



Proposal Decision

Site visit made on 16 August 2011

By Alan Beckett BA MSc MIPROW

An Inspector appointed by the Secretary of State

Decision date: 28 September 2011

Proposal Ref: COM 261
Pendarves Woods, Camborne, Cornwall.

Register Unit: CL336

Registration Authority: Cornwall Council

- The proposal was made by Cornwall Council ('the Council') under Section 19 (2) (a) of the Commons Act 2006 ('the 2006 Act') to correct a mistake made by the Commons Registration Authority in making or amending an entry in the register.

Summary of Decision: The proposal is granted.

Preliminary Matters

1. This proposal has been determined on the basis of the site visit I made and the written representations submitted.

The Proposal Land

2. The proposal relates to that parcel of land shown edged red on the plan appended to this decision which was registered as being part of Pendarves Woods (CL336) under the provisions of the Commons Registration Act 1965 but which the Council contends was mistakenly registered.
3. It is the Council's case that at the time the entry was made in the commons register, the land at issue was not part of Pendarves Woods. It is contended that when the predecessor commons registration authority (Cornwall County Council) had drawn up the register map for CL336, it had included land within the curtilage of Sycamore House that had not formed part of the original land for which registration had been sought by Camborne-Redruth Rural District Council.

The Statutory Requirements

4. The proposal has been made in accordance with the provisions of section 19 (2) (a) of the 2006 Act.
 5. Section 19 (2) (a) of the 2006 Act provides that a Commons Registration Authority (CRA) may amend its register of common land to correct a mistake made by the CRA in making or amending an entry in the register. Section 19 (4) (a) permits a CRA to make amendments on its own initiative.
 6. The Commons Registration (England) Regulations 2008 (the 2008 Regulations) set out the procedures to be followed. Paragraph 18 of the 2008 Regulations requires that the CRA must –
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- (a) Prepare a statement in writing describing the proposal and explaining the justification for it;
 - (b) Publish a notice of the proposal on its website;
 - (c) Publish a notice of the proposal in one or more newspapers circulating in the relevant area as appears to it to be sufficient to secure adequate publicity;
 - (d) Serve notice on (i) any person who is recorded in the register as having entitlement to a right of common over the whole or any part of the register unit to which the proposal relates; (ii) any commons council or other body representing the interests of persons with rights of common over land to which the proposal relates; and (iii) any owner of a right of common in gross which is exercisable over the whole or any part of the register unit to which the proposal relates.
7. The task of proving the case in support of the correction of the register rests with the body making the proposal, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.
8. Defra's guidance to the Planning Inspectorate¹ states that: "*It is particularly important thata proposal is fully examined where, if granted, it would have some effect on the public interest, such as where land would be deregistered. It is for the applicant to adduce [convincing] evidence, and in its absence, the application must not be granted.*"

Reasons

The Proposal

9. The Council's written statement of the proposal sets out the grounds on which it is considered that part of CL336 should be removed from the register of common land. The statement also lists the documentary evidence the Council has adduced in support of the proposal and is accompanied by a 1:1250 scale plan showing the land at issue. Notice of the proposal was published in the *West Briton* on 22 July 2010 and was included in the Council's website at the same date. There are no persons registered as having a right of common over any part of Pendarves Woods. The Council served notice of the proposal on the owner and the occupier of Sycamore House, other local authorities, relevant organisations and interested parties. No objections to the proposal were received following its advertisement on site and in the press.
10. I am satisfied that the relevant provisions of the 2008 regulations in respect of the proposal have been met and conclude that the proposal has been duly made.

Whether a mistake had been made by the Commons Registration Authority in making an entry in the register

11. An application to register Pendarves Woods as common land was made by Camborne-Redruth Urban District Council on 25 June 1968. The plan appended to that application shows the boundaries of the land which was claimed as common land edged in light green with the claimed land colourwashed green. The plan appears to have been drawn with a degree of precision as the

¹ Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation, February 2011

colouring excludes the public roads which run between the different blocks of land that make up the Pendarves Woods register unit. The application plan does not include the buildings or garden area of Sycamore House.

12. In contrast, the Register plan includes the land which comprises Sycamore House and its gardens. The Council's case is that the inclusion of Sycamore House in the Register as part of CL336 was erroneous as the land had not formed part of the original claim made by Camborne-Redruth UDC.
13. The 1875 first edition Ordnance Survey map and the 1906 second edition Ordnance Survey map show that the land occupied by Sycamore House has been physically separated from Pendarves Woods by walls, hedges or fences since at least 1875. That part of the land at issue which is not covered by the footprint of Sycamore House has the appearance of being cultivated as a garden; the use and function of the land at issue is exclusive to the occupiers of Sycamore House and is ancillary to the occupation of the house. I conclude that the land edged red on the plan attached to this decision lies within the curtilage of Sycamore House.
14. Based on my observations on site, and the documentary evidence submitted, it appears to me that the boundaries of Sycamore House have not changed to any great extent in around 130 years, and that Sycamore House and the land within its curtilage has not formed part of Pendarves Woods since at least 1875.
15. On the limited evidence submitted, I consider it more likely than not that the CRA of the day (the former Cornwall County Council) mistakenly included Sycamore House as part of CL336; there is no evidence before me to suggest that Sycamore House has been part of Pendarves Woods. I consider the omission of the land at issue from the original application for registration to be evidence that in 1968, the land did not have the local reputation of being common land.
16. On a balance of probabilities, the inclusion of Sycamore House as part of CL336 appears to have occurred as a result of a poor cartography when the entry on the Register map was copied from the application map submitted by Camborne-Redruth Urban District Council.

Conclusions

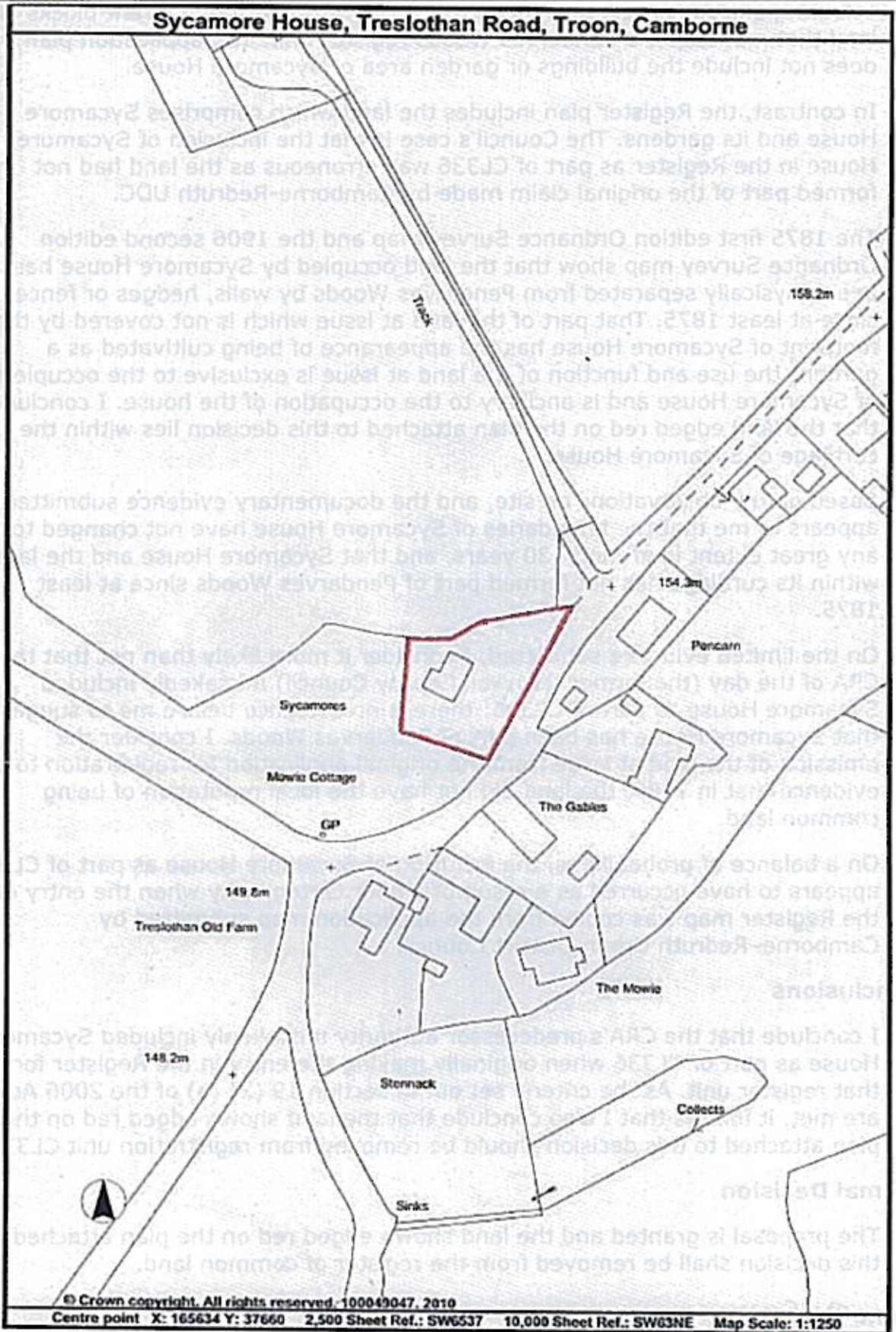
17. I conclude that the CRA's predecessor authority mistakenly included Sycamore House as part of CL336 when originally making the entry in the Register for that register unit. As the criteria set out in section 19 (2) (a) of the 2006 Act are met, it follows that I also conclude that the land shown edged red on the plan attached to this decision should be removed from registration unit CL336.

Formal Decision

18. The proposal is granted and the land shown edged red on the plan attached to this decision shall be removed from the register of common land.

Alan Beckett

INSPECTOR



NOT TO ORIGINAL SCALE