



COMMONS REGISTRATION ACT 1965

Reference No. 206/R/6

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of Land at Rosehill Touring Park, Rosehill, Porthtowan,
part of piece of Common and Waste between Porthowan and Mevagissey,
St. Agnes

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.570 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 10th April 1991 made by Christopher Robin Smiles and Margaret Ann Smiles numbered OB 6 and referred to a Commons Commissioner on 19th August 1991.

OBJECTION LAND

The land to which the Objection relates consists of the part of the Register Unit edged in red on the plan attached to the Objection ("the Objection Land").

ENTRIES ON REGISTER

The land was registered as common land upon the application of the Ramblers Association. The registration being undisputed became final on 1st August 1973. There are no entries in the Rights Section of the Register.

In the Ownership Section of the Register South West Water Authority is registered as owner of a pumping station on the Register unit but otherwise the Register unit remains subject to protection under Section 9 of the Act of 1965.

EVIDENCE IN SUPPORT

Statutory Declarations in support of the Objection were made by:

- (1) Grace Drucilla O'Shea
- (2) Mr and Mrs Smiles

WRITTEN REPRESENTATIONS

Written representations opposing the Objection were received by the Commons Commissioners from:

- (1) The Ramblers Association
- (2) The Open Spaces Society



HEARING AND SITE VISIT

I held a hearing to inquire into the Objection at Camborne on 12th December 1991 and I inspected the site immediately after 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 T Hoskin of Thurston Hoskin, Solicitors of Redruth representing the Objectors, Mr C R Smiles in person and Mr J Berry Rights of Way Secretary, Cornwall Area, Ramblers Association and Local Correspondent of the Open Spaces Society representing both the Ramblers Association and the Open Spaces Society. The same persons were present at the site visit.

TITLE TO OBJECTION LAND

The Objection Land was part of O S No.68 on the 1908 Edition of the Ordnance Survey Map. Mr Hoskin produced an Abstract of Title to Rosehill Touring Park going back to a Conveyance of the 6th November 1928. The Objection Land is included in the land shown on the plan to that Conveyance as being conveyed thereby, and on that plan the measurements of the Objection Land are shown as 120 feet by 100 feet. This is the only piece of land for which measurements are given on that plan, which suggests that in 1928 the Objection Land was being separated out from the remainder of O.S.68 much of which now falls within the Register Unit. I am satisfied that the Objection Land has been conveyed with Rosehill Touring Park and Rose Cottage the dwelling-house situate thereon ever since 1928.

REQUIREMENTS OF 1989 ACT

Mr Hoskins submitted that the Objection Land had throughout the title deeds been conveyed "free from incumbrances", and that it therefore ought not to have been registered as common land. This is possibly true, but I have no jurisdiction to determine the question whether the Objection Land was properly registered or not. The only jurisdiction I have is to determine whether the Objection Land falls within the requirements of the 1989 Act.

Section 1(4) of the 1989 Act requires me to consider whether the requirements specified in section 1(2) are satisfied in the case of the land to which the objection relates or any part of it.

As far as relevant to this case those requirements are -

"(a) that

(1).....

(2) the land is ancillary to a dwellinghouse which is not on the land; and

(b) that the requirements of paragraph (a) above have been satisfied at all times since 5th August 1945"

By section 1(3)

"For the purposes of subsection (2) above land ancillary to a dwellinghouse means a garden..... used and enjoyed with the dwellinghouse".



OPPOSING REPRESENTATION BY OPEN SPACES SOCIETY

The representation by the Open Spaces Society was in the following terms:-

"We consider that the land covered by the application is a genuine part of the common. No house or garden is marked on the ordnance survey 1:25000 pathfinder series map that was surveyed between 1963 and 1975.

The Pathfinder Map referred to is No. 1359 Camborne (North). The scale of this is so small (2½ inches to 1 mile) that it is not easy to identify the Objection Land (which as mentioned above is only 120 feet by 100 feet) on it at all. Rose Cottage appears to be marked on it by a conventional square, but it certainly cannot be ascertained from that map whether the Objection Land is a garden.

EVIDENCE BY STATUTORY DECLARATION

By her Declaration Grace Drucilla O'Shea declared that she was 70 years of age and lived at Porthtowan between the ages of 4 and 13 and again between 1948 and 1952, that she was acquainted with the general area of the Objection Land and that she used to play in that area as a child.

By their Declaration Mr and Mrs Smiles, who have owned the land since May 1987, declared (inter alia) as follows:-

"The land is steeply sloping and we have made no particular use of it but have treated it as "natural garden" or amenity land."

SITE

The dwellinghouse Rose Cottage was, I was told, a quarry manager's house. It was built 100 years or more ago into a recess cut out of the rock face at some height above road level. There is no vehicular access to Rose Cottage, let alone to the Objection Land. Any fear there may have been that the Objection Land might be used as an extension to the Caravan Park is unjustified, as it is on a very steep slope and inaccessible with vehicles.

BOUNDARIES

The boundaries between the Objection Land and the remainder of the Register unit are clearly marked out by substantial concrete boundary posts which have clearly been there for many years. There were indications on the posts that they had formerly borne wire, although this has since perished. Although there was no direct evidence it seems to me that on the balance of probabilities these posts would have been put in at or about the time of the Conveyance of 1928, when the measurements of the Objection Land were first set out on a plan.

STATE OF LAND

Though no longer enclosed with wire, the Objection Land was enclosed in the past and remains a clearly defined area both on the ground and in the title deeds and plans. The only purpose to which it could have been put in the past was as an extension to the garden of Rose Cottage, but it has been neglected for some years, the wire has rusted away, and the gorse has been allowed to grow in from the common. Nevertheless there are signs of planting, daffodils, bluebells, aubretia, foxgloves, sycamore and fir trees, none of which are apparent on the adjoining part of the Register Unit.



WITHDRAWAL BY RAMBLERS ASSOCIATION

As stated above, the Ramblers Association lodged a written representation opposing the Objection, but Mr Berry withdrew this at the Hearing on certain terms which he agreed with Mr Smiles. I have no jurisdiction to approve compromises in cases of this type, and in any event the Open Spaces Society have notified me since the hearing that it does not wish to withdraw its representation. I shall therefore say no more about this aspect of the matter.

CONSTRUCTION OF 1989 ACT

In a recent appeal in a case under the 1989 Act Mummery J over-ruled my Decision that a row of cottages which had been derelict for nearly 20 years were not "dwellinghouses" at all times since 1945 within the requirements of the Act; In re 1-4 White Row Cottages, Beverley 1991 3 WLR 229. He said, at page 233; "I do not think they ceased to be dwellinghouses simply because they were not dwelt in."

Following this logic in the present case it seems to me that the Objection Land has not ceased to be a garden within the meaning of the 1989 Act simply because it has been neglected for a number of years.

CONCLUSION

Accordingly I reach the conclusion that the Objection Land satisfies the requirements of Section 1(2) of the 1989 Act.

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

23rd

day of

March

1992

Martin Rott

Commons Commissioner