



COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of Land at Carn Creis, part of Escalls Cliff, Sennen

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. 6 in the Land Section of Register Unit No. CL.715 in the Register of Common Land maintained by the Cornwall County Council.

It is occasioned by Objection No. 18 made by Mary Hope Nesbitt and referred to a Commons Commissioner on 14 August 1992.

I held a hearing to inquire into this objection at Penzance on 20 May 1993 and viewed the land shortly afterwards.

At the hearing the objector, Mrs M H Nesbitt, was represented by Mr G Rice, Solicitor of Messrs. Gilbert Stephens. Mr M Wright represented the Cornwall County Council the Registration Authority.

The Objection Land has not been common land since an Enclosure Award dated 7 March 1842, when it and the adjacent land were parcelled out in strips. Unfortunately an over enthusiastic member of the West Cornwall Footpath Preservation Society caused it to be registered, and though many of the adjoining owners made objections at the time, no objection was made in respect of this land and the registration became conclusive. However, the 1989 Act does not enable all such mistakes to be corrected, since it only applies to the restricted categories of land specified in section 1(2).

The bungalow Carn Creis was erected in 1938, and I am satisfied that it has at all material times been a dwellinghouse within the meaning of the Act. The original builder fenced in an area of level ground surrounding the bungalow, and this area, which is laid to lawn, is now surrounded by a stone wall. The commons registration affects the northwestern part of the lawn, but does not include the bungalow itself, and as to this piece of land I am satisfied that the requirements of section 1(2) of the Act are satisfied and that it should therefore be de-registered. The remainder of the objection land, however, consists of a sloping cliff face inclined at an angle of up to 45°, covered in gorse bushes and brambles and intersected by a public footpath. Mrs Nesbitt told me her late husband had attempted to create a water garden in part of the land, but in a few years it had been wholly overgrown by the spreading bushes and brambles. I cannot, therefore regard this land as "garden used and enjoyed with the dwellinghouse", and I am therefore not satisfied that the requirements of section 1(2) of the Act are satisfied in regard thereto.

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

24th

day of

1993

Commons Commissioner