



COMMONS REGISTRATION ACT 1965

Reference No. 213/R/5

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of land at former Pond forming part of Kenton Green,
Elmore

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 in Entry No. 1 in the Land Section of Register Unit No. CL.236 in the Register of Common Land maintained by the Gloucestershire County Council.

NOTICE OF OBJECTION

The reference is occasioned by a Notice of Objection dated 17th July 1992 made by Gordon Perry Davis ("the Objector") referred to a Commons Commissioner on 10th December 1993.

OBJECTION LAND

The land to which the Objection relates consists of the part of the Register unit edged in green on the plan to the Objection ("the Objection land"). The Objection land is a very small area formerly a pond forming part of O S. No.104a on the 1923 edition of the Ordnance Survey Map (now 6181 on the 1979 edition).

ENTRIES ON REGISTER

Kenton Green containing approximately 1½ acres was registered as common land upon the application of Elmore Parish Council in 1968. The registration being undisputed became final on 1st August 1972.

ENTRIES ON REGISTER

There are no entries in the Rights section of the Register and none in the Ownership section.

OWNERSHIP INQUIRY

There was an inquiry before a Commons Commissioner into the ownership of the land in 1977. In his Decision dated 26th March 1977 Chief Commons Commissioner Mr George Squibb said this:-

"Following upon the public notice of this reference the executors limited to settled land of Sir Anselm William Edward Guise, Bt claimed to be the freehold owners of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Gloucester on 8 February 1977.



There was no appearance at the hearing. The executors had previously "withdrawn" their claim by letter addressed to the Clerk of the Commons Commissioners".

The land therefore remained subject to protection under Section 9 of the Act of 1965.

HEARING

I held a hearing to inquire into the Objection at Gloucester on 6th July 1994 and I visited the site immediately following the hearing.

ATTENDANCE

The hearing was attended by Mr Pugh-Smith of Counsel instructed by Brand Mellon Solicitors of Gloucester and Mr John Mellon of that firm representing the Objector, the Objector in person Mrs Sarah Griffiths Mr John F Penley of Penleys Solicitors of Dursley represented Sir John Guise and Elmore Parish Council and Miss Liza Walton.

EXCHANGE OF LAND

This Objection was originally one of 2 Objections under the 1989 Act made by the Objector in respect of parts of Kenton Green. The other Objection was in respect of a larger piece of land adjoining the Objection land to the north-west. Prior to the hearing before me this other piece of land had been removed from the Commons Register by the County Council as Registration Authority following an exchange of land authorised by the Secretary of State for the Environment. The Objection relating to that land was accordingly dismissed by a Commons Commissioner without a hearing on 22nd April 1994.

OPPOSING REPRESENTATIONS

Whilst both Objections were on foot numerous written representations were received by the Commons Commissioners opposing the removal of the land from the Register. It is however difficult to separate those relating to the exchanged land from those in respect of the site of the pond. Among the representations specifically relating to the site of the pond were those of Penleys acting for Elmore Parish Council and Sir John Guise, and of Mrs Sarah Griffiths.

NO OPPOSITION AT HEARING

Mr John Francis Penley (of Penleys) was sworn and gave evidence. Sir John Guise as owner of the Elmore Court Estate which included O S. 103 (on the 1922 Edition of the O S Map) did not claim ownership of O S 104(a). It was not included in the tenancy agreement to Mr Steel in the 1940s. He produced a Minute of a Resolution passed at a Meeting of Elmore Parish Council on 30th July 1992 approving the exchange of land at Kenton Green, and resolving not to oppose Mr Davis' application for rectification of the Register regarding the pond.

Mrs Sarah Griffiths was sworn and gave evidence. She said she had been Clerk to the Parish Council for 40 years. She was friendly with Mr and Mrs Reynolds (the Objector's predecessors in title) and from 1953 onwards visited them about once a week. They had a very pretty garden. She couldn't remember the pond.



She didn't oppose Mr Davis' Objection in respect of the pond.

No other person attended the hearing to oppose the Objection in respect of the pond.

PONDS

Ponds are frequently important features of common land, used for the watering of grazing animals. I am satisfied that the pond formerly on the Objection land was not of this category, but was a drainage feature. There is a stream running to the north-west and south-west of the Register unit, and on the 1979 O.S Map 6 ponds are shown within a radius of 100 metres of the Objection land.

TITLE TO OBJECTION LAND

The title to the Objection land contains an unfortunate inconsistency. By a Conveyance dated 29th December 1945 there was conveyed to William Reynolds first a cottage with outbuildings and land or garden ground and small orchard thereto adjoining numbered 104 on the O S Map (1923 Edition) for purposes of identification only coloured pink on the plan thereon and secondly a piece of orchard land near the property first described numbered 104a on the O S Map for purposes of identification only coloured brown on the plan. On that plan the Objection land (i.e. the pond) is uncoloured and is shown as lying in between the two parcels conveyed. However on the O S Map the pond (and two other areas) are shown linked in with O S. 104a and included within the area of .211 of an acre. As the plan is "for purposes of identification only" the wording of the parcels clause takes priority, and in spite of what appears on the plan the pond area (and other land) was included in that Conveyance.

On William Reynolds' death in 1968 his widow assented to the Vesting of the same land (together with other land) in herself. By a Conveyance dated 8th September 1985 she conveyed it to Christopher Thomas Marshall, and by a Conveyance dated 9th July 1986 he conveyed it to the Objector and Sharryn Davis. The plans to each of these Conveyances also left the pond area uncoloured.

EFFECT OF EXCHANGE

The effect of the exchange of land which was authorised by the Department of the Environment is that the Objection land is now cut off from the remainder of the common land comprising Kenton Green. The only access to the Objection land is from the Objector's other land or from O S. 103 (on the 1923 O S Map) which forms part of Sir John Guise's Elmore Estate. The latter makes no claim to the Objection Land. It is therefore landlocked and of no value to anyone other than the Objector.

LEGAL SUBMISSIONS

Mr Pugh-Smith referred me to all the relevant reported cases, viz:

Re 1-4 White Row Cottages, Beverley 1991 3WLR 229.

Cresstock Investments v Commons Commissioner 1992 1WLR 1088.

Re land at Freshfields 1993 66 P. & C.R.9.

Sir Richard Storey v Commons Commissioner 1993 66 P. & C.R.206.

He made a series of submissions based on these authorities.



AERIAL PHOTOGRAPHS

Mr Mellon produced a series of aerial photographs taken in 1944 and 1946 on which the site of the pond can be discerned.

SITE VISIT

On my site visit I was satisfied that the Objection land forms an integral part of the Objector's garden and serves no purpose whatsoever by remaining on the Commons Register.

ANCILLARY TO DWELLINGHOUSE

This is a difficult case, as the evidence of the user of the Objection land since 1945 is scanty. Mr Pugh-Smith however relied on the White Row Cottages case to establish the proposition that evidence of actual use and enjoyment is not required. He submitted that on the balance of probabilities the pond had always been an ancillary feature to the Reynolds' dwellinghouse.

CONCLUSION

I accept that submission. Taking into account all the other factors in this unusual case I consider that the requirements of Section 1(2) of the 1989 Act are satisfied in respect of the Objection land.

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

18th

day of

July

1994

Mati Rott

Chief Commons Commissioner