



COMMONS REGISTRATION ACT 1965

Reference No. 206/R/5

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of land at Swindon Villa Inches Down Bodmin
part of Retire Common Withiel and Roche

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.218 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 8th January 1991 made by Gordon Albert Hancock numbered OB5 and referred to a Commons Commissioner on 12th July 1991.

OBJECTION LAND

The land to which the Objection relates consists of the part of the Register Unit edged in pink and partly hatched green on the plan attached to the Objection ("the Objection land").

ENTRIES ON REGISTER

The land was registered as common land in consequence of a Rights application. The registration being undisputed became final on 1st October 1970. There are 9 entries in the Rights Section of the Register, all of which were undisputed and became final either on 1st October 1970 or 1st August 1972. One of these, Entry No. 2, was in the name of Mary Elizabeth Hancock in respect of the right to graze 12 cattle and 6 pigs over the whole of the land comprised in the register unit and register unit CL.369. The land to which this right is stated to be attached is Swindon Villa comprising the land shown on a supplemental map bearing the number of that registration.

APPARENTLY CONFLICTING ENTRIES

The land on the supplemental map in respect of Rights Entry No.2 more or less corresponds with the Objection land. It therefore seems to me that there was a conflict between the Entry in the Land section of the Register and Entry No.2 in the Rights section, which in my view ought to have been referred to a Commons Commissioner before either entry was made final. The Swindon Villa land could not have been both part of the common and land to which rights over the common were attached. Had Mrs Hancock's Rights Entry then been confirmed (and no Objection to it ever made) the result would have been a modification of the Land section to exclude the Swindon Villa land.



OWNERSHIP INQUIRY

Initially there were no entries in the Ownership Section of the Register. On 4th July 1984 the then Chief Commons Commissioner, Mr G D Squibb, held an inquiry into the ownership of the common, and by his Decision dated 28th February 1985 he decided that such ownership fell into four separate parts. As to one of these parts which more or less coincides with the Objection land, he held that Mr G A Hancock (i.e the present Objector) was the owner. This finding is now recorded in Entry No. 2 in the Ownership Section of the Register.

REPRESENTATION OPPOSING OBJECTION

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

REPRESENTATIONS SUPPORTING OBJECTION

Written representations supporting the Objection were received by the Commons Commissioners from some twenty persons, all of whom stated that they had lived in the locality for lengthy periods of time.

HEARING AND SITE VISIT

I held a hearing to inquire into the Objection at Bodmin on 10th December 1991 and I inspected the site on the afternoon of 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 Ian Chisholm of G & I Chisholm Solicitors of Bodmin representing the Objector, Mr G A Hancock (the Objector) in person, Mr John Hancock (his son), Mrs P Chapman, Mrs M Wullis, Mr H G Semmens, Mr G Ferkin (Rights Entry No.5), Mr & Mrs Rowse (Rights Entry No.3), Mrs Doreen E Harris, Mr James Boxall, Mrs Ann Hancock, Mr E L Harper (part Rights Entry No.4), Mr W Chapman, Mrs D Barnes and others.

The site visit was attended by most of the same persons and a number of other people.

MODIFICATION OF OBJECTION

I have said that the part of the Common in respect of which Mr G A Hancock (the Objector) is registered as owner under ownership Entry No.2 (which is shown edged red on Sheet 87B of the Register Map) "more or less coincides" with the objection land. If one compares the plan attached to the Objection with Sheet 87B it will be seen that the Objection plan appears to include rather more land on the southern boundary than Sheet 87B. When I pointed this out to Mr Chisholm he agreed that the Objection should be modified to include only the land shown on Sheet 87B.



HISTORY OF OBJECTION LAND

The history of the Objection land down to 1984 was summarised by Mr G D Squibb in his Decision as follows:-

"On 13 October 1934 the husband of the late Mrs M E Hancock purchased a second-hand railway carriage, which he shortly afterwards placed on land in the north-western corner of the western half of the land comprised in the Register Unit. Mr and Mrs Hancock lived in the railway carriage from then until Mr Hancock died on 4 March 1947, and Mrs Hancock continued to live there until she died on 23 June 1973. Shortly after Mr and Mrs Hancock moved into the railway carriage Mr Hancock fenced in an area of land 420 ft x 460 ft, which has since been treated as the curtilage of the railway carriage, which is now known as Swindon Villa.

Mrs Hancock died intestate and letters of administration of her estate were granted to her son, Mr J J Hancock, on 4 September 1973. By a Conveyance made 11 April 1974 between (1) Jonathan John Hancock (2) Gordon Albert Hancock Swindon Villa was conveyed to Mr G A Hancock, who still lives there."

REPRESENTATION BY OPEN SPACES SOCIETY

The primary ground of opposition expressed by the Open Spaces Society in their written representation dated 17th July 1991 was as follows:-

"From our inspection of the Ordnance Survey 1:25,000 Pathfinder series, based on survey carried out between 1965 and 1981, the majority of this area appears to be unenclosed from the main part of the common. The only area of enclosure appears to be Swindon Villa itself and a small area of garden to the immediate south of the villa. We do not consider therefore that the land has been used as a dwelling house and ancillary gardens at all times since 1945".

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.

ENCLOSED AREA

Although the fences are now in dis-repair and the hedges overgrown, the evidence is overwhelming that the land shown on Sheet 87B has been enclosed since 1934. The Chief Commons Commissioner, Mr Squibb, so found in his Decision in 1985. The Objection is supported by Statutory Declarations all made on the 13th November 1972, by Mary Elizabeth Hancock, Olive Blake, and Maria Elizabeth Lobb, and all bearing plans corresponding with Sheet 87B. Indeed it was a copy of the identical plan which Mr Squibb used for the purposes of his Decision and which became Sheet 87B. It is sufficient to quote one sentence from Mrs Hancock's Declaration:-

"We moved into the property in 1934. My husband fenced the property shortly after we moved in."



I accept this evidence without question, as no doubt Mr Squibb did before me.

SUBSEQUENT EVENTS

- (1) At some date of which I was not given particulars Swindon Villa was listed as a building of historic interest. I was told that the railway carriage had been identified as of a type made in about 1875, originally having gas-light fittings.
- (2) On 13th June 1989 Mr G A Hancock conveyed the part of the land hatched green on the Objection plan to his son, John Hancock. Shortly thereafter John Hancock was registered at H M Land Registry as Proprietor of this piece of land.
- (3) Mr John Hancock then obtained planning permission for the erection of a dwellinghouse on this piece of land
- (4) Mr John Hancock also made an application to the Secretary of State for the Environment under Section 194 of the Law of Property Act, 1925 for consent to the erection of a bungalow on this piece of land. I understand that on 5th September 1989 such consent was refused, but I have not seen the grounds on which it was refused.
- (5) Mr John Hancock commenced work on the erection of the bungalow, but such work was brought to a stand-still because (as I understand it) building finance could not be obtained whilst the site remained registered as common land.

REQUIREMENTS OF 1989 ACT

Section 1 of the 1989 Act requires that I should be satisfied that at all times since August 1945 there has been a dwellinghouse on the land, and that insofar as the land is not the site of that dwellinghouse, it is ancillary to that dwellinghouse. The meaning of the words "ancillary to a dwellinghouse" is however restricted to "a garden, private garage or outbuildings used and enjoyed with the dwellinghouse"

DWELLINGHOUSE

Nobody has ever disputed that the railway carriage is and has at all times since 1945 been a dwellinghouse within the meaning of the Act. The question I have to decide is whether the rest of the land shown on Sheet 87B can properly be described as having been used and enjoyed as a garden throughout the relevant period.

EVIDENCE AS TO USER OF LAND

Mr G A Hancock, Mr John Hancock and Mrs Ann Hancock all gave evidence. In addition a lot of useful information was to be found in the numerous written representations supporting the Objection which were sent to the Commons Commissioners before the hearing.

Mr G A Hancock said that he was aged 60, and was one of a family of 11 children, and there were always 5 children at home at Swindon Villa at any one time. When his father first went there he dug the whole of the area over. He grew Potatoes and vegetables. He kept pigs and geese as well as poultry. His Mother continued in similar manner after his father died in 1947.



Mrs Ann Hancock (Mr G A Hancock's sister-in-law) said she had known the property for more than 25 years. The land was entirely cultivated to vegetables and for fattening pigs and running poultry, all the produce being consumed by the family. For a while a goat was kept for milk.

Mr John Hancock said that he was aged 33 and had 4 children. The children used the land for football and riding their bicycles and generally running around. There had always been children at Swindon Villa.

Several of the written representations described the property as "a small holding". This is a technical term which is not in fact appropriate, but it does I think give a fair picture of the type of activity which was carried on.

MR CHISHOLM'S SUBMISSIONS

On the meaning of the word "garden" Mr Chisholm cited to me:-

- (i) The definition in the shorter Oxford Dictionary
- (ii) Bomford v Osborne 1942 AC 14
- (iii) Methuen - Campbell v Walters 1979 1 AER 606
- (iv) Re 1-4 White Row Cottages Beverley 1991 3 WLR 229.

He submitted with some force that the use to which gardens are put in country districts of Cornwall may differ considerably from what one would expect to find in an urban area. He said that the Swindon Villa land had been used for various activities in different places at different times, partly horticultural, partly recreational and to a limited extent for animals, as was traditional in the area.

THE LAND HATCHED GREEN

I have considered the question whether the sale of the piece of land hatched green on the plan attached to the Objection to Mr John Hancock has any affect on the Objection insofar as it concerns that piece of land. Section 1(1) of the 1989 Act provides that "any person" may make an objection, so the fact that Mr G A Hancock (the Objector) no longer owns this piece of land is irrelevant. The question remains however whether it can still be said that this piece of land is ancillary to the dwellinghouse, Swindon Villa.

This it seems to me is a question of fact. This piece of land although sold to John Hancock, has not been fenced off from the remainder of the land. I apprehend that the proposed bungalow is intended as an adjunct to Swindon Villa, rather than as a separate property. Mr Chisholm said that its purpose was to relieve the pressure on the occupants of Swindon Villa. On this aspect of the case he cited to me:-

- (i) Makins v Elson 1977 1 WLR 572
- (ii) Batey v Wakefield 1982 1 AER (C.A) 61

CONCLUSION

I have found this a most unusual and difficult case. The conclusion which I reach, not without some hesitation, is that the requirements of the 1989 Act are satisfied not only in respect of the dwellinghouse Swindon Villa, but also in respect of the whole of that part of the Objection land which is shown edged red on Sheet No. 87B of the Register Map.

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 13th day of January 1992

Mati Rott

Commons Commissioner