



COMMONS REGISTRATION ACT 1965

Reference No. 231/D/1  
231/D/2  
231/D/3  
231/D/4  
231/D/5  
231/D/6

In the Matter of Brown Clee Hill  
(summit area of about 172.943 acres),  
Abdon, South Shropshire District,  
Salop

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1 to 4 in the Rights Section of Register Unit No. CL 20 in the Register of Common Land maintained by the Salop County Council and are occasioned by Objections Nos 157, 158 and 159 made by Viscount Boyne Estates and Objection No. 271 made by Salop County Council and all noted in the Register on 25 August 1972.

I held a hearing for the purpose of inquiring into the disputes at Shrewsbury on 20 June 1973. At the hearing (1) Rt Hon Gustavus Michael George (10th) Viscount Boyne was represented by Mr N R N Corris his Agent, chartered surveyor of Benson & Rogers-Coltman of Craven Arms; (2) Salop County Council were represented by Mr D J Brierley solicitor and assistant to the County Secretary; (3) Mr Edward Arthur Norgrove (Rights Section Entry No. 3 was made on his application) was represented by Mr W R Spanner solicitor of Morgans, Solicitors of Ludlow; (4) Mr Robert John Hartley of Lower Earnstrey Park, Abdon (as successor of Mrs L M Childe on whose application Rights Section Entry No. 1 was made); and (5) Mr Thomas William Howells of Boundary Gate, Abdon (as successor of Mr William George Howells now deceased on whose application Rights Section Entry No. 2 was made) were both also represented by Mr Spanner; and (6) Mr P T Hobson of The Pound, Clee St Margaret as chairman of Clee St Margaret Commoners Association (their common is nearby on the south, being Register Unit No. CL 4) attended in person.

The land ("the Unit Land") in this Register Unit is from north to south a little under  $1\frac{1}{2}$  miles long and is for much of its length about 400 yds wide; its east boundary passes through or near the summit Abdon Burf (1,750 feet or 540 meters), and Unit Land generally slopes downwards from east to west, in places steeply. The Land Section registration was made as a consequence of the application for Rights Section registration No 1. In the Rights Section there are 4 entries of the grazing rights mentioned below. In the Ownership Section "Viscount Boyne Estates" are the registered owners of all the Unit Land; Mr Corris said that "Viscount Boyne Estates" is not a body corporate, but is only the business name of the 10th Viscount. The grounds of Objection No. O.157 (Viscount Boyne Estates) are that the part ("the Radio Station Land") of the Unit Land coloured pink on the attached plan (the same part is coloured red on the plan attached to Objection No. 271) was not common land at the date of registration. The grounds of Objection No. O.271 (Salop County Council) are the same except that additionally objection is made to the access road ("the Brown Road") coloured brown on the plan attached to the objection. The grounds of Objection Nos O.158 and O.159 (Viscount Boyne Estates) are that the rights registered at Rights Section Entry Nos 3 and 4 do not exist at all; and that if the right registered at Entry No. 4 exists at all it should comprise only 5 sheep.



The issues in these proceedings were much simplified by the following statements:-  
Mr F F French (Rights Section Entry No. 4) proposed to withdraw his application (so stated in a letter of 14 June 1978 from his solicitors Manby & Steward of Wolverhampton). Mr Spanner said (at the hearing) that Mr R J Hartley is the son of Mr J L Hartley who purchased some of the land at Earmstrey of Mrs L M Childe. Mr Spanner also said (confirming a letter dated 20 June 1978 handed in at the hearing) that Mr R J Hartley, Mr T W Howells and Mr Norgrove accepted Objections Nos 157 and 271 relating to the Radio Station Land and the Brown Road. Mr Brierly said (in effect):- The Radio Station Land is a radio station at present used by the Zone Office, the Police, the Fire Service, the Gas Board, the Electricity Board, the County Council Highways Department, the Water Authority, and British Broadcasting Corporation; the road to it is adopted; although nearly all this road comes up the valley from the north-east, it loops near the Radio Station Land and so reaches such land by a road ~~apparently~~ coming south; just there by the Radio Station <sup>from</sup> Land there is a car park; Mr Brierly asked for leave to amend the grounds of Objection No. 271 by including the rectangular area ("the Car Park Area") so used, defined as the rectangle whose westerly side is 46 feet long and lies along the access road leading to the land coloured red on the O.271 Objection land, and whose northerly side is 40 feet long and lies along the security fence of the land so coloured. Mr Spanner said that he did not object to this amendment, and accordingly I allow it under regulation 26 of the Commons Commissioners Regulations 1971.

The Rights Section Entry Nos 1 and 2 are in question by reason of Objection Nos 157 and 271 to the Land Section Entry, see section 5(6) of the 1965 Act. Notwithstanding that the Objections relate only to the Radio Station Land and the Brown Road, Mr Spanner and Mr Corrie agreed that Rights Section Entry No. 1 of a right attached to Lower Earmstrey Park "to graze 40 sheep and cattle" should be amended so as to read "40 sheep and 5 cattle" and that Rights Section Entry No. 2 of a right attached Inkeidge to graze 80 sheep and 50 cattle should be amended so as to be attached to the land called Earmstrey Hill and Boundary Gate, (it was said that the reference to Inkeidge which is some distance away in Clee St Margaret was a mistake); ~~as they agreed~~ that the substitution of other land for Inkeidge should not form the basis of any claim for an increase in the number of animals.

So the only question left for my determination related to the rights registration at Rights Section Entry No. 3, being a right attached to Lower Normcott "to graze 250 adult sheep", and ~~in~~ Objection No. 153, the grounds of which are: "the right does not exist at all".

In support of this registration evidence was given by Mr E A Norgrove who was born in 1899 and who is now the owner of Lower Normcott Farm under a conveyance dated 29 September 1925 made to his father Mr Thomas Norgrove (the farm is therein described as 109 acres) and also given by his son Mr W A Norgrove who was born in 1930 and who in 1951 entered into partnership with his father. Mr E A Norgrove said (in effect) he was born on the farm, his father having been tenant before his purchase. The farm is more than 1½ miles, nearly 2 miles from the Hill (the Unit Land); he took dry sheep out on the Hill; they were taken down for the winter (about September); they did this almost every year; 30 or 40 sheep; he remembered doing this before the first war (1914-1918); but they had taken them up onto the Hill for 25 years; they stopped because the sheep they had were too good for the Hill. Mr W A Norgrove recollected taking sheep up the Hill before the (1952-1945) war in summer not the winter and driving them back again; the sheep went up every year; until about the time they went into partnership, then (1951) they stopped, because they started a more pure breed (Clun Forest; before they were crossed with Welsh Sheep). He could not remember how many when he was a boy, but all the war he remembered taking up 40 or 50.



Mr Corris in the course of his evidence explained that when making the Objections they knew only of Mr Howells (Entry No. 2) actually grazing at the time: he was unable to get from Mr Norgrove any evidence about the rights he claimed. Mr Norgrove (intervening) said that the figure "250" was put in his application because the Solicitor thought it was about the figure; he thought "something about 80 was pretty well what we should want". Mr Corris (continuing his evidence) referred to the final Entries at Nos 1 and 2 of 40 sheep and 5 cattle and 80 sheep and 5 cattle and contended that because the Unit Land is about 172 acres, 250 sheep would make a total which would be too much for the land.

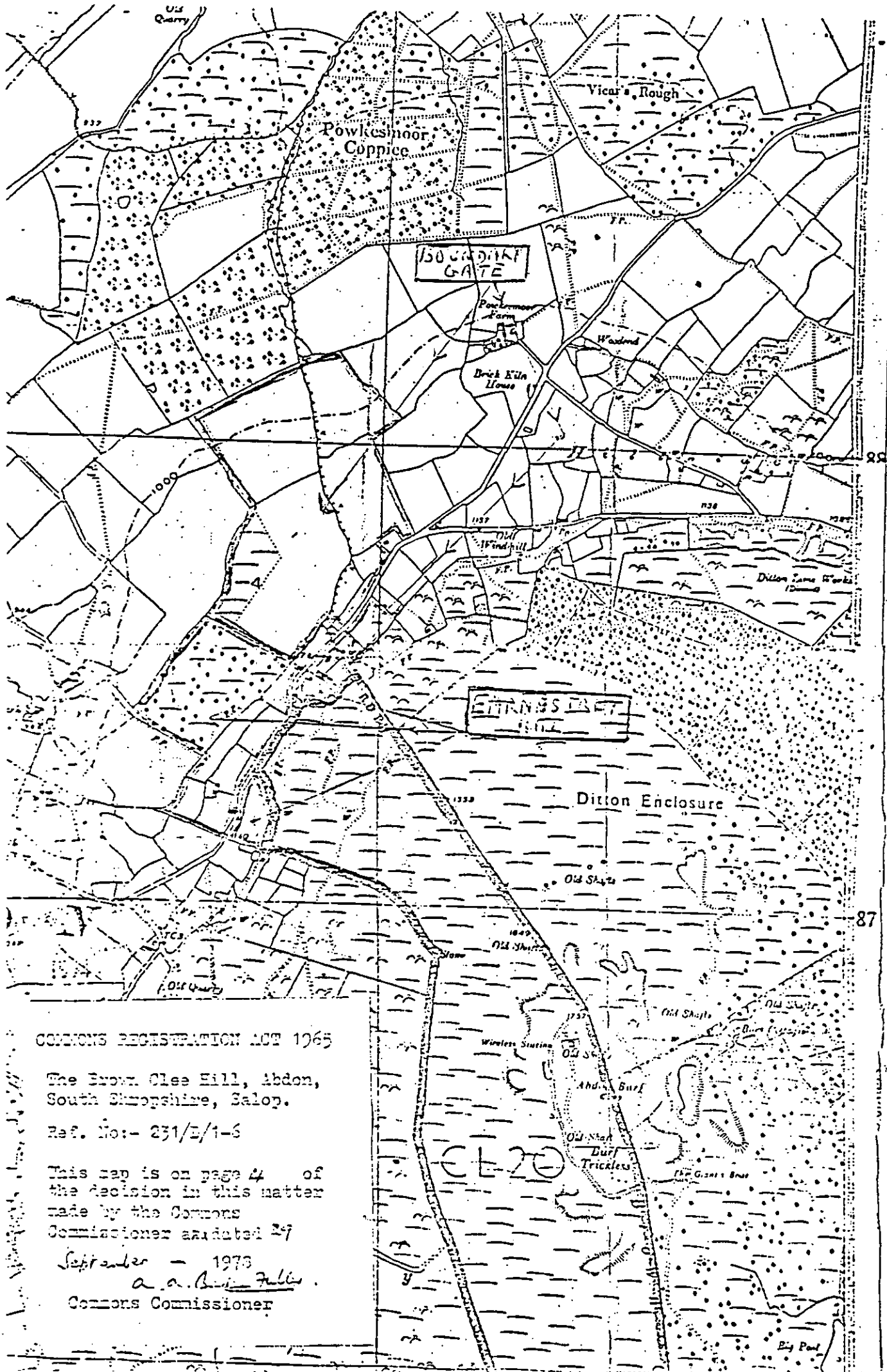
After the conclusion of the evidence, Mr Corris said (very properly I think) that he was reasonably satisfied that the Norgroves in respect of Little Norrcott had a right on the Hill. But it does not follow that, I must confirm the registration without any modification as regards the number. Through no fault of Mr Corris the grounds of objection, "The right does not exist at all" is or may be ambiguous. In my opinion the right to graze 250 sheep "does not exist at all" because of any such right there was no evidence; but in my opinion a right to graze some sheep, the number of which by section 15 of the 1965 Act has to be quantified, does exist. Whether by giving leave to amend the grounds of objection or by putting Mr Norgrove on terms if he does not wish to be left with any registration, I consider that I ought to determine what the number should be.

In my opinion the proper number for registration purposes depends on the actual grazing during the relevant period; I reject therefore Mr Norgrove's figure "80" of what "we should want", and I reject also Mr Corris's contention that I should estimate the figure from the capacity of the Unit Land. Because there has been no grazing over the Unit Land from Lower Norrcott since 1951, the registration cannot be supported under the Prescription Act 1832: the 30 year period there mentioned runs back from the date of the objection (7 July 1972). But the registration may be supported apart from the Act, by grazing before 1951. As to this, only Mr W A Norgrove spoke of 40 or 50 sheep but for the period before 1945 while he was a boy, I prefer the evidence of his father; the period of which Mr W A Norgrove has personal knowledge (1945 to 1951) is too short to be significant. So the decisive period is before 1939 as spoken to by Mr E A Norgrove; the number of sheep he mentioned without any prompting was "30 or 40"; at times before and during his evidence, other persons mentioned larger numbers, and questions were put to him expressly or impliedly referring to such numbers; but he never expressly agreed any number over 40. In my opinion the number "30 or 40" was his estimate of what he actually saw during the relevant period.

The expression "adult" sheep was not used by any witness. It was agreed that the sheep that go onto the Hill were about one year old when they went on and about 1½ years old when they came off and might therefore be described either as "dry sheep" or as "yearling" (meaning at least one year and not more than two years). The word "adult" is not used in any of the other registrations and in my opinion the word "sheep" by itself is for registration purposes sufficient. The word "adult" appears only in Entry No. 3 and is likely to cause confusion; I shall therefore delete it.

The persons present or represented at the hearing being the only persons concerned, I consider that I can properly give effect to the above mentioned agreement relating to Rights Section Entry Nos 1 and 2. Notwithstanding that the agreement

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COMMONS REGISTRATION ACT 1965

The Brown Clee Hill, Abdon,  
South Shropshire, Salop.

Ref. No:- 231/E/1-6

This map is on page 4 of  
the decision in this matter  
made by the Commons  
Commissioner dated 27

September - 1973

*a. a. B. Fuller*

Commons Commissioner

ET-20



goes outside the scope of the grounds of objection Nos 157 and 271. As regards Entry No. 3, I have since the hearing been sent two plans of Earnstrey Hill and Boundary Gate which have been agreed between Mr Spanner and Mr Corrie; these plans are on different scales and one does not show the location and they are therefore unsuitable for registration purposes. I have prepared a map (page 4 of this decision) which accords with the plans and my decision will take effect by reference to this map.

On the considerations set out above, I confirm the registration at Entry No. 1 in the Land Section with the modification that there be removed from the Register (a) the land coloured pink and edged red on the plans attached to Objection Nos 0.157 and 0.271; (b) the land coloured brown on the plan attached to Objection No. 0.271 and (c) the land in this decision called the Car Park Area. I confirm the registration at Entry No. 1 in the Rights Section with the modification for the words in column 4 "and cattle" there be substituted "and 5 cattle". I confirm the registration at Entry No. 2 in the Rights Section with the modification that in column 5 for the words "Inkeridge" there be substituted the words "Earnstrey Hill and Boundary Gate" and that the supplemental map relating to this Entry be altered by showing the lands shown as such on the map being page 4 of this decision. I confirm the registration at Entry No. 3 in the Rights Section with the modification that in column 4 for the words "graze 250 adult sheep" there be substituted "graze 40 sheep". I refuse to confirm the registration at Entry No. 4 in the Rights Section.

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.

Dated this 29<sup>th</sup> ——— day of September ——— 1978

*a. a. Baden Fuller*

Commons Commissioner