



COMMONS REGISTRATION ACT 1965

Reference No. 206/R/4

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of land at Pendarves North Lodge part of
Pendarves Woods, Kerrier, Camborne

DECISION

REFERENCE

This reference relates to an Objection under the Common Land (Rectification of Registers) Act, 1989 to the registration of part of the land registered at Entry No. 1 in the Land Section of Register Unit No. CL.336 in the Register of Common Land maintained by the Cornwall County Council.

NOTICE OF OBJECTION

The reference is occasioned by a Notice of Objection dated 23rd November 1990 made by Richard Aubrey Markham and Jean Markham ("the Objectors") numbered O B 3 and referred to a Commons Commissioner on 3rd July 1991.

OBJECTION LAND

The land to which the Objection relates consists of the part of the Register Unit edged in yellow on the plan attached to the Objection ("the Objection land").

ENTRIES OF REGISTER

The land was registered as common land upon the application of Camborne - Redruth Urban District Council. The registration being undisputed became final on 1st August 1972. There are no entries in the Rights Section of the Register. An inquiry as to the ownership of the land was held by a Commons Commissioner at Camborne on 13th January 1983. Pursuant to his Decision dated 13th June 1983 the Minister of Agriculture Fisheries and Food was registered as owner of various parts of the register unit, including the Objection land or some part of it. The Objectors are however now registered at H M Land Registry as Proprietors with Absolute Title to North Lodge and its curtilage including the Objection land, which overrides the entry in the Ownership section.

REPRESENTATION OPPOSING THE OBJECTION

A written representation opposing the Objection was received by the Commons Commissioners from The Open Spaces Society on 19th July 1991.

HEARING AND SITE VISIT

I held a hearing to inquire into the Objection at Camborne on 12th December 1991 and I inspected the site immediately after the hearing.

ATTENDANCE AT HEARING

The hearing was attended by Mr M C Wright Commons Registration Officer of Cornwall County Council and Mrs J Stiff his assistant Mr A Walker of Stewart & Knight Solicitors of Camborne representing the Objectors Mr R A Markham (in person) and Mr & Mrs H Muller. The same persons were present at the site visit.



REPRESENTATION BY OPEN SPACES SOCIETY

The representation by the Open Spaces Society was in the following terms:-

"From inspection of the Ordnance Survey map 1:25,000 Pathfinder series, which was surveyed at a 1 to 10560 scale between 1961 and 1976, it is clear that the south-eastern corner of the objection land was not included in the garden of North Lodge. It is shown on the O S map coloured green and undivided from the adjacent woodland which forms the remainder of the common. We have therefore no objection to removal from the register of the larger area of land which is clearly within the garden of North Lodge, but would wish to see the application modified to exclude this south-eastern portion - see attached plan."

This plan excluded the garage facing the track which can be seen below the word "Lodge" on the Objection plan and the triangle of land to the south of it.

HISTORY OF PROPERTY

North Lodge was at the main entrance to Pendarves House, a Georgian or earlier Mansion which was abandoned as a residence by the Pendarves family during or shortly before the Second World War. The house was demolished in 1955, and North Lodge was conveyed to the sitting tenant Edward Charles Mitchell by a Conveyance dated 9th March 1959, which included the garage site and the triangle of land which the Open Spaces Society contends should not be removed from the Commons Register.

ORDNANCE SURVEY MAPS

It is well settled that Ordnance Survey maps are admissible in Court proceedings to show what physical features the persons employed to make the survey did or did not see at the time of the survey: see the cases cited in Halsbury's Laws of England 4th Edition Volume 17 paragraph 208 note 2. It seems to me however that this principle can only be applied to the large scale Ordnance Survey maps. The Pathfinder series are on a scale of 2½ inches to the mile, that is to say 1:25,000. From personal observation in this and other cases in Cornwall and elsewhere I have found that the maps on this small scale do not show every fence hedge building or other feature which exists on the land, and cannot be relied on as showing small details with complete accuracy. The Lodge building itself is not square, but a shallow T-shape. As will be seen from the Objection plan, the boundary of the common shown on the Register map (which is based on the 6 inches to the mile O S map) appears to run through the tail of the T. Only on the 1: 2,500 scale map used by the Land Registry (and for the Objection plan) is the true shape of the Lodge building apparent.

EVIDENCE

In addition to the documents supplied with the Notice of Objection Mr Walker handed in at the hearing a Statutory Declaration dated 3rd December 1991 made by Peter Raymond Mitchell. The following are extracts from his Declaration.

"1. I am 48 years of age and readily recall that when I was about 12 years old I went with my parents to live at North Lodge, Pendarves Estate, Camborne.

2. My father was employed by the Pendarves Estate and not long after going to live at The Lodge I remember my father bought it from Mrs Pendarves.



3. The Lodge was the main lodge to the mansion and the drive up to the mansion was very well defined. Gardeners were employed to weed the drive and keep it in an immaculate state at all times. The land between the drive and The Lodge was always laid to lawn and cultivated as part of the garden to The Lodge.

4. About two years after the purchase of The Lodge by my father I assisted him to build a garage leading off the drive. The garage was built of concrete block and was situated about half way down the length of the garden and is still there today. The area of front garden from the drive gates down to the garage was formally cultivated but the area of land beyond the garage was not formally cultivated.

6. I believe that during the whole of the time that I knew North Lodge the state of the land purchased by my father clearly indicated to anyone that it was part of the garden to The Lodge. I knew the Lodge before we went to live there. It was occupied by someone by the name of Craze before my parents and to my knowledge and recollection the garden which was sold to my father had always been cultivated in the same state as when we occupied it."

CONCLUSION

On this evidence I consider that the requirements specified in sub-section (2) of Section 1 of the 1989 Act are satisfied in respect of the whole of the land to which this Objection relates.

APPEAL

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

14th

day of

January

1992

Mati Rott,

Commons Commissioner