

ANALYSIS OF REGISTERS OF COMMON LAND

CWMTEUDDWR COMMON – RCL 36

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Ownership

The land comprised in RCL unit 36 (Cwmteuddwr common) is an amalgam of the waste of the former Manors of Cwmteuddwr (marked B in green on the manorial plan) and that of Grange of Cwmteuddwr (marked A in yellow thereon). The two sections of Cwmteuddwr Grange in RCL 36 represent sections of the former manor not acquired by Birmingham Corporation under the Birmingham Corporation Water Act 1892, the rest being encompassed in former CL 66 and now owned by the Welsh Water Elan Estate. There are two small sections of common land within RCL36 owned by Welsh Water on the watershed of the Elan catchment, shown marked blue on the commons registration map.

The Ownership section of the commons register for RCL 36 records the ownership of the Lewis Lloyd Estate of the land formerly waste of the Manor of Cwmteuddwr Grange and also of Cwmteuddwr Manor, and that of Welsh Water in respect of two small parcels marked blue along the watershed of the Elan catchment. The following interest of Major-General R.S.Lewis is also noted in the notes to the land section: “The holding of the Lordship of the Manor of Cwmteuddwr and the Lordship of the Manor of Grange of Cwmteuddwr, with rights and interests pertaining thereto) over the whole area with the exception of that colour washed in blue and denoted by the letter “D” [i.e. the land owned by Welsh Water, above]”.

Pasturage

There are registered rights to pasture 10844 sheep on the common unit (or parts of it). 10304 of these are rights appurtenant to dominant land identified in the register (in most cases with relevant acreages of the dominant land benefitted). There are two entries (nos. 32 and 33) of grazing rights in gross, for 540 sheep, expressed as exercisable over two small parts of land on the western fringes of the common along the watershed of the Élan catchment: both are held by Welsh Water PLC and rented to tenants on the Elan Estate.

Most of the grazing rights are registered as exercisable over part of the common land, not the whole unit. In some cases this is representative of the historical sheep walks attached to the dominant tenement/farm to which the rights attach, or (in the case of the 2 entries of rights in gross, as above) to rights over sheep walks purchased by Birmingham Corporation under the 1892 Act. The precise areas of land over which the rights are exercisable are not in most cases identified in the register. In most cases it is defined in general terms e.g. “over part of this unit, namely waste of the manor of Grange of Cwmteuddwr”, or over the “waste of the Manor of Cwmteuddwr”, representing in each case the manor of which the farm holding the rights originally formed part. In law, pasturage rights are in principle exercisable over the whole CL unit against which they are registered. A commoner can, however, abandon his

right to graze over the whole of the land which he is otherwise entitled to use. The registers for RCL 36 provide an example of a phenomenon commented upon by Gadsden¹ i.e. the impact of registrations under the CRA 1965 that restricted rights to the area of their sheep walk, thereby effecting an abandonment of rights over the remainder of the common. The practical effect is often to create a series of “sub commons” each with only one rights holder. There are, however, in this case two registrations of gazing rights over the whole of the common land in RCL 36 - entries 12 and 16, which give a right to graze, respectively, 520 and 950 sheep over the whole of the Unit, comprising the former wastes of both manors. The right to turbary and estovers in both entries is, however, only exercisable over land that is waste of Manor of Cwmteuddwr. The explanation for this anomaly may be that the boundaries of the former manors of Cwmteuddwr and Grange of Cwmteuddwr cut through the sheepwalks of two holdings - Dderw and Treheslog. The sheepwalks straddle the two areas of former manorial waste, with the result that on registration the farms claimed rights of pasturage on both.

The broad effect of the registration process has therefore been to present a picture of fragmented sole grazing rights on individual sheep walks, with overlapping grazing rights for 1470 sheep represented by entries 12 and 16 – rather than individual sub commons as such.

The registrations disclose no restrictions by date on when ewes, lambs or rams may be put to the common, or removed (e.g. for overwintering on the dominant tenement). And, unlike the registrations in some other CL units, the rights register does not record additional rights to graze lambs cf. the register for CL 58 (Eskdale) where the entries are more specific, recording in many cases rights to graze “breeding ewes or other sheep aged 1 year and over 1 year”, “sheep and followers”, “sheep and lambs”². There are also no registered rights to graze cattle or horses. Historically cattle and horses were grazed on Cwmteuddwr common³, but customary practice has clearly not been recorded in the registration process. This may prove to be of considerable importance in the context of modern priorities for the ecological improvement of the common, as the Tir Gofal agri-environment scheme envisages mixed grazing with cattle and sheep as a strategy for managing bracken encroachment and controlling gorse. None of the commoners with registered rights currently have the right to put cattle to the common.

Estovers

There are 43 entries of rights of estovers in the rights section of the register. All the entries are expressed in general terms to be either for “estovers (including the rights to cut bracken)” or for “estovers (including the rights to cut fern)”. Although the cutting of ferns and bracken is the most likely right of estovers to be of value in this case, the right is not expressed as exclusively limited to bracken or fern (“including the right....”). The legal form taken by the

¹ Gadsden, *The Law of Commons* (1988) at para 3.112

² See Rodgers, *Analysis of Register of Common Land – Eskdale CL 58 (briefing paper)*.

³ See Winchester and Straughton, *Elan and Claerwen Valleys Powys: Historical Briefing Paper* at p.15 where evidence of presentments before the manor court for grazing cattle by “strangers” (i.e. farmers outside the boundaries of the manor) is discussed.

registrations would suggest a general (i.e. unlimited) right of estovers – potentially including greater and lesser house bote, plough bote and hedge or hay bote – with the cutting of fern or bracken the only right specified by name. This is unlikely to be representative of the rights claimed, however, which may well have been intended to be limited to cutting bracken or ferns for animal bedding. The register for RCL36 provide a good example of a point made by Gadsden⁴ viz. that in many cases rights of estovers were registered under the 1965 Act without refining the term further and that “it is necessary to look behind the register to discover the scope of the right”. In practice these rights are rarely exercised, and whether evidence could be adduced on which to base a claim to estovers (other than a right to ferns or bracken) must be doubtful.

Turbary

All the entries of pasturage on the rights register also record a generic right to turbary, without specifying the site from which peat may be taken. There was a history of peat digging on parts of the manor of Grange of Cwmteuddwr⁵, and the manor court formerly sought to control both the site from which permitted digging may take place and by whom it was done. The register does not reflect these nuances. This right is not used at the present time, and its exercise would, in any event, breach the terms of the SSSI notification for the Elenydd SSSI and the terms of the current ESA management agreement for Cwmteuddwr common.

In the case of both estovers and turbary, therefore, it would be necessary to look behind the register in order to discover the precise nature and ambit of the rights registered under the 1965 Act. The historical evidence suggests, however, that peat cutting was an important resource for all farms on CL36 and former CL66 until the 1960s or 1970s⁶.

⁴ Gadsden, *The Law of Commons* (1988) at para 3.66).

⁵ See Winchester and Straughton, *Elan and Claerwen Valleys Powys: Historical Briefing Paper* at p.16

⁶ *ibid.*