



COMMONS REGISTRATION ACT 1965

Reference No. 203/R/4

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of Land at White Cottage, part of Moor End Common,
Frieth

DECISION

This reference relates to an objection under the Common Land (Rectification of Registers) Act 1989 to the registration of part of the land registered in Entry No.1 in the Land Section of Register Unit No. CL.82 in the Register of Common Land maintained by the Buckinghamshire County Council.

It is occasioned by Objection No, 993(4) made by Dr P J Livesey and Mrs S E Livesey and referred to a Commons Commissioner on 10 August 1992.

I held a hearing to inquire into this objection at High Wycombe on 2 December 1992 when an adjournment was requested and granted and resumed the hearing on 20 July 1994.

At the hearing the Objectors, Dr and Mrs Livesey, were represented by Mr M Pimlott, Solicitor, of Messrs. Harrison Townend and Ormeshers and the Lane End Parish Council was represented by Mr M Keighley, Solicitor, of Messrs. Horwood and James. Mr A R Gill who had made representations against the objection, appeared in person. Dr Livesey and Mr Gill gave evidence on oath. The registration authority the Buckinghamshire County Council was not represented.

The plan on the notice of objection is on a comparatively small scale, and this was amplified before the original hearing by the production of Drawing No.1895 D by Mr Jonathan Bowman a surveyor employed by the Objectors. Shortly before the adjourned hearing the Objectors submitted a revised Drawing No. 1895 D 2 which included two areas of land not included in Drawing No. 1895 D. After hearing legal submissions by Mr Pimlott I ruled that the Common Land (Rectification of Registers) Regulations 1990 did not contain either an express or an implied power enabling an objection to be amended so as to add additional land to the objection: and I ruled further that even if, contrary to my view, such a power existed it would not be proper to permit an amendment adding additional land to an objection after the expiry of the Act on 20 July 1992. I therefore decided to treat Drawing No. 1895 D 2 as merely explanatory of the small scale plan attached to the Notice of Objection.

The registration of Moor End Common was carried out by reference to the 1919 Ordnance Survey Map. On this, White Cottage and its neighbour The Old Cottage occupy an enclave in the middle of the common which is enclosure No. 117 of 0.144 acre. The northern boundary of the enclosure is a straight line, while the southern (internal) boundary of White Cottage is a straight line running (not parallel) but at an angle with the northern boundary. The boundary of White Cottage as shown on Drawing No. 1895 D 2 takes in a substantial portion of the Common along the northern boundary and around the curving easterly boundary. Apparently there has been a boundary dispute between the Objectors and Lane End Parish Council, which has now been settled on the basis of that drawing. However, adverse possession for 12 years is sufficient to give a good possessory title: but in a case under the 1989 Act it must be shown that since



5th August 1945 the objection land has been occupied as the site of a dwellinghouse or the garden garage or outbuildings of a dwellinghouse. Thus evidence is required showing the history of the land not for the past 12 years, but for the past 49 years.

The only relevant evidence produced by the Objectors was a Conveyance on Sale dated 30th August 1946 by Gertrude May King to Angela Joan Sutton. The plan on this Conveyance is for identification only, and therefore cannot be relied on to establish the precise boundaries of the land. It shows the plot as rectangular, with south and north sides parallel, and a projection some 12' x 38' on the north side at the western end of the north boundary, opposite the Cottage. The approach to the Cottage is merely a footpath from the Marlow-Fingest Road. I am prepared to accept that this projection formed part of the land occupied with the Cottage at August 1945, especially as it is shown on the revised Ordnance Survey Map of 1972.

In 1962 the eastern half of the garden of the Cottage was sold to one W E Sanderson, who covenanted to make a roadway to the Cottage and to the caravan which he proposed to install on the site he had acquired. Aerial photographs of 1972 show the caravan at the extreme north east corner of the site: and (since the natural slope of the land is downwards from south to north) it seems to me that the installation of a hard standing for the caravan, and the construction of the road or track leading thereto, is responsible for the extension of the area (now virtually level several feet above the natural slope) now occupied with White Cottage beyond the original boundary to the point it is shown as occupying in Drawing No. 1895 D 2. Thus the evidence, so far from showing that the land edged green on that Drawing has been garden occupied with White Cottage or the said caravan "at all times" since 1945, seems to my mind to point clearly to the conclusion that most of that land (except the rectangle 12' x 38' which I have hatched approximately on the copy of Drawing No. 1895 D 2 which is annexed hereto) has been incorporated into the property since 1962, and hence does not satisfy the requirements of Section 1(2) of the 1989 Act. I therefore consider that the requirements of Section 1(2) of the 1989 Act are satisfied only in the case of the land 12' x 38' at the north eastern corner of the property hatched black on the said Drawing.

I am required by regulation 22(1) of the Common Land (Rectification of Registers) Regulations 1990 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

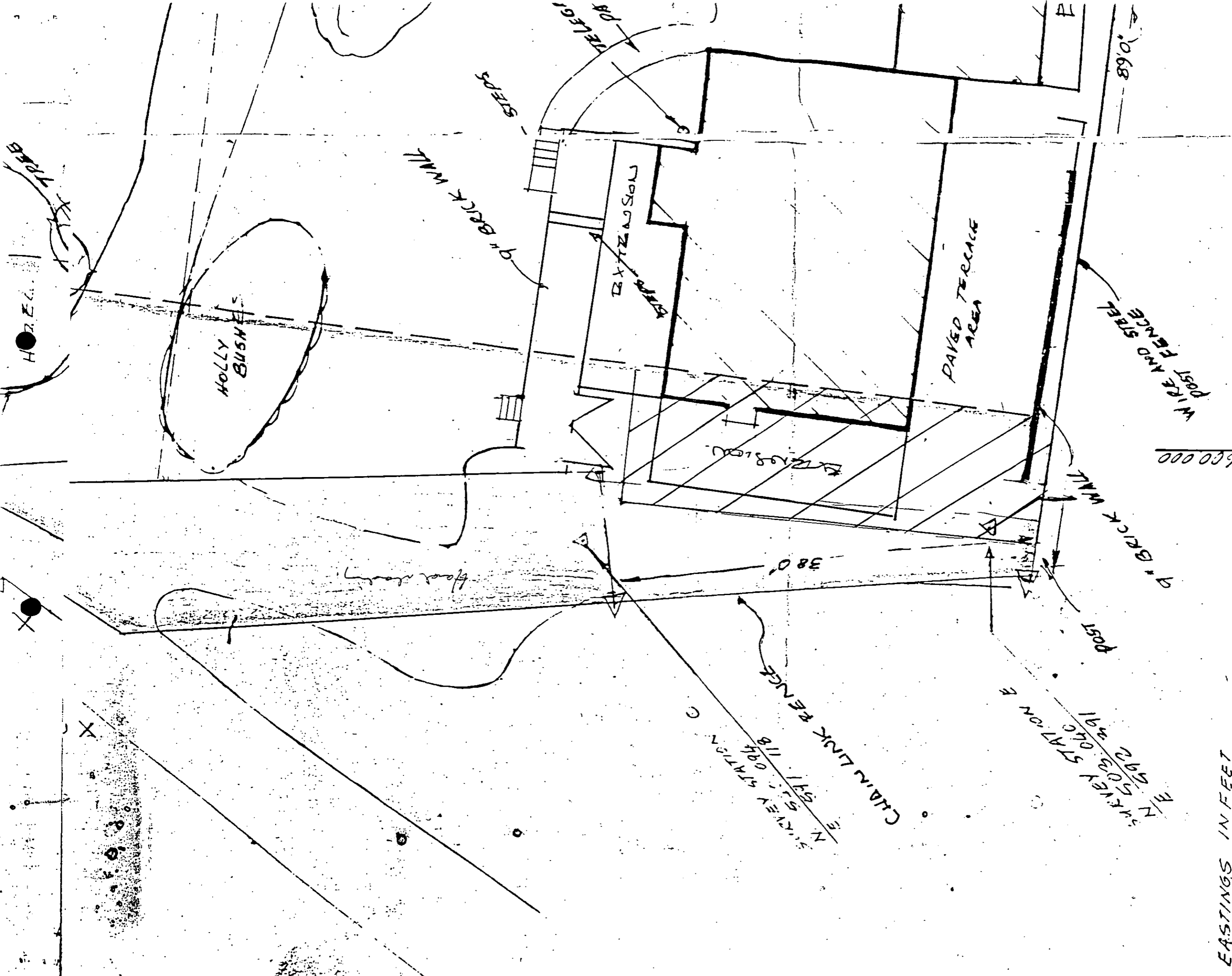
25th

day of

July
John Gutter

1994

Commons Commissioner



EASTINGS IN FEET

Reference No. 203|R|4

This is the plan referred to in my Decision dated 25th July 1994

John Ginter

Commons Commissioner