



COMMONS REGISTRATION ACT 1965

Reference No. 262/R/4

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of Land at Lowick Farm House, Lowick Green, part of
Lowick Common, Lowick

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.39 in the Register of Common Land maintained by the Cumbria County Council.

It is occasioned by Objection No. 7 made by Michael Robert Milner and referred to a Commons Commissioner on 29 September 1992.

I held a hearing to inquire into this objection at Ulverston on 11 May 1993.

At the hearing the Objector, Michael Robert Milner, was represented by Mr P A Sharp of Kendall and Fisher, Solicitors, Dalton-in-Furness, and Mr H James, vice-chairman of Lowick Parish Council also appeared. Mrs F Harrison, Commons Registration Officer represented Cumbria County Council, the Registration Authority.

At the hearing it transpired that Mr Milner who had only purchased the land in May 1991 was unable to give any relevant evidence concerning the use of the objection land between 1945 and the present time, and Mr Sharp was unable to call any witness in support of his case. I therefore, having inspected the land in company with Mr Milner and Mr James granted Mr Sharp's application for an adjournment and indicated that if satisfactory evidence were provided by statutory declaration and the opposition of Lowick Parish Council was withdrawn (which has been done) I would decide the matter without a further hearing.

Lowick Farmhouse lies at the junction of the A5084 and the A5092. When the latter road was widened, the new road surface came within a short distance of the south-west wall of Lowick Farmhouse, leaving a strip of land which is virtually inaccessible for all practical purposes. This strip of land forms part of the objection land, but the major portion of the objection land lies in front of (to the south east) of the house. The evidence as to the latter piece of land viz. - Affidavits made by Herbert James on 14 April 1994, and by Thomas Clegg on 25 April 1994, and a Statutory Declaration made by Iris Marea Thompson on 16 October 1993 - establish that the land was, from 1945 until 1975, surrounded by a wall and was used as a garden ancillary to the farmhouse. Formerly, a farm track crossed the A5084 and ran in front of the said wall to join the A5092, but when the latter was widened this junction was abolished. Miss Thompson, who was then the owner of the farmhouse, demolished the said wall, but the land formerly surrounded by the wall remains a lawn and as such is clearly "garden" ancillary to the farmhouse. I consider the strip of land referred to above also falls within the description of "garden" as it has been explained in such authorities as Re White Row Cottages 1991 Ch.441, being land occupied and enjoyed with the farmhouse and not with any other property, even though it is not capable of being mown or planted and has not been used since the main road was widened.



On that evidence I consider that the requirements of Section 1(2) of the 1989 Act are satisfied in the case of the whole of the land to which this objection relates.

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

5th

day of

May

1994

A handwritten signature in cursive script, appearing to read 'M. G. G. G.', written in black ink.

Commons Commissioner