APPLICATION FOR PROSPECTING LICENCE 26/1828

This matter is an application for Prospecting Licence 26/1828 and concerns the position of the 'datum post' with the form 20 attached to it as to whether this position constitutes a 'corner' or an 'angle', for the requirements of marking out to be in compliance with Regulation 59 of the Mining Act 1978.

Regulation 59 states:

Manner of marking out a tenement

59. Land in respect of which a mining tenement is sought shall, unless otherwise expressly provided, be marked out in the following manner—

(a) by fixing firmly in the ground at each corner or angle of the mining tenement, or as near as practicable thereto, a substantial post or cairn of stones projecting not less than 1 metre above the surface of the ground and set in the angle of 2 trenches commencing between 1.5 and 2 metres from the post or cairn, not less than 1 metre in length and 15 centimetres deep, cut in the direction of the boundary lines;

(b) by fixing firmly in the ground at intervals not exceeding 300 metres along each of the boundary lines of the mining tenement, substantial pegs or cairns of stones projecting not less than 1 metre above the surface of the ground and set between 2 trenches not less than 1 metre in length and 15 centimetres deep, cut in the direction of the boundary line on which it is so fixed, but such pegs and trenches are not required in respect to any boundary line or portion thereof which—

(i) coincides with a previously surveyed boundary, a fence, railway line, road or other similar well defined feature if such boundary, or feature is referred to in the description of the tenement recorded on the notice of marking out in the form No. 20 and the application in the form No. 21 in the First Schedule;

(ii) is within an existing townsite or built up area; or

(iii) is situated on private land;

(c) on the completion of the requirements of paragraphs (a) and (b) of this regulation by fixing firmly to one of the corner posts or cairns which shall be the datum post, notice of marking out in the form No. 20 in the First Schedule.

[Regulation 59 amended in Gazette 2 October 1987 p. 3819.]

The datum peg for this application has been placed between the first and ninth pegs of the description on the Forms 20 and 21 (see appendix A).

The terms 'angle' and 'corner' are not defined in the Mining Act. The Concise Oxford Dictionary defines 'corner' as a place where converging sides or edges meet projecting an angle.

'Converging' is defined as 'tend to meet in a point'.

An 'angle is defined as the space between two meeting lines or planes,
being the inclination of two lines to each other, acute, obtuse or right angle (corner).

Therefore, a 'corner' is the place where converging lines meet creating a point. The 'angle' being the inclination between the meeting lines.

Regulation 59(a) refers to affixing at each 'corner' or 'angle'...... a substantial 'post' or 'cairn of stones' projecting not less than one metre above the surface of the ground.

This recognizes that marking out lines will not be straight and allows for the marking out in the field so that it is clear where the boundaries of the tenement are.

Regulation 59(c) refers to a 'corner post' or 'cairn' and not angle so the Act apparently differentiates between a 'corner' and an 'angle' for the purposes of marking out and the placement of the datum post. However, the apparent differentiation in wording is the result of bad drafting and not for any real purpose and creates an ambiguity in the regulation. The Act should be amended accordingly.

In this application the datum post with the Form 20 attached has been placed at a point 1° 22 minutes between the two right angle corner posts.

Essentially a 'corner' is a point where two lines meet or converge and project an angle.

There is no dispute that the Form 20 is affixed at this point.

Therefore, it is my conclusion that the Form 20 is affixed to a corner post as a corner exists no matter how minimal the inclination. The existence of the inclination itself leads to the conclusion that a corner exists.

The question is whether the applicant has complied with Regulation 92.

Regulation 92 refers to 'desirable' as well as 'necessary' and the use of the word 'or' means that provided one or the other is the case then
the shape need not be rectangular.

In this case given that:

1. The datum is a surveyed point.

2. Other tenements exist in the immediate area.

3. At least parts of surveyed boundaries of other tenements are described and form part of the boundaries of this tenement and those surveyed lines would not permit the shape of the tenement to be rectangular if followed.

4. Having regard to the precise location of other tenements and other surveyed boundaries, it is my opinion the shape as marked out and applied for is "desirable" as required by Regulation 92.

Therefore, the application is granted.

B A Lane  SM
WARDEN
20/8/90.