



COMMONS REGISTRATION ACT 1965

Reference Nos 274/D/228 to
247

In the Matter of (1) Aberdyfi Common, including Morfa Gypsies and The Recreation Ground and (2) Cefn Rhos or Aberdovey Common, both in Merionnydd District, Gwynedd.

DECISION

Introduction

This decision relates to registrations made, or purporting to have been made, under the 1965 Act. My decisions as regards each of the registrations are set out in the Third (and last) Schedule hereto. The disputes which have occasioned this decision, the circumstances in which they have arisen and my reasons for my decision are as follows.

These disputes relate to the registrations at Entry No 1 in the Land Section and Nos 1 to 6 inclusive in the Rights Section of Register Unit No CL97 in the Register of Common Land maintained by the Gwynedd (formerly Merioneth) County Council; and the registrations at Entry No 1 in the Land Section and ~~and~~ → Nos 1 to 6 inclusive in the Rights Section of Register Unit No CL124 in the said Register, and are occasioned: by Objections Nos 181 to 186 inclusive made by the Trustees of Aberdovey Golf Club and noted in the CL97 Register on 16 December 1970, by Objections Nos 187 to 192 inclusive made by the said Trustees and noted in the CL124 Register on 16 December 1970, by Objections Nos 437 and 465 made by Meuric Rees and T D Cook (for British Railways Board) and noted in the CL124 Register on 22 August 1972, and by the said Land Section registrations being or allegedly being → in conflict with each other.

These disputes were referred to a Commons Commissioner by Gwynedd County Council as registration authority in notices dated 13 May 1987.

References identical with or similar to the said 1987 references were in 1974 sent by Gwynedd County Council (Dolgellau Area Office) to the Commons Commissioners. From the papers now available in their office, it seems that the Commons Commissioners or someone acting for them thought that the CL97 and the CL124 parts of the Register of Common Land originally maintained by Merioneth County Council were irregular in that contrary to sub-section (4) of section 4 of the Commons Registration Act 1965, land on 6 October 1969 registered in the CL124 Land Section included land on 4 October 1968 registered in the CL97 Land Section. As appears from the Register: the October 1968 CL97 Land Section registration was followed by six CL97 Rights Section registrations made between 7 October 1968 and 26 January 1970 and by two CL97 Ownership Section registration made on 4 October 1968 and 26 January 1970, (the former was modified on 15 May 1972); also the October



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1969 CL124 Land Section registration was followed by six CL124 Rights Section registration made between 6 October 1969 and 23 January 1970 and by one CL124 Ownership Section registration made on 26 January 1970 and amended 20 September 1972. From the next mentioned letters sent by the Clerk of the Commons Commissioners, it seems that they or someone acting for them considered that the irregularity was such as to preclude them from giving any consideration to any of these registrations. (1) letter dated 8 February 1978 to Margetts and Ritchie, Solicitors of Birmingham acting for a purchaser of land in Aberdyfi, their reference GRR/MEB/3673S; (2) letter dated 15 October 1980 to Meirionnydd District Council, their reference C 24/2; (3) letter dated 22 July 1981 to National Farmer's Union (Merionnydd County Branch), their reference TL/DW/GR; and (4) letter dated 1 February 1983 to Dafydd Elis Thomas Esq, MP for Meirionnydd who had been contacted on behalf of Messrs T A and D H Jones, Crychnant, Aberdyfi. The papers sent by the County Council in 1974 were sometime before February 1983 returned to them by the Clerk of the Commons Commissioners.

In the Report of the Common Land Forum, published by the Countryside Commission in 1986, at page 70, about Aberdyfi Common CL97 and Cefyn Rhos (or Aberdyfi) Common CL 124 it is said: "the Commons Commissioners have declined to exercise jurisdiction to consider objections to the provisional registrations". I, having noticed the words above quoted from the said Report considered the said before - 1983 papers and was unable to think of any good reason why a Commons Commissioner could refuse to consider at least some of the said registrations on receiving about them from the County Council a reference in the prescribed form; I thought it at least arguable that a Commons Commissioner ought to consider all such registrations.

At a discussion held at Caernarfon on 31 March 1987 with representatives of the County Council, I so informed the Assistant County Secretary and indicated that if the papers sent in 1974, were resubmitted to the Commons Commissioners with such updating as the County Council thought appropriate, I would direct these matters to be listed for a public hearing. Hence the said May 1987 notices.

For the purpose of inquiring into the disputes specified in the said notices, I held a hearing at Dolgellau on 24, 25 and 26 November 1987. At the hearing (1) Mr Norman John Cave-Brown-Cave and Mr Selwyn Wooton Hill as trustees of the Aberdovey Golf Club who made the said Objections Nos 181-192 (inclusive) and who applied for registration CL97 Ownership Section Entry No 2 and at CL124 Ownership Section No 3 (replacing Entry No 1), were represented by Mr E Llwyd, solicitor of Guthrie Jones & Jones, Solicitors of Dolgellau; (2) Mr Richard Ellis Meuric Rees who made the said Objection No 437 and who applied for the registration of CL97 Rights Section Entry No 2, was represented by Mr Bryn Roberts, solicitor of Henry Evans Roberts & Co, Solicitors of Machynlleth; (3) Mr John William Horsford Hodgson and Mr Edward Bromley Davenport as the personal representatives of Mrs Isobella Mary Alison Rieben (she died 13 January 1971) who applied for the registration at CL97 Rights Section Entry No 1, were represented by Mr A M Dancer, solicitor of Griffith Adams, Solicitors of Dolgellau, as agents for Bolton & Lowe, Solicitors of 2 Temple Gardens, London; (4) Meirionnydd District Council as successor of the Urban District Council of Tywyn who applied for the registrations at CL97 Rights Section Entry No 5 and Ownership Section Entry No 1 (amended by Entry No 3) were represented by Mr John Gwynedd Roberts their solicitor; (5) Mr Thomas John Jones



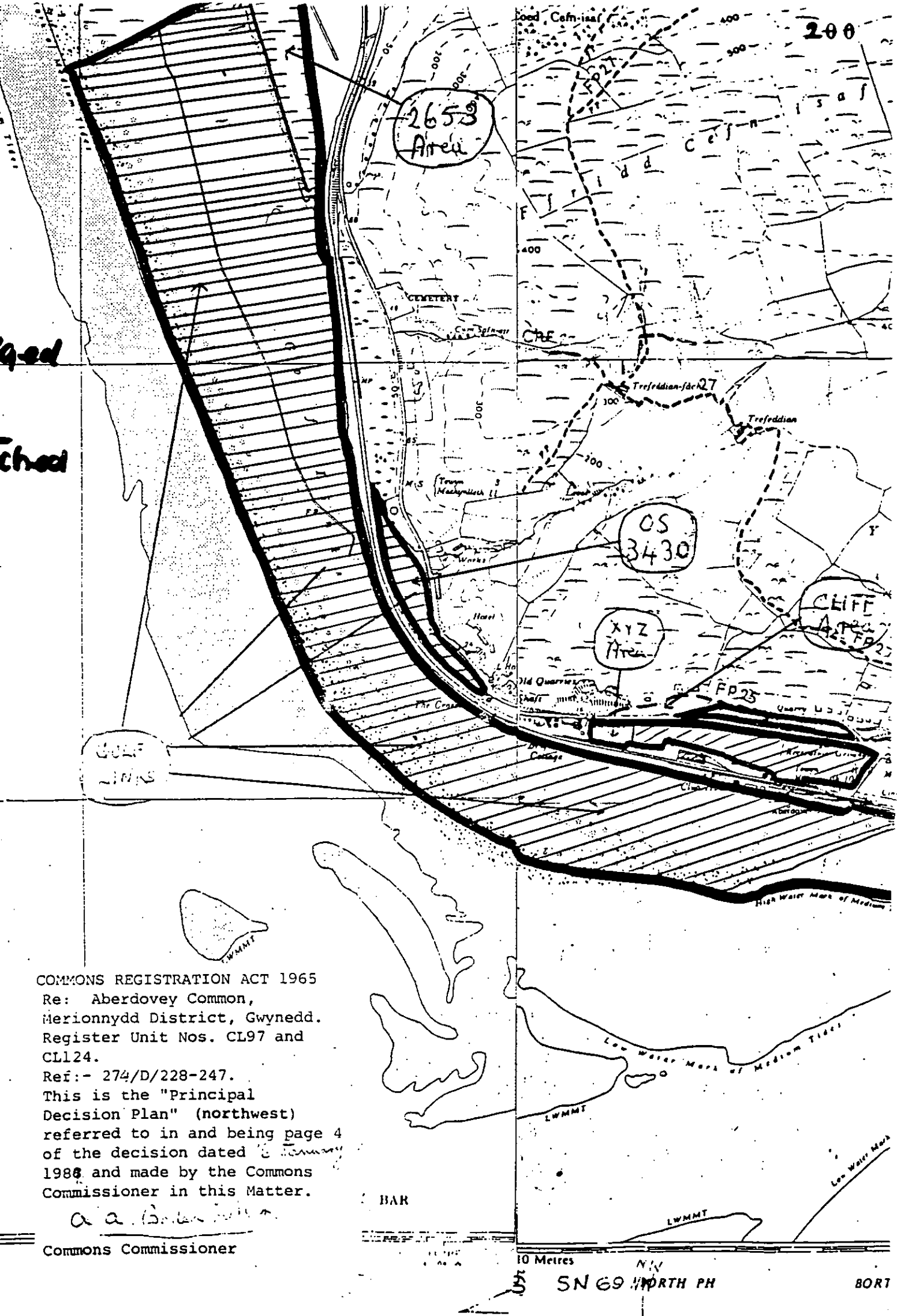
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who with Mr Evan Pugh Jones (now deceased) applied for the registration at CL124 Rights Section Entry No. 1 was represented by their nephew, Mr Evan Pugh Jones of Tyddyu Rhys, Aberdovey; (6) Mr Lewis Griffith Jones who applied for the registration at CL124 Rights Section Entry No. 2 was represented by Mr B W Jones, solicitor with Humphreys & Parsons, Solicitors of Machynlleth; (7) Mr Evan Edfryn Davies who applied for the registrations at CL124 Rights Section Entry Nos 3 and 4 was also represented by Mr B W Jones; (8) Mr Thomas Alun Jones who applied for the registrations at CL124 Rights Section Entry No. 5 alone and No. 6 with two others, was also represented by Mr B W Jones; (9) Mr David Henry Jones who with Mr Thomas David Jones and the said Thomas Alun Jones applied for the CL124 Rights Section at registration Entry No. 6 was also represented by Mr B W Jones; and (10) Gwynedd County Council were represented by Mr Kelvin R Dent, solicitor, Assistant County Secretary (Environmental Services) and Mr E D Owen, Administrative Officer of the Department of the County Secretary and Solicitor.

At pages 4 and 5 of this decision is an uncoloured copy ("the Principal Decision Plan") of a plan prepared by Gwynedd County Council showing the CL124 land edged black and the CL97 land hatched in red; the red hatching on the original appears on the copy as thin black lines. I have divided the CL97 land and the CL124 land into parts, and, to give some precision to this decision, have named and defined such parts in Part I of the First Schedule hereto. I have written the names on the Principal Decision Plan and hereinafter use them.

The CL97 land comprises 4 pieces: (i) a piece ("Golf Links") the west and south-west boundary of which is about $1\frac{1}{2}$ miles long being Seashore (HWM of MT), and which includes all, except about 20 acres at the north-east end, the land between such boundary and the railway from Machynlleth and Aberdovey on the east to Tywyn and beyond on the north; (ii) a piece ("Recreation Ground") which is about $\frac{1}{3}$ of a mile long from east to west, is bounded on the north by the part of the A493 road between Aberdovey and Tywyn, and bounded on the south by the land held with Aberdovey Railway Station; (iii) a piece ("OS3430") which is so numbered on the OS Map 1/2500, contains 7.764 acres, and is situated between the said road and railway and (iv) a piece ("Morfa Gypsies") which is about $\frac{1}{3}$ of a mile long and comparatively narrow and adjoins the north side of the A493 road opposite the Recreation Ground. The CL124 land comprises 5 areas: (i) all the CL124 land except an area ("Cliff Area") which is about 100 yards long and narrow, too small to appear clearly on the Principal Decision Plan, and which extends from the east end of (and is I suppose by some considered to be part of) Morfa Gypsies; (ii) an area ("Aberdyfi Village Area") which is about $\frac{1}{2}$ a mile long extending eastwards from the southeast side of the Golf Links; (iii) an Area ("2653 Area") the sides of which are about 550, 85, 530 and 30 yards and which adjoins the north end of the northeast side of the Golf Links; (iv) an area ("XYZ Area") which is about 100 yards long from east to west and about 60 yards wide and which adjoins the west side of the Recreation Ground; and (v) an area ("ABC Area") which is too small and irregular to appear clearly on the Principal Decision Plan, and which opposite the Railway Station, adjoins the south side of the Recreation Ground.

The registrations in the CL97 and CL124 Land Sections, Rights Section and Ownership Sections are summarised in Parts II and III of the First Schedule hereto, and the grounds of each Objection are there specified.



COMMONS REGISTRATION ACT 1965

Re: Aberdovey Common,
Merionnydd District, Gwynedd.
Register Unit Nos. CL97 and
CL124.

Ref:- 274/D/228-247.

This is the "Principal
Decision Plan" (northwest)
referred to in and being page 4
of the decision dated 2 January
1988 and made by the Commons
Commissioner in this Matter.

a. a. B. B. B. B.

Commons Commissioner

10 Metres

SN 69 NORTH PH

BORT



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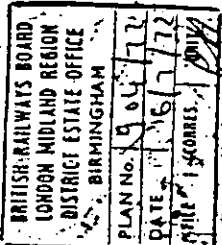
Course of Proceedings

(24 November) I started by asking for evidence or argument for or against my not proceeding with any of the said references by reason of the irregularity alleged in the said 1974 to 1983 correspondence or for any other reason. Mr Llwyd referred me to the Commons Registrations (General) Regulation 1966, by which a registration authority is in regulation 36 required to correct the errors or omissions there specified, and suggested that some of the Objections are out of time. Nobody suggested any other reason for my not proceeding with the hearing. I considered (and so said) first, that my jurisdiction to consider disputes occasioned by objection was under section 6 of the Commons Registration Act 1965, and was not restricted by anything in the cited Regulations; and secondly, the judgements in re West Anstey 1984 1Ch 172 showed that where there is a registration subject to any objection, all questions relating to it were open for consideration by a Commons Commissioner.

In the course of a preliminary discussion:- Mr K R Dent said there were three small areas which should be removed from the Register. It was agreed that without prejudice to any question as to on whom was the burden of proof evidence offered by the Aberdovey Golf Club should be called first. Mr E Llwyd said that Mr Thomas Evan Jenkins who was a trustee of the Aberdovey Golf Club is now deceased and Messrs Eifion Richards and Perris Williams have been appointed trustees in his place. Mr A M Dancer and Mr B W Jones conceded Objection No. 465 made for British Railways Board; at page 7 of this decision in an uncoloured copy ("the BR Plan") of the plan attached to this Objection on which I have marked PQRT the line on the original coloured green and on which the land hatched or coloured purple on the original appears as a comparatively small rectangular area the north boundary of which is "QR". Mr J G Roberts said that the District Council claimed to be owners not only of the parts of the CL97 land of which they were registered as owners, but also of part of the CL124 land not included in the CL97 registration. Mr E Llwyd said that the CL97 Rights Section Entry No. 1 and CL124 Rights Section Entry No. 4 were duplicates (both of rights attached to Penhelig Uchaf).

Next Mr Norman John Cave-Brown-Cave who has been a trustee of Aberdovey Golf Club since 1955 gave oral evidence by reference to his 1987 statutory declaration (AGC/1) and the exhibit thereto (AGC/2) showing the part of the CL97 land owned by the Club. Questioned by Mr B W Jones about the 2653 Area, he agreed that there was no dividing fence between it and the CL97 land owned by the Club: he thought the Club had never claimed to own this Area and had never agreed anybody else's claim.

Next, Mr E Llwyd claimed that the Club CL97 Ownership Section registration at Entry No. 2 should be confirmed without any modification, and Mr J G Roberts claimed that the Tywyd UDC (now Merionydd District Council) CL97 Ownership Section Registration at Entry No. 1 should also be confirmed.



Commons Commissioner



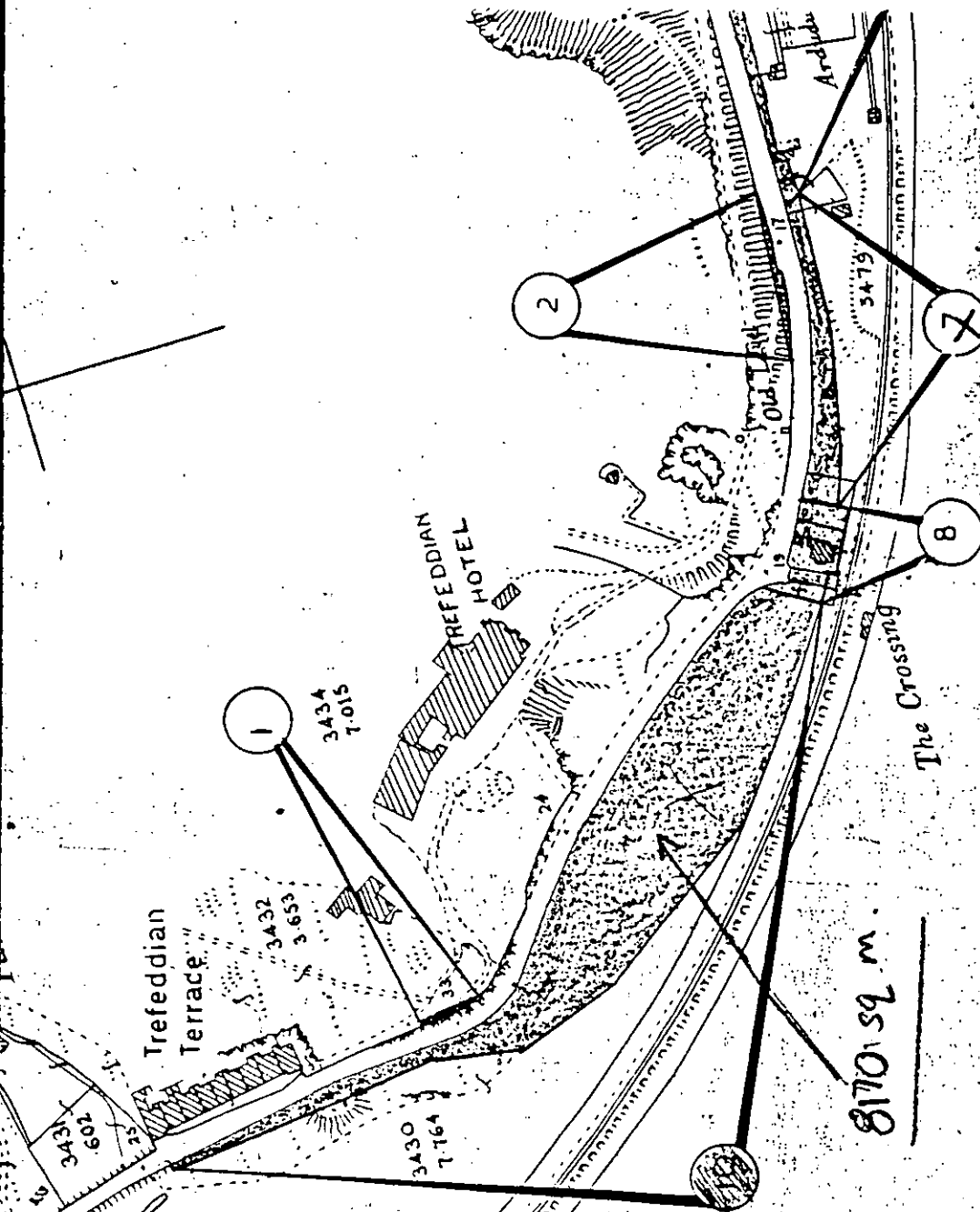
- 8 -

Next, oral evidence was given by Mr Michael David Gwynne Jones who is the chairman of the House Committee and of the Grazing Subcommittee of the Aberdovey Golf Club, who has been a member since 1972, and who had been asked by the Trustees to investigate the relevant history. He referred to Objections Nos 181 to 192, produced the 1974 to 1976 conveyances (AGC/4, 5, 6 and 7) under which the Club became entitled to the rights registered at CL97 Rights Section Entry Nos. 3, 4, 5 and 6, and said (in effect):- Before the 1941 agreement (County/2) the grazing was 2 sheep per head of cattle; under it grazing was 4 sheep per head of cattle; the agreement expired in 1962 and has not been renewed. The golf course is 18 holes on low lying marsh land in the vicinity of Aberdovey. Large parts of it in the early days were under water and it is only the activities of the Golf Club helped by the River Board which have made it much better grazing than it was previously. The course is a major tourist attraction and the village benefits greatly by having near it a golf course of high repute. The fact that both cattle and sheep are being grazed on the Common has detracted from the development of the course; when cattle are grazed it is vital that all the greens are surrounded by an electric fence and this makes difficulty in attracting green fee payers and also major tournaments; sheep and cattle make the upkeep of the sand bunkers very difficult; the droppings are a nuisance. So the cost of the upkeep of the Course is greatly increased by the presence of grazing animals. During February, March and April when there is very little food (meaning grass for animals) left for stock to eat, there is a tendency for too many sheep to be left on the Course and as a result they wander along the beech into the village of Aberdovey and as far north as Tywyn in search of food.

While Mr M D G Jones was giving the evidence above summarised, by the County Council was produced a plan (County/1) referred to in the 1968 statutory declaration made by Mr Llewellyn Williams in support of the CL97 Land Section registration, and a copy (County/2) held by them of the 1941 agreement, Mr Llwyd explaining that he thought the original of this which was at one time held by Tywyn Urban District Council had been mislaid. Mr M D G Jones in the course of his evidence mentioned that the Club wished to reach agreement with the graziers and that he thought that the activities of the Club were of benefit to the village of Aberdovey.

Next there was some discussion as to the effect of the 1941 deed and for the convenience of Mr K R Dent and Mr Islwyn Jones, the oral evidence of Mr M D G Jones was then left unfinished.

Next (24 November) Mr K R Dent produced a plan (County/3) of Merioneth County Council Highways and Bridges Department; Tywyn Aberdovey Road A493 Improvement from Trefedddian Hotel to Cape St Vincent, and said that three areas; (i) 8,170 sq m marked as "10"; (ii) 1,720 sq m marked as "4" and (iii) 1,580 sq m marked as "Deed of dedication 17 March 1969" were acquired by conveyance or deed of dedication for the improvement, and were (irrespective of their manner of acquisition) part of the highway; all are on the plan coloured pink. At pages 9, 10 and 11 of this decision are uncoloured extracts from this plan ("Highway Improvement Plan west/central/east"). Mr B W Jones agreed that these 3 plots are now highway and said that they had never any grazing value. Mr Bryn Roberts and Mr A M Dancer also agreed.



COMMONS REGISTRATION ACT 1965
 Re: Aberdovey Common,
 Merionnydd District, Gwynedd.
 Register Unit Nos CL97 and
 CL124.
 Ref:- 27-/D/228-247
 This is the "Highway
 Improvement Plan (west)"
 referred to in and being
 page 9 of the decision
 dated 16 January 1988
 and made by the Commons
 Commissioner in this Matter.

A. A. Bowen Jones

Commons Commissioner.

MERIONETH O.S. XLVIII. 6. SECOND EDITION 1901 WITH AMMENDMENTS

MERIONETH COUNTY COUNCIL

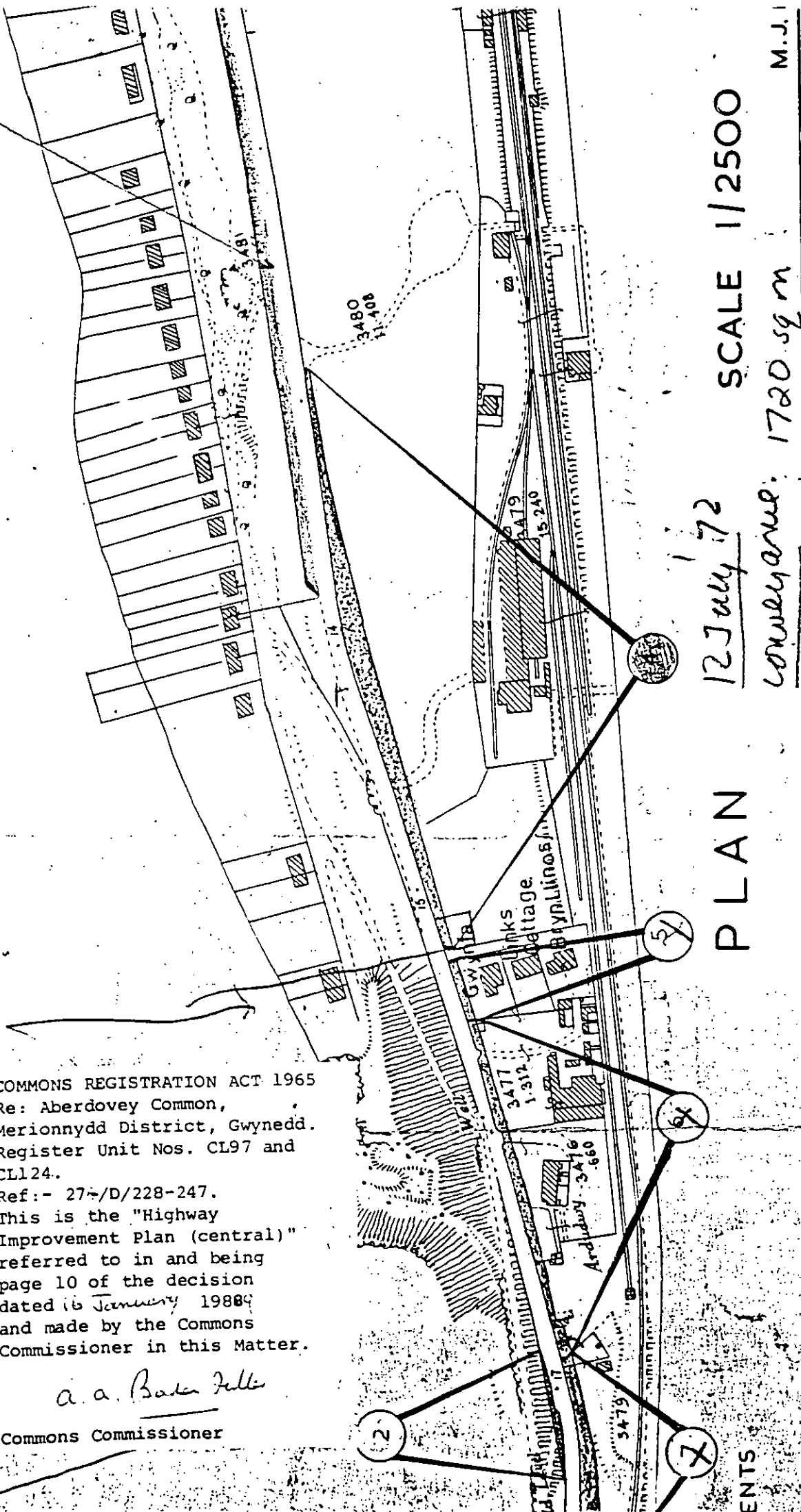
PLANNING AND ROADS DEPT

TY
 205
 IMPROVEMENT

COMMONS REGISTRATION ACT 1965
 Re: Aberdovey Common,
 Merionnydd District, Gwynedd.
 Register Unit Nos. CL97 and
 CL124.
 Ref:- 27-D/228-247.
 This is the "Highway
 Improvement Plan (central)"
 referred to in and being
 page 10 of the decision
 dated 16 January 1988
 and made by the Commons
 Commissioner in this Matter.

a. a. Baker Fells

Commons Commissioner



ENTS

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TYWYN ABERDOVEY ROAD A 493

ADDITIONAL FROM TRAFFICIAN HOTEL TO CAPT ST. VINC

COMMONS REGISTRATION ACT 1965
 Re: Aberdovey Common,
 Merionnydd District, Gwynedd.
 Register Unit Nos. CL97 and
 CL124.

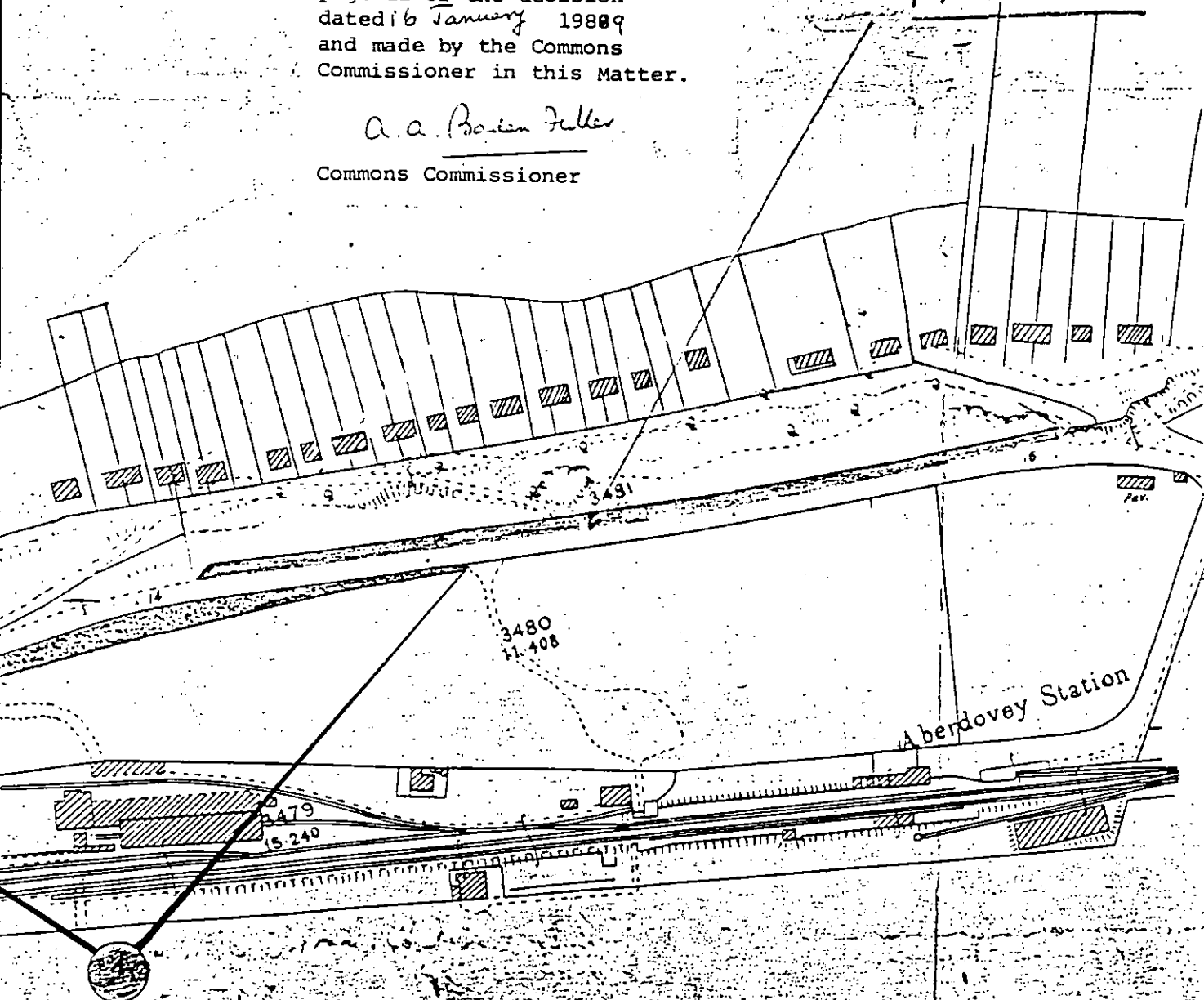
Ref:- 274/D/228-247.

This is the "Highway
 Improvement Plan (east)"
 referred to in and being
 page 11 of the decision
 dated 16 January 1988
 and made by the Commons
 Commissioner in this Matter.

A. A. Bowen-Jones

Commons Commissioner

*Order of dedication
 17 March '69*



12 July 72

SCALE 1/2500

conveyance 1720 sq m

M. J. PAGE, C.Eng. M.Inst.C.E.

LEY ROAD A 493

IAN HOTEL TO CAPE ST. VINCENT.



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Next Mr K R Dent produced a plan (County/4) which included the eastern half of the Aberdyfi Village Area (being a part of the CL124 land not included in the CL97 land) on which there was coloured red a rectangular piece of land about 55 yards long from east to west and about 8 yards wide, and there was edged green a triangular piece with sides of about 20 yards from north to south and extending eastwards about 130 and 135 yards. An uncoloured copy of such plan is page 13 of this decision ("the Fire Station and Car Park Plan"); on it I have marked sagittarily the red and edged green pieces. Mr Dent said that the red piece had been bought in March 1971 by the County Council from Tywyn Rural District Council and sometime in the 1970s the Fire Station there was built on it, and the rest of the red piece has been occupied with it. He claimed that the red piece should be excluded from the registration. This claim was agreed by Mr B W Jones, Mr Bryn Roberts and Mr A M Dancer.

Next (24 November) Mr Islwyn Jones in the course of his oral evidence (among other things) said (in effect):- He was born on 14 August 1911 at Penhelig (Uchaf) Farm. He left the Farm on 12 November 1945; his father left in 1930; they were (successively) tenants. On the Common they grazed in the summer 5 cattle and in the winter 25 sheep, for which they paid nobody; the rights went with the tenancy.

Next (25 November) Mr M D G Jones continued his evidence, and in answer to questions by Mr E Llwyd produced from the file of the Golf Club Secretary the 1926 letter (AGC/8); the Schedule to it for cattle is the same (59 altogether) as the Second Schedule to the 1941 Agreement (County/2), and for sheep is half (113 altogether instead of 236).

Mr M D G Jones was for about 2 hours questioned by Mr A M Dancer, Mr Bryn Roberts and Mr B W Jones; many of his answers by reason of the agreement made on the following day as below, recorded, are now irrelevant. He said (in effect):- He agreed that the Golf Club had never claimed to own the 2653 Area, that OS 3430 had never been grazed as far as he could remember, and that the Club had not itself grazed under the rights acquired under the 1974 - 1976 conveyances (AGC/4, 5, 6 and 7).

Next it was agreed that his re-examination should be postponed, and after an agreed adjournment for discussion, upon my resuming the hearing it was agreed that I should continue on the basis that I would not until the next day consider any evidence other than that relating to the 2653 Area specified in Objection No. 437 made by Mr Meuric Rees.

Next, (25 November) Mr David Henry Jones who applied for the CL124 Rights Section registration at Entry No. 6 (Crychnant) said (in effect):- He farmed Crychnant in partnership with his brother; they first came there in March 1942 as tenants; they became owners on 10 March 1962 (DHJ/1). The 2653 Area (witness referred to MDC/1) had always been part of the Common Land, and he could say that rights had been enjoyed over it since 1942, when they started farming. The appearance of this area and of the streams which flowed by it and the adjoining land were as he described in detail.



COMMONS REGISTRATION ACT 1965
Re: Aberdovey Common,
Merionnydd District, Gwynedd.
Register Unit Nos. CL97 and
CL124.

Ref:- 274/D/228-247.

This is the "Fire Station
and Car Park Plan"
referred to in and being
page 13 of the decision
dated 16 January 1980
and made by the Commons
Commissioner in this Matter.

a.a. Boden Fuller

Commons Commissioner



Next (26 November), after a short adjournment, Mr E Llwyd said the Golf Club had reached agreement with the graziers under headings which were to this effect:- First: OS 3430 was not by the graziers required for grazing, so that none of the rights registrations would extend over it; the Club's registrations of their ownership so far as it extended to OS 3430 would be made final. Secondly, the Club's registration of their ownership to the extent of the land edged with red broken lines on the exhibit to the 1987 declaration of Mr N J Cave-Brown-Cave would be made final. Thirdly, sheep would only be grazed 6 months in winter from 1 November to 30 April in each year, and cattle would only be grazed in summer from 1 May to 31 October in each year. Fourthly, the Rights Section registrations except CL97 Nos 3, 4, 5 and 6 would be dealt with as follows: CL97 No. 1 and CL124 No. 4 would not both be confirmed; one (it did not matter which) would be confirmed, the Objection to it being withdrawn. CL 97 No. 2 would be confirmed. CL124 No. 1 would be confirmed with the modification to 5 cattle and 20 sheep appurtenant to Tyddyn-Rhys-y-Gadair, so that from the registration Tynewydd would be deleted. CL124 Nos 2, 3 and 5 would be confirmed, the Objections to them being withdrawn. CL124 No. 6 would be confirmed with the modification that 7 cattle and 28 sheep would be appurtenant to Crychant and 3 cattle and 12 sheep would be appurtenant to Tynewydd, being OS Nos.

2796	containing	4.544:	2823	containing	3.684
2824	"	5.106:	2838	"	2.006
3399	"	15.154:	3384A	"	4.432
3400	"	9.288:	3.404	"	6.097
3405	"	2.239:	3415	"	6.523

Mr Llwyd said that no time need be taken up with CL97 Rights Section Nos. 3, 4, 5 and 6 because about them there was no real question (the Golf Club had acquired these rights), and that Tynewydd had been sold in lots partly to the Golf Club under a conveyance dated 22 March 1974, partly to Messrs T D, T A and D H Jones (applicants for CL124 Entry No. 6), and partly to others.

Mr B W Jones confirming that the agreement had been reached, said that the grazing would be all one: everything within either CL97 or CL124 except the Highway Improvement Area, and subject to whatever might be my decision about the 2653 Area.

Mr J G Roberts for Merionnydd District Council agreed that the CL97 rights so far as confirmed would extend over parts of CL124 not included in CL97.

Mr Bryn Roberts said that Mr Meuric Rees did not agree that the rights extended over the 2653 Area.

Mr Dancer concurred in everything said so far but pointed out that there was a part of the CL124 land north of the railway line (the XYZ Area) not included in the CL97 land.



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I commented first the withdrawal of an Objection has no effect (the registration is not thereby finalised as it might have been if the Objections had never been made), but I would treat Mr Llwyd's "withdrawal" as meaning that the Golf Club agrees to my confirming the registration to which the Objection applied; and secondly that I thought that the Rights Section CL97 Entry No. 1 and CL124 Entry No. 4 could be consolidated so as to be treated as made on the application of Mrs I M A Rieben as owner and of Mr E E Davies as tenant.

Next Mr E P Jones looked at the 1969 statutory declaration (EPJ/1) made by his uncles in support of CL124 Rights Section Entry No. 1, and he on their behalf agreed with Mr Llwyd's statement on behalf of the Golf Club that column 5 of such registration could be amended by deleting "and Tynewydd", and by amending the black colouring on the supplemental map by deleting from the land so coloured all the OS Nos. specified in column 5 of CL97 Rights Section Entry No. 5.

Mr Dancer said that the XYZ Area had been built over. He asked whether as matters then stood the graziers had to prove their rights; I indicated that the evidence already given at the hearing with the statutory declarations made in support of each of the registrations was enough for me to give a decision about them as agreed.

Next, Mr J G Roberts for Meirionnydd District Council referred to the CL97 Ownership Section registration at Entry No. 1 (MDC/2), and said it was correct. He also produced the 1979 conveyance of the Play Area by his Council to Tywyn Community Council, an uncoloured copy of the plan attached thereto ("the Play Area Plan") is page 16 of this decision; he contended that the Play Area and the Car Park Area, being the land edged green on the plan (County/3) produced by Mr K R Dent, should like the Fire Station Area coloured red on such plan be excluded from the CL124 Land Section registration. He also produced a copy of the 1925 Scheme (MDC/4) made under the 1899 Act.

Next (26 November) Mr David Henry Jones continued his oral evidence being questioned by Mr Bryn Roberts who put to him the December 1961 conveyance (MR/1) by Mrs I M A Rieben to Mr Meuric Rees, the 1930 Scheme Plan (MDC/1), the 1926 agreement (AGC/8), and the March 1908 conveyance (MR/2). He (among other things) said (in effect):- To the stream nowflowing between the two red lines on the 1961 conveyance plan, meaning between the boundaries of the 2653 Area and OS 2651; there were and are two points of access for watering cattle or sheep: at the top and the bottom (meaning at the northeast corner of the 2653 Area and at or a short distance south of the southeast corner): "I have a choice"; the banks of the stream (along the said boundary) were erected by the Water Authority in about 1960. There is nothing to stop cattle or sheep going from anywhere on the Common onto the 2653 Area. He accepted that the part of OS 2653 not included in the 2653 Area (marked PQR on my copy of the 1961 conveyance plan) was part of the Common and that the fence which Mr Rees when he came put up included this part. He knew nothing about consequential negotiations and disputes. He remembered that the Golf Club took some turf from the 2653 Area.

Further questioned by Mr B W Jones, Mr D H Jones said that as to the fence erected in the 1950s along the west boundary of the 2653 Area he was not involved in their being any right (for Mr Rees so to erect it); in his opinion the Area "belonged to the Common".

COMMONS REGISTRATION ACT 1965
Re: Aberdovey Common,
Merionnydd District, Gwynedd.
Register Unit Nos. CL97 and CL124. 212

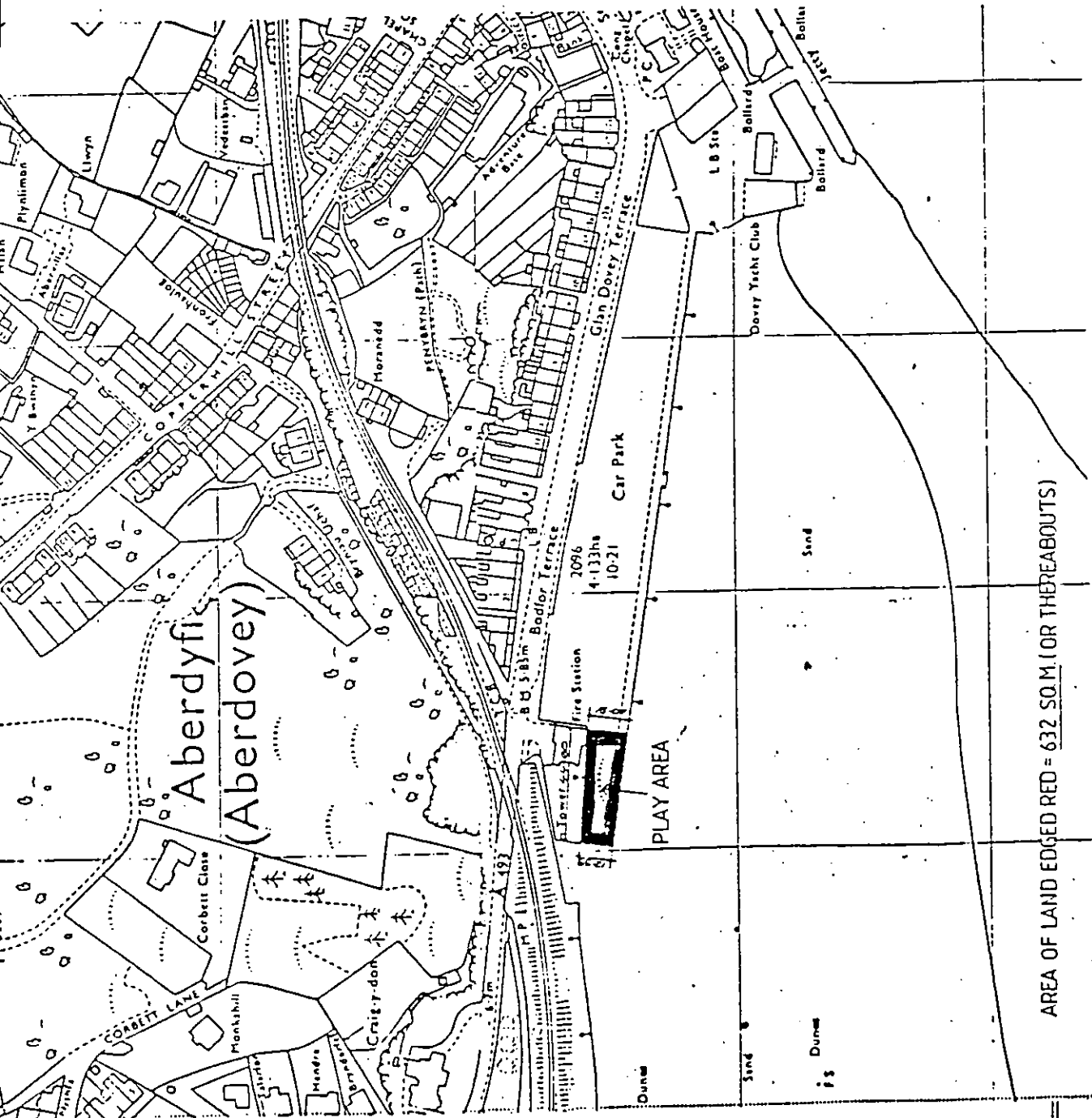
Ref:- 274/D/228-247.
This is the "Play Area Plan"
referred to in and being
page 16 of the decision
dated 16 January 1988
made by the Commons
Commissioner in this Matter.

A. A. B. Baker

Commons Commissioner

job
PLAY AREA
ABERYDŷI

title
PLAN AS EXISTING
OS REF. SHEET NO. SN6095/6195.



AREA OF LAND EDGED RED = 632 SQ.M (OR THEREABOUTS)



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Next (26 November) Mr Islwyn Jones continuing his evidence (24 November at page 12 above) said (in effect):- He had known Aberdovey Common since he was 7 years old. He was born 14 August 1911 at Penhelig Uchaf; for it there was a right to graze 5 cows in the summer and 25 sheep in the winter. He took over Penhelig in 1940 and left in 1955:- "I made a mistake when I said 1945 (when giving evidence on 24 November): I looked when I got home and found I left in 1955". From there he went to Plas Penhelig; since 1955 he had not gone from Aberdovey. As to the land cross hatched on the Scheme plan (the 2653 Area), he went there in 1921 with a horse and cart; it was a very dry summer; all with sheep and cattle on the common when it gets dry, go up there to graze; it is very wet in the winter but you can take a horse and cart there during the summer. As to there being a fence dividing the 2653 Area from the rest of the Common: "Never in my lifetime nor in my dad's lifetime". They (his father and he) exercised rights over the Common - including the cross hatched Area. There was no objection except from the Golf Club when they were holding a tournament just for a week. They (his father and he) were tenants of Penhelig Uchaf, he for 15 years as a tenant.

Next, Mr Islwyn Jones in answer to questions by Mr Bryn Roberts said (in effect):- He knew Aberdovey Common well. As to between 1925 and 1930 part of it being excluded from the Common, "I never heard of it nor been told". Mr Howell was his landlord, meaning the brother (JMH) of Mrs Rieben (IMAR), same as Mr Rees' landlord. He could not offer any explanation of it (2653 Area) being excluded from the Common (the 1925 Scheme). There was a ditch before you go onto the marsh. As to where did he say the boundary was, "I would say the stream between the Marsh and ... (meaning OS2651). There is some kind of bridge there, a wooden bridge, so the stream is the boundary.

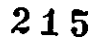
Next, Mr Islwyn Jones in answer to questions by Mr B W Jones said (in effect):- As to the boundary (pointing to the Scheme map), "here" (the east side of the 2653 Area). There were two bridges (pointing to the map: first from the CL97 land on the west near the middle of the west boundary of the 2653 Area; and secondly from OS2651 near a point $\frac{1}{2}$ rd to the south and $\frac{1}{2}$ rd to the north of the east boundary of the 2653 Area. So the rushes "was in the Common: (so you thought?) I know".

Next (26 November) oral evidence was given by Mr Richard Ellis Meuric Rees (in the 1961 conveyance and in the Register called Meuric Rees) in the course of which he produced the documents specified in Part VI of the Second Schedule hereto, and said (in effect):- Since he was 3 years old he had lived at Escuan (on OS Map 1/50,000, a short distance north of where the A493 crosses Afon Dyffryn-Gwyn). His main interest was farming and related matters. His interest in Aberdovey Common had been since 1954 as the Common over which he had rights; previously his interest had been as a local person living close to it. The 2653 Area was included in the tenancy in 1954 granted to him by Mrs Rieben who had inherited the Penhelig Estate from her brother Mr J M Howell. In 1961 he took a conveyance (MR/1) of what he was then tenant, Dyffrynglyncul (509.278 acres). When he moved from Escuan and took over the tenancy, the situation on the marsh land was: the cattle from the Common were grazing right up to the railway including OS2651: it (OS2651) was in the same condition with regard to rushes as the 2653 Area is today. OS2651 has since been drained and reseeded; the reason why the cattle came through was that the ditch and



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waterway was clogged up and they could walk through it; it had not been cleared for many years and the River Board had not been maintaining the waterway between OS2651 and 2653. The grazing then (1954) was just as had been described by the two Mr Jones (as witnesses). As to the fence (meaning that by him erected in 1957), he was not defending his rights as a tenant but acting on the instructions of his landlord Mrs Rieben; he was instructed to fence it by her agent Mr H M Arthur as appears from his August 1957 letter (MR/4); he was solicitor agent for her and dealt with her other tenants, she did not act personally, then being about 80 years old. The fence (1957) was on the western side of the 2653 Area; he understood from Mr Arthur that the fence was along the line of the boundary (witness pointed to the 1961 conveyance plan); he thought it (the fence) continued southwards but not going all of "PQ" (meaning the west boundary of the PQR Area), perhaps southeast from "P", the west and south boundary of OS2653 excluding the southern point. There is about 100 yards of waterway on the southern end where the stream comes into the Common land (that is south of "PR"): the waterway was then as clogged up as was the rest of the waterway, and it may be that cattle would have difficulty in getting water there. The Drainage Board came and cleared the stream from the place where the two streams come under the road right down to the northern end of the 2653 Area, the two streams coming under the road there converge when they come onto the Common. The farms (higher up) depend for their water on these two streams. The River Board carried out major drainage extending elsewhere costing something like £200,000 and have maintained the water flow, so that it has never (since) dried up along the line "PR"; it may have dried up previously but there has been free flowing water ever since the exceptionally dry summer 3 years ago. The scheme (for drainage) was done during the 1960s. He did not know how long the ditch had not been maintained. He had been member of Tywyn Urban District Council until 1974 and was therefore familiar with the Scheme Map which hung up on a wall where they met. The Scheme was amended on 14 November 1930 (MD/4). As to the 1941 Agreement (County/2) and the 1926 letter (AGC/8), he understood when he was on the Council that the Agreement between the Golf Club and the Commoners did not extend over the hatched area (on the Scheme Plan), but the issue never arose in the Council. When he came in 1954 he understood there were 9 Commoners; he thought 4 dealt with the fence, but he could not be certain who they were. As to turf being taken off the 2653 Area: the Golf Club took some in 1961 with his agreement; the Secretary rang him up and asked if he objected; they have not used it for the last 10 years. They have not had any peat on it for some years; he was approached by persons to cut peat. As to the use of the area for water: the southern watering point is better because it has a hard bottom; (rock); he had not seen any use of the water at the northern end, there is a muddy access, but he could not say it had not been used. He had no intention of excluding commoners from getting water from the stream.



Next after Mr M Rees concluded his evidence I asked whether there would be any arguments as to the 1961 conveyance (MR/1) of Mr M Rees having been made before the 1962 conveyance (DHJ/1) of Mr D H Jones (up to then I had seen no more than the outside of this conveyance). To this Mr Bryn Roberts said (in effect) that Mr Rees did not wish to make any distinction between the Commoners who had registered, that the point made in some of the cross-examination about Mr D H Jones' 1961 conveyance being before the 1962 conveyance would not be relied on and that I could assume the evidence given by Mr Islwyn Jones and by Mr D H Jones could be treated as applicable to all (meaning all who had registered rights of common).

Next Mr B W Jones and Mr Bryn Roberts made submissions; and Mr B W Jones replied. It was explained that the River Board referred to by Mr Rees was, or was succeeded by, the Welsh Water Authority.



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Inspection

On 27 November 1987 I inspected the CL97 and CL124 lands and their surroundings for over 2 hours accompanied by Mr R E Meuric Rees and Mr David Henry Jones both of whom had given evidence and Mr Thomas Alun Jones of Crychant and Mr Dyer James of the Farmers' Union of Wales, Llysamaeth, Dolgellau who had been helping Mr B W Jones.

We started from the Railway Station going in a Land Rover by the Cinema under the bridge carrying the railway and by the Club House to the place mentioned at the hearing where two streams join and then flow under the railway and thence northwards between the 2653 Area and OS2651. We continued on foot seeing the newly completed stream bank erected by the Welsh Water Authority along the east boundary of the 2653 Area and where rushes had been growing, the line of where the 1957 fence had been was pointed out and it was agreed that it was wooden posts with two barbed wire strands, cattle proof but not sheep proof. The bridge on the east side of the 2653 Area was tree trunks supporting railway sleepers; it was said to be by the line of an old gas pipe not now used. It was agreed that in dry summer 2653 Area dries out so rushes could be cut mechanically and the land becomes grazeable by cattle; the rushes are taken away and used as bedding or to improve other land. The fence on the east side of the stream was erected by Mr Rees. There was now a temporary fence to protect the new stream bank (of clay) while being reseeded. Near the north end of 2653 Area is a double concrete post boundary to an apparently private way not available to Commoners, which led to a public footpath (not public for animals) to the A493 road. Depressions of apparently old peat workings are visible on the 2653 Area; those caused by peat having been taken by the Golf Club being at the north end; at the north-west corner of the 2653 Area the ground is slightly higher with pasture. The bridge over the west boundary, 14 to 15 feet grass, soil core probably supported by a stone cylinder, apparently aged (could be 100 years as suggested in evidence). The ditch which this bridge crosses could be easily crossed by animals or humans but not by vehicles. Within the west boundary of the 2653 Area for a width varying up to about 17 yards there is comparatively higher ground, grazeable (no rushes).

Mr Rees pointed out that if the west side of the 2653 Area is not a boundary (of the common land), the bridge is the only (vehicular) access to it.

Returning to the A483 road in the Land Rover I was driven up the road leading to the Trefeddiann Farm and Bwlchgwyn and shown such of the lands to which registered rights were attached as could be easily seen from such road.

Next (unattended) I inspected the ABC Area, the Car Park Area, the Fire Station Area, the Play Area, the XYZ Area, the Highway Improvement Area and its surroundings, and (so far as visible from the A483 road) the Cliff Area.



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Jurisdiction: consolidation

If the existence of Register Unit No. CL 124 and of the registrations made in it are altogether disregarded, the May 1987 references by Gwynedd County Council as registration authority of the disputed CL 97 Rights Section registrations Nos. 1 to 6 occasioned by CL 97 Objection Nos. 181 to 186 are apparently in order under the 1965 Act and the Commons Commissioners Regulations 1971, and about them plainly not only have I no good reason for not considering these disputes but also I am by the Act obliged to give a decision about them. There is nothing in the before 1982 papers in the office of the Commons Commissioners to suggest that a Commons Commissioner about such papers ever gave a 'decision' within the meaning of the 1965 Act (see section 18) formally declining jurisdiction; and indeed because no hearing was ever held and those concerned were never before 1988 given an opportunity of calling evidence or making submissions about the matter, there could not have been any such decision. So in my opinion I must consider the evidence about the CL 97 registrations put before me.

If the existence of Register Unit No. CL 97 and of the registrations made in it are altogether disregarded, all I have said in the preceding paragraph is applicable to the May 1987 references about the disputes relating to CL 124 Land Section registration at Entry No. 1 and Rights Section Entry Nos. 1 to 6 occasioned by the CL 124 Objections Nos. 437, 465 and 187 to 192.

My difficulties arise when I find on considering either of these two groups of disputes, I discover that the registrations read together are a nonsense because the County Council as registration authority overlooked subsection (4) of Section 4 of the Act. On receiving the application of 25 August 1969 made by Messrs E P and T J Jones they should have done one of two things: (1) opened a new Register Unit (say CL X) which comprised so much of the land in the application as was not all registered in CL 97, and then registered the rights claimed in the application both in the CL 97 and the CL X Rights Section; or (2) added to the CL 97 Land Section as an additional Entry (No. 2) being a registration of so much of the land in the application as was not already registered at Entry No. 1, and then registered the rights claimed in the application in the Rights Section so that they were all over the land then in the Register Unit. In my experience (1) is generally preferred by registration authorities as being (I suppose) administratively the easier, although, it may result in a single grazing area being registered in two or more register units and in applications for registrations of rights in one becoming final without any modification and in another becoming final modified and in another becoming void. This result may not follow on (2), but other confusing results may follow from several grazing areas adjoining and some graziers grazing more than one of them.

By section 19 of the 1965 Act, the Minister may make regulations "for treating any registration conflicting with another registration as an objection to the other registration". Regulation 7 of the said 1971 Regulations provides: "Where there is a conflict between two registrations, then for the purposes of section 5(6), 6 and 7 of the Act and for the purposes of these Regulations each shall be treated as an objection to the other".



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In my opinion the CL 124 Land Section registrations at Entry No. 1 conflict with the CL 97 Land Section registration at Entry No. 1, because it is contrary to subsection (4) of section 4 of the Act, and it does not cease to be "in conflict" for the purposes of the Act because it was made as a result of a mistake made by the County Council as registration authority, or because in a sense their mistake was an illegality. Any such illegality was no more than an administrative oversight and could not render void every consequence and in particular could not deprive an applicant for registration or a maker of an objection who had no means of stopping the mistake or ever becoming aware of it of the benefits they could reasonably expect from a valid registration or objection.

So I conclude that the 1987 reference of a dispute about the CL 124 Land Section Entry No. 1 in consequence of its conflict with CL 97 Land Section Entry No. 1 was validly made as was also the 1987 reference of a dispute about CL 97 Land Section Entry No. 1 arising from the same conflict.

By subsection (7) of section 5 of the 1965 Act any objection to the registration of land as common land is to be treated as an objection to any registration of any rights over the land. So in the result all the CL 97 and CL 124 Rights Section registrations are in question, and in accordance with the judgments in re West Anstey 1985 Ch 329, I am obliged to inquire into the propriety all these registrations.

As to the resolution of the conflict, nobody at the hearing opposed my suggestion that these Register Units should somehow be consolidated, and indeed the above recorded heads of agreement were put forward on the last day of the hearing on the assumption that there would be some such consolidation. In my opinion the word 'modification' in the 1965 Act and in the Regulations made under it, include a consolidation such as might have been made upon a proper application of subsection (4) of section 5. Upon these considerations, my decision as to consolidation is as set out in Part I of the Third Schedule hereto.

Land Section

Under this heading, I consider the land in either or both the CL 97 and CL 124 Land Section registrations, except the 2653 Area as to which see below under another heading.

As to the rectangular area edged and hatched purple and the comparatively long and narrow strip coloured green on the plan enclosed with Objection No. 465 made by T D Cook apparently on behalf of British Railways Board:- The making of the Objection puts the area and strip in question. Although neither Mr Cook nor the Board appeared or were represented at the hearing, the burden of proof lies on those wishing to support the inclusion of the area and strip in the registration. No evidence was offered by anyone in support; as hereinbefore appears many (probably all) at the hearing conceded the Objection. At my inspection the rectangular area appeared to be part of the railway land used with the station and the green strip appeared to be a footpath leading from the station eastwards or at least to include the bank on the south side of such footpath, both an integral part of the land used with the railway station. Upon these considerations my decision is that the Objection succeeds as expressed.



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The Objection although apparently relating to a very small part of the CL 97 land and the CL 124 land puts in question the whole of such registration so I must consider the propriety of the remainder of the land in the Land Section, see re Sutton 1982 1WLR 647 and re West Anstey supra. In addition to and adjoining the said purple and green land on the BR plan, there is an area ("the ABC Area") which is situated between the Recreation Ground and the railway, which is included in the CL 124 land but not in the CL 97 land and whose exact extent is difficult from the Register map to define or determine. The CL 97 Register map read with the 1926-1930 Scheme plan defines the nearby boundary of the Recreation Ground clearly enough. On my inspection I considered that anything outside such boundary could not be common land. The absence of any evidence supporting the inclusion of the ABC Area, my decision is that it was not properly included in the Register.

As to the Highway Improvement Area, the Fire Station Area, the Car Park Area and the Play Area:- As hereinbefore appears at my hearing reasons were put forward for excluding these Areas from the registration. Nobody at the hearing suggested that they were properly included. During my inspection for reasons deducible from the names I have in this decision given to these Areas, I conclude that none of them were properly included in the registration and my decision is accordingly.

As to the XYZ Area:- At my hearing nobody except Mr Dancer said anything about it. During my inspection I identified it with: (a) the road off and south of the A483 road situated between an electricity substation and wall on the Recreation Ground to the east and some dwellinghouses to the west of which the nearest the A483 road is Gwynfa; (b) the said dwellinghouses and the lands held with, and (c) further west other dwellinghouses with a side road providing access. Having regard to the apparent age of these buildings I conclude that the Area could not have been common land at the date of registration. Having regard to what Mr Dancer said and from what I saw on my inspection, my decision is that the Area should be excluded from the Land Section.

As to the Cliff Area:- This is included in the CL 97 land but not in the CL 124 land. During my inspection I concluded that it is too narrow and too steep to be practically grazeable. On the 1926-1930 Scheme map it is treated as part of Morfa Gypsies which by all at the hearing was assumed to be properly registered. In my opinion land which could properly be regarded as part of a piece of land known by a particular name and for the most part a grazeable area, is properly included in the registration of the grazeable area notwithstanding it by reason of its rocky steepness is incapable of much or any beneficial use by sheep, cattle or humans. My decision is therefore that it should remain included in the registration.

Formally I give effect to my decisions under this heading in Part II of the Third Schedule hereto. In such part the Cliff Area is not particularly specified because the general words in such part are wide enough to include it. Being not clear whether any part of the purple and green land on the plan attached to the Cook Objection No. 465, is applicable to the CL 97 land, I have made paragraph 3 of such Part applicable not only to paragraph 1 but also to paragraph 2.



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Rights Section

Under this heading, I give no consideration to questions relating to the 2653 Area; as to these, see under a later heading in this decision.

Generally in favour of the registrations I have: the present appearance of the land within the Land Section, being a large area of nearly flat grassland, generally only a few feet above that of HWM of MT; the situation of the farms to which the rights claimed are attached, being agricultural land on the hilly land to the east, north-east and north of the CL97/124 land; and the probability from such situation that rights of common have from such farms been exercised over the CL97/124 land from time immemorial.

As to the registrations within the agreement headings mentioned by Mr Llwyd on 26 November, being all except those at CL97 Entry Nos. 3, 4, 5 and 6:-
I have the statutory declarations in support of the applications for these registrations circumstance that they all either accord with the 1941 Agreement (County/2) or will accord if modified in accordance with the headings. There may be doubts as to whether the numbers in the Schedule to the 1941 Agreement continued to be applicable after its expiration; under the headings these doubts are resolved in favour of permanent effect being given to such numbers; it is in the public interest that these doubts should be compromised, if the numbers are (as I think they are) reasonable.

I accept as reasonable the agreed conclusion that CL97 Entry No. 1 and CL124 Entry No. 4 are duplicates and the agreed definitions of the beginning of and end of summer and winter.

It may be that by reason of the 1974, 1975 and 1976 conveyances (AGC/4, 5, 6 and 7) the exact wording of the registrations at CL97 Entries Nos. 3, 4, 5 and 6 is now no practical consequence. However this may be I am concerned with the propriety of these registrations as they were in 1969 and 1970 when they were made. As registered they did not include either the Aberdyfi Village Area or the 2653 Area, but they do accord with the Schedule of the 1941 agreement (County/2) if the agreement numbers for Crychnant and Tynewydd are added together. My confirmation of these registrations therefore will be accordingly. Any amendments of the Register consequential on the making of the 1974, 1975 and 1976 conveyances can be made if need be under regulation 29 of the Commons Registration (General) Regulations 1966; in these proceedings I am not concerned with alterations which should or might be made in any Rights Section registration consequential on any conveyance lease or other event happening after the date of registration.

Formally I give effect to my decisions under this heading in Part III of the Third Schedule hereto. My note as to the manner in which Tynewydd had been divided is not clear and in case I have not given effect in such Schedule to what was agreed about this I give to any person concerned liberty to apply to vary such Schedule so far as it relates to Tynewydd.



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2653 Area

I am under this heading only concerned with the part of OS2653 which is included in the CL124 land and not included in the CL97 land. Mr M Rees during his oral evidence said that he did not intend his Objection No. 437 to be applicable to any other part; thus conceding that the remaining parts of OS2653, being the PQR Area defined in the First Schedule hereto and the remaining part, if any, of OS2653 which is to the south of the PQR Area, were common land and subject to the registrations in the CL97 and CL124 Rights Sections.

About the 2653 Area there were at the hearing differences as to the effect of the oral evidence of Mr D H Jones and Mr Islwyn Jones on the one side and the oral evidence of and the documents produced or referred to by, Mr M Rees on the other side. Happily neither side disputed the oral evidence of the other side so far as any witness spoke about matters within his own knowledge; the differences were all as to the inferences of fact to be drawn from what was said and from the documents, and as to the law applicable.

As to the ownership of the 2653 Area, the "paper title" of Mr M Rees was regularly deduced; nobody disputed his ownership. So all under this heading is on the basis that he is and has been since the 1961 conveyance (MR/1) the owner of the Area in succession to Mrs I M A Rieben, and her brother Mr J M Howell who became the owner under the 1908 conveyance (MR/2). Accordingly the burden of proving that his ownership is subject to a right of grazing is on those who so claim, see *Corpus Christi v Gloucestershire* 1983 QB 360.

A right of common may be proved by use such as accords with the Prescription Act 1832 or use such as is enough for a grant to be presumed under the law by the Court of Appeal stated in *Tehidy v Norman* 1971 2QB 528; in effect, proof of enjoyment as of right for more than 20 years is enough. By section 16 of the Commons Registration Act 1965, for the purposes of the 1832 Act the period is to be measured back from the Objection; in my opinion the period for the purposes of the law applicable to a presumed grant is also back from the Objection. Objection No. 415 is dated 26 July 1972, so I am primarily concerned to consider grazing from July 1952 to July 1972.

That Aberdovey Common, meaning at least the CL97 land, has been grazed by the Commoners during the 1952-1972 and before and afterwards was stated in their evidence by Mr Islwyn Jones and Mr D H Jones, and on behalf of Mr M Rees at the conclusion of the hearing their evidence was conceded; bearing in mind that at the time such concession was made other commoners were present apparently able and willing to give evidence if needed, I consider I can and should give full effect to what these two witnesses said and conclude that there was at least so much grazing in exercise of the grazing rights registered in the CL97 and CL124 Rights Sections. It was also not disputed that cattle and sheep so grazing often went on the 2653 Area. The first (perhaps the most important) submission by Mr Bryn Roberts for Mr M Rees was that the 2653 Area was never part of Aberdovey Common.

On this submission I have the guidance of the Court of Appeal who in *Tehidy v Norman* supra at page 534 said of Tawna Down (in Devon) of some 240 acres in extent:-

"No distinction, we think, is to be drawn between any parts of the Down. During the significant period between 1920 and 1941 and earlier the whole Down was



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open. Animals which had access to one part of it had access to every part of it, and the only possible view appears to us to be that anyone who enjoyed grazing rights on any part of the Down enjoyed them over the whole Down."

So I am faced with the question did Aberdovey Common between 1952 and 1972 include the 2653 Area. On this question I have the guidance of Jessel MR in *Commissioners v Glasse* 1874 19 Eq 134 when he decided that certain wastes, part of Epping Forest (in Essex) containing nearly 4,000 acres owned in parts by a number of different persons, were all one common over which the commoners had rights over every part; after a hearing lasting 23 days he propounded, (at page 151) the following question which he considered to be possibly decisive:-

"with this great body of evidence and under these circumstances, what am I to consider proved? First of all what is this thing called?"

It seems to me that this "thing ?" test so concisely stated by Jessel MR is another way of stating the general principle applicable in determining the boundaries of commons in all sorts of different circumstances: stated at greater length "what is the piece of land about which we are talking?".

Tehidy v Norman and *Commissioners v Glasse* supra highlight the conflict which in this case I have to resolve. Mr M Rees personally (as I inferred while he was giving evidence) relied primarily on the plan referred to in the 1925 Scheme (MDC/4) and the documents showing his title to ownership (MR/1 and 2 particularly); additionally Mr Bryn Roberts for him relied on the appearance of the 2653 Area as I should from the oral evidence infer it. Mr B W Evans for the Commoners submitted contra that this plan and these documents were inconclusive.

As to the 1925 Scheme:- As first approved (MDC/4) the land subject to it was "delineated in a Plan deposited at the offices of the Urban District Council of Towyn ... and thereon coloured green and brown respectively, being a Common within the meaning of The Commons Act 1899 ..."

On 19 November 1930 an amendment to this Plan was approved:-

"by the exclusion of the land shown hereon cross hatched in red from the operation of the scheme".

The land coloured and edged green (County/1) is the same as that remaining in the Scheme after 1930 and is the same as the CL97 land; the land on the Scheme plan "cross hatched in red" is the same as the 2653 Area. I have no reliable evidence as to the motives either of the UDC or of the Minister when making this exclusion; the motives suggested by Mr M Rees were no more than his guess. In the 1899 Act "common" is defined as including any land subject to be enclosed under the Inclosure Acts 1845 to 1882 and any town or village green; although the Scheme is or may be cogent evidence that the land which has since 1930 been within it is "common" as so defined, I decline to infer that the exclusion in 1930 of the 2563 Area is cogent evidence that such area was not common within the definition; section 2 of the Act provides (in effect) that a scheme shall not be made if there is any dissent by the person entitled to the soil of the common; it may be that the amendment was occasioned by a dissent by Mr J M Howell having been overlooked in 1925; however this may be the 1930 amendment is no more than some evidence (to be balanced against any contrary evidence) that the 2653 Area was not then subject



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to any grazing rights and was not then considered as part of Aberdovey Common; evidence of little weight when considering whether there has been any exercise of grazing rights between 1952 and 1972.

By the 1961 and 1908 conveyance (MR/1 and 2) the 2653 Area was conveyed as "Pasture" and on the conveyance plans marked "Liable to Floods", and there is nothing in either conveyance to suggest that it was subject to any grazing rights. The law applicable to the evidentiary value of a conveyance against "anybody whoever they may be" was stated in *Blandy-Jenkins v Dunraven* 1899 2Ch 121; such a grant is "an act of ownership". Perhaps if these two conveyances were the only evidence I had, they would be cogent against the 2653 Area ever having been any part of Aberdovey Common, because anyone knowing the possibility of there being any such rights would be advised to mention such possibility in the conveyance, and because the similarity between the two conveyances suggest the state of affairs, having existed continuously from 1908 to 1961. But contra I have evidence which was candidly admitted by Mr M Rees, that in or about 1954 a fence was erected by him on the instructions of the agent of his landlord Mr H M Arthur, and that such fence was within about two months removed; I find that Mr Rees inferred (correctly) that such removal was done by or on behalf of some of the graziers because they thought that it substantially interfered with their grazing; so the evidentiary value of the 1961 conveyance in support of a claim by Mr Rees that before it the cattle of the graziers were not on the 2653 Area "as of right" is small. Considered by itself the evidentiary value of the 1908 conveyance as to the grazing during the 20 year period with which I am concerned is less.

Some of Mr Rees' earlier documents relating to the 2653 Area and OS 2651 were produced, particularly an 1889 valuation in which they were OS 904 and OS 929 and differently delineated (I infer before the railway was made). My guess is that the course of the stream was changed when the railway was built; no useful purpose would be served by my attempting to unravel the local history of so long ago.

Mr M Rees emphasised that ever since he could remember a copy of the 1925 Scheme Plan as amended in 1930 hung in the offices of the Tywyn UDC in a prominent position plainly visible in Councillors and others who came there and was therefore a public document. I decline to infer that the grazing described by Mr D H Jones and Mr Islwyn Jones was necessarily by reference to this document, and its existence is I think of little significance on the question whether any such grazing was in relation to the 2653 Area, as of right.

So importantly I am concerned with the appearance of the 2653 Area between 1952 and 1972.

As to this I begin with its appearance at the time of the hearing and my inspection. Generally, but not entirely, it is low lying and such as would be likely to flood after heavy rain during a high tide; rushes abounded. The east boundary is a stream flowing in a straight line carrying water from the high ground on the east side of the railway and is (in comparison with the ditch next mentioned on the west boundary) an important waterway and a striking geographical feature, such as cattle and sheep would not ordinarily attempt to cross. The west boundary is very different; a wide ditch with sloping sides no obstacle to cattle and sheep,



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which when I saw it was carrying little or no water but might be useful after heavy rain, particularly if such rain resulted in a nearby flood; to the east of this ditch there is enough high ground to grow grass on it to attract cattle or sheep. Remarkably and strikingly there is over this ditch a well constructed bridge most likely consisting of a stone cylinder (to carry the water), with earth and rubble above (as a level passage for vehicles); the bridge would apparently be useful to cart away rushes cut on the 2563 Area and useful during wet conditions for animals and humans; but ordinarily animals and humans would walk anywhere over the ditch. It appeared possibly more than a 100 years old and to be far more substantial than could be needed for current usage; a local historian might conclude that it was the beginning of a very old track from the remainder of Aberdovey Common across which is now the railway, the A483 road to farmlands of Dyffrynglynul and beyond. Notwithstanding that this remarkable bridge is some indication to the contrary, I find from the other geographical features visible during my inspection and above mentioned, that the Area is now part of the land known and called Aberdovey Common the east boundary of which is an important stream which now flows in a straight line.

Whatever presumption there may be as to land having been in the past the same as it now appears, such presumption was in many important respects rebutted by the evidence that at least since about 1954 when Mr D H Jones and Mr M Rees first knew it until the 1960s when the Water Authority started their work. As to the period within living memory before 1954 I accept the evidence of Mr Islwyn Jones and Mr D H Jones that from about 1945 onwards the stream flowed through mud without any easily recognisable banks and without being an obstruction to cattle and sheep. The evidence of Mr Islwyn Jones as to what the stream looked like as he first knew it in the 1920s was somewhat vague; but I do not think it was unreliable for this reason, because the situation of the 2563 Area in relation to the Aberdovey Common generally was such that its appearance, except as providing access to water would never be easily describable or easily memorable; I conclude that the stream must have flowed with banks sufficiently defined for a bridge over it to be worthwhile and that its channel was therefore in the 1920s and 1930s reasonably well maintained. As to the line in the 1920s and 1930s of the channel, the 1901 OS map (County/1) shows two parallel straight lines near together practically the same as the straight line channel along which the stream now flows.

My general conclusion is that notwithstanding the mud and blockages in consequence of the ill-maintenance of the stream during the 1940s and 1950s and notwithstanding the flooding, at least since 1901 (the date of the OS map) the water of the stream flowed as nearly as it could in a straight line essentially the same as that along which it now flows, and that this would be as it appeared, or at least as it would locally be assumed, to be flowing. As to the west boundary ditch and the said bridge (possibly over 100 years old), I conclude it was always much as now, that is as a waterway and as a boundary for cattle and sheep of little significance and very minor compared with the stream on the east boundary.



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So as to whether the 2653 Area between 1952 and 1972 was included in the land then called Aberdovey Common, I have to balance the east boundary ditch with its bridge possibly 100 years old, the 1901 OS map showing the Area with a distinct No, and the 1908 Conveyance plan against the appearance of the Area and its boundaries particularly the comparatively important water course on its east boundary. I have insufficient historical information to say whether the ditch on the west was or was not ever the boundary of Aberdovey Common; perhaps before the railway was built, the stream now on the east, then flowed differently. However this may be, even assuming for Mr Rees that up to about 1910 the ditch was locally considered to be the boundary of the Common, I find that by the 1940s it had ceased to be such and that from some time before 1952, Aberdovey Common so called included all the 2653 Area.

I reject the suggestion made by Mr Bryn Roberts that cattle and sheep when on the 2653 Area were there in exercise of a right of way to the stream to get water; such a right seems to me altogether inappropriate to the present appearance of the Area and the appearance of it as I have found it to have been for the last 40 years.

Upon the above considerations my decision is that the 2653 Area was in 1972 subject to the grazing rights registered in the CL124 Rights Section, and was therefore properly included in the CL124 Land Section. Formally I give effect to this decision by not excepting the 2653 Area from the general words in Part II of the Third Schedule hereto and in particular by not mentioning it in paragraph 3 of such Part.

As to the Rights Section:- No-one disputed that the rights attached to Dyffrynglyncul were over all the CL97/124 Register Unit as it will subsist under Part I of the Third Schedule hereto; so apart from the circumstance next mentioned there is no reason why CL97/124 Entry No. 2 should as regards the 2653 Area be essentially different from Entry Nos. 1, 7, 8, 9, 11, and 12. The circumstance is that Mr M Rees claims (correctly so I have assumed) to be the owner of the 2653 Area and in law a person who owns part of a common cannot have a right of common properly so called over the part he owns; his grazing over such part is as an owner and not as a commoner. During my inspection it was explained to me that to graze on Aberdovey Common from Dyffrynglyncul the animals would enter the Common not from OS 2651 but at a point to the south by a track under the railway; so such grazing was effectively the same as the grazing from the other farms such as Crychant and Treffeddian near the head waters of the stream; I find therefore that the grazing from Dyffrynglyncul on the 2653 Area (assuming Mr Rees owns it) is not subject to but is on an equal basis with that of the other graziers, that is, it is in exercise of a quasi right of common such as was recognised in *Musgrave v Inclosure Commissioners* 1874 LR9QB 162 and discussed at page 106 of my November 1986 decision re *West Anstey*, reference 209/D/234-243. It would be unjust to Mr Rees in this decision to prejudice any claim to be the owner of the 2653 Area he might make in any proceedings under section 8 of the 1965 Act (as to which see under the heading *Ownership* Section below); so not to prejudice him I shall further modify his Rights Section by mentioning in it a quasi right as specified in paragraph 2 of Part III of the Third Schedule hereto.



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Ownership Section

In neither the CL97 nor the CL124 Ownership Section is there any registration of the ownership of the Aberdyfi Village Area and the 2653 Area. About such ownership there has not been and could not have been any reference to a Commons Commissioner under section 5 of the Commons Registration Act 1965, being the section under which the May 1987 references were made. When the Land Section registrations have become final (as in due course they will as a result of this decision) the County Council as registration authority must under section 8 of the Act refer to a Commons Commissioner the ownership of these two Areas and a public hearing will follow. So although consequentially on my November 1987 hearing, I may in this decision in relation to any Land Section and Rights Section registrations, have expressly or impliedly assumed that Meirionnydd District Council and Mr M Rees are the respective owners of these two Areas, no new registration in the Ownership Section will result from it.

In the CL97 Ownership Section at Entry No 1 (as amended at Entry No 3), "the Urban District of Tywyn" is registered as the owner of Morfa Gypsies and the Recreation Ground, and at Entry No 2 the Aberdovey Golf Club by its Trustees (being there nominated) are registered as owner of the Golf Links. In the CL124 Ownership Section at Entry No 3 (replacing Entry No 1) the Club Trustees are registered as owners of the Golf Links. Because there has been no reference to a Commons Commissioner about these registrations, I can now give no decision about them.

I have not overlooked that Mr E Llwyd when (26 November) speaking of the agreement then reached (see page 14 above) contemplated that the Club ownership registration would be confirmed and Mr J G Roberts contemplated that the UDC ownership registration would likewise be confirmed. In these proceedings I am concerned only with so much of the agreement mentioned on 26 November as relates to matters now within my jurisdiction; the carrying out of any other parts of the agreement is for the persons concerned to complete in accordance with the law as generally applicable to agreements. Hopefully there will be no practical difficulty, because to me it seems there are only the two possibilities next mentioned.

The first possibility is that none of the said three Ownership Section registrations conflict with any other. Having decided that the Land Section and Rights Section registrations shall be consolidated as specified in Part I of the Third Schedule hereto, it necessarily follows that the County Council as registration authority must somehow consolidate the Ownership Section; it is for them to determine how to do it. I suggest for their consideration that in the combined CL97/124 Ownership Section, there be set out the CL97 Ownership Section Entry Nos 1, 2 and 3, and that in a note to the CL97/124 Ownership Section it be recorded that pursuant to an application specified in column 2 of Entry No. 2 a registration to the same effect was made in the CL124 Ownership Section at Entry No. 3. In the main body of the CL97/124 Rights Section can then be recorded the registrations not being disputed have become final under section 7 of the Commons Registration Act 1965. The circumstance that Ownership Section problems may arise from my decision about the Land Section and Rights Section, is no reason for my not giving effect to such decision as far as I can.



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The second possibility is that the said Ownership Section registrations or some of them are in conflict. On the information now before me I am inclined to the view that there is no such conflict, but perhaps a conflict may be alleged or thought to be possible. On such a supposition, it will be open to the County Council as registration authority to refer the conflict to a Commons Commissioner on form 36 adapted as necessary. It might save some expense and be more convenient to all concerned if such a reference were made at the same time as the section 8 reference on form 37 relating to the parts of the Register Unit CL97/124 of which no person is registered under section 4 of the 1965 Act as the owner, being the Aberdyfi Village Area and the 2653 Area.

Final

On the questions arising in these proceedings the decisions about each of them hereinbefore set out are summarised in the Third Schedule hereto, which Schedule should be treated as part of this decision.

Because much of this decision is long and complicated and may therefore contain mistakes or errors which I can and should correct without putting the parties concerned to the expense of an appeal to the High Court, about them I give any person concerned liberty to apply.

Where under any heading of this decision there is liberty to apply, the applicant should in the first instance make his application in writing (it may be by letter) and send it to the Clerk of the Commons Commissioners in London. A copy of the application should be sent to any person who might be adversely affected by the granting of the relief claimed. If the application is for or might result in a re-opening of the hearing, the applicant should send to any such person a summary of the evidence he might adduce at any such hearing and a copy or abstract of the documents which might then be relied on. And such application should be made within THREE MONTHS of the day on which this decision is sent out to those concerned to have it or within such extended time as a Commons Commissioner may allow.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

FIRST SCHEDULE OVER