



GOLF COURSES ON COMMON LAND

Viv Price, Secretary at Merthyr Tydfil Golf Club, writes about the Law and the golf club.

Secretary At Work: December 2003 *(reviewed December 2011)*

Merthyr Tydfil Golf Club is situated on Cilsanws Mountain, which is part of a common comprising 3750 acres. The golf course sits within 270 acres of the common, and this parcel of land is owned by the club. There are 26 commoners that have grazing rights over the whole common but in practice these rights are only exercised by a few commoners. The club had persistent problems with one of them: Dilwyn John.

Despite my numerous letters of complaint to him, Dilwyn John continued over a period of 6 years to abuse and damage the golf club land and the committee's patience finally broke in the winter of 2000. On the 8th January 2001 the committee resolved to pursue a county court action against Dilwyn John for £350 damages to the course. I initiated the county court summons on the 22nd January 2001.

The damage to the golf club land was caused by Dilwyn John bringing feed onto the common, using a large tractor, when the ground was soft. This was the main abuse, which he had persisted with every winter since 1994. The County Court action brought by the club sought to recover £350 to re-instate the damage caused in the winter of 2000 and to get the court to rule whether or not Dilwyn John's rights as a commoner allowed him to bring feed onto the common (golf course).

Dilwyn John in turn filed a defence to our claim and made a counterclaim on three points:

- a) That the golf club had no right to cut any grass on any of the new 7 holes (built in 1995) because it was an interference with his commoner's grazing rights,
- b) That the new 7 holes had been constructed without Welsh Office approval under section 194 of The Law of Property Act 1925 and as such the land should be returned to its original condition and
- c) That the drainage channels constructed by the club interfered with his right of access to the common.

This greatly complicated the situation and raised a number of important legal issues. Arguments about commoner's rights were dealt with in the High Court case of *White v Taylor and Others* 1968. This case appeared to me to indicate that commoners were not allowed to bring feed onto a common. However, there was no legal precedent for the matters raised in Dilwyn John's counter claim.

After a number of preliminary hearings at Merthyr Tydfil County Court District Judge Lloyd Davies decided that the issues raised were too complicated and varied for him to decide the matter. As such he transferred the matter to His Honour Judge Hywel Moseley QC, who was a specialist in land disputes.

By this time I was aware that Clyne Golf Club, Swansea had experienced similar difficulties and had won a County Court dispute with one of their commoners. I learned from their secretary that their case had been dealt with by one of their members, Mr Jim Tonner, who was a solicitor. After speaking to Mr Tonner I recommended to the committee that we engage him to act on our behalf. This we did and through him we also engaged a London barrister by the name of Steve Lloyd who was an expert in land disputes.

On their involvement our action was amended to include a claim that Dilwyn John had no right as a commoner to bring a vehicle onto our land.

After much frustration and delay the matter was finally heard by HH Judge Moseley QC on November 25/26, 2002. At the end of the hearing HH Judge Moseley decided:

- 1) That Dilwyn John could only take a vehicle onto the common (golf course) in limited circumstances eg for animal welfare purposes such as to attend to an injured animal or to remove a dead animal,
- 2) That Dilwyn John's rights as a commoner did not include an ancillary right of bringing feed for his animals onto the common (golf course),
- 3) That cutting the grass on the new 7 holes did not interfere with Dilwyn John's grazing rights,
- 4) That no order would be made to return the new 7 holes to their original mountain condition and
- 5) That the drainage ditches did not interfere with Dilwyn John's right of access to the common.

In effect all 5 issues had been decided in our favour.

However, our joy was short-lived when we received notice that Dilwyn John was appealing to the High Court. The appeal was only on points 1, 2 and 3. Therefore points 4 and 5 would stand in our favour.

Yet again there was much frustration and delay with Dilwyn John's legal team dragging their feet in providing court documents etc. The matter was finally heard at the Court of Appeal by Lord Justice Buxton and Lord Justice Laws on the October 29, 2003.

The club was again represented by Jim Tonner (Solicitor) and Steve Lloyd (Barrister) and Dilwyn John was represented by Rory Hutchins (Solicitor) but by a different barrister, Leslie Blohm.

The judgement was that HH Judge Moseley was correct in ruling points 2 and 3 above in our favour (that Dilwyn John had no right to bring feed onto the common and that we were not interfering with his grazing rights by mowing the grass on the new 7 holes).

However, on Point 1 regarding the taking of a vehicle onto common land the judges ruled that Dilwyn John should have limited access to shepherd his sheep with a vehicle. They were not totally at odds with HH Judge Moseley's decision but thought that the definition of welfare in this case should extend to shepherding sheep. But they added that this right should be exercised reasonably by Dilwyn John without interfering with our rights as the landowner. There was quite a discussion on how this matter could be made workable. The outcome was that our barrister would draw up a document indicating where we thought Dilwyn John should be allowed to take a vehicle. This would then be discussed with Dilwyn John's barrister so that a document and plan could be presented to the Judge within the next 28 days for his approval.

The likely result of this will be that Dilwyn John will only be able to travel on an identified route and will only be able to leave that route with a vehicle to attend to an injured or dead animal. He will not be allowed to round up his sheep using a land rover or quad bike etc but will have to leave any vehicle he uses on the agreed route and round up the animals on foot with a dog.

The Judge ordered that Dilwyn John would have to pay two thirds of our costs, which will cost him around £33,000 (£23,000 from the County Court and £10,000 from the High Court). He will also have to meet his own costs of around £50,000.

We are disappointed that HH Judge Moseley's original decision has been slightly diluted but we have to remember that the original action we took only sought to stop Dilwyn John feeding on the common. It was he that chose to raise the stakes.

We have now severely limited what he can do on the common, including prohibiting him bringing feed on as well as ending all his arguments about us cutting too much grass, once and for all.

At the end of the case Dilwyn John's barrister asked for leave to appeal to the House of Lords and this was firmly rejected by the judges. The case was actually listed as Clive Norman Besley & Others v John because the action had to be instigated in the names of the club trustees.

A full transcript should be available shortly and if anyone requires a copy they can contact me on 01685 388141.

The club wishes to acknowledge the expert assistance provided by Mr Jim Tonner (solicitor) of James H Tonner Johns & Co, 48, Walter Road, Swansea and Mr Steve Lloyd (barrister) of 11, New Square, Lincoln's Inn, London. I can recommend them to any club having similar problems.

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