



COMMONS REGISTRATION ACT 1965

Reference No. 206/R/31

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of Land at Tranquilla, forming part of Common Land
at Lizard Green, The Lizard, Cornwall

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.1 in the Land Section of Register Unit No. CL.220 in the Register of Common Land maintained by the Cornwall County Council.

It is occasioned by Objection No. 52 made by Mr S Stephens and referred to a Commons Commissioner on 10 December 1992.

I held a hearing to enquire into the objection at Camborne on 19 January 1994 and viewed the land shortly afterwards.

At the hearing Mr Stephens Senior, the Objector, was represented by Mr Ryder of Thrall Ryder Williamson, Solicitors, Truro: Llandewednack Parish Council, which opposed the objection was represented by Mr Trevaskis of Reginald Rogers & Son, Solicitors, Helston: and Mr Wright and Mr Wilson represented Cornwall County Council the registration authority.

Evidence was given on behalf of the objection by Mr Stephens Senior himself, his son Mr Michael Sidney Stephens and Mr M J Mitchell. Evidence was given on behalf of the Parish Council by Mr R H R Lyne, and Mr F K B Triggs.

The objection land consists of a triangle with a base 18' in length along Pentreath Lane: one side lies along the front wall of Mr Stephens' property "Tranquilla", and the other side some 35' in length runs along the side of a path leading to Pound Cottage. The land forms part of the Lizard Green which is registered as common land and is owned by the Parish Council. Inevitably (as Mr Stephens has claimed a squatter's title to the land) questions of adverse possession were canvassed in evidence, though strictly such questions are not relevant to my inquiry, which has to answer the question whether, from 5 August 1945 and at all times thereafter, the land has been "garden" ancillary to "Tranquilla". The evidence showed that at 5 August 1945, and into 1946, "Tranquilla" was occupied by a Mrs Munday, who employed Mr Mitchell (then a schoolboy) to do odd jobs including on occasions to remove weeds by hand from the objection land. Mr Stephens became the occupier of "Tranquilla" in 1946 (and he subsequently became the owner of the property): and his evidence was that he planted flowers along the exterior frontage of the garden wall of "Tranquilla", and on occasions mowed the grass on the objection land at first with shears and later with a mower.

The father of Mr Lyne kept about 85 milking cattle between 1973 and 1985, and twice a day drove his herd to pastures off Pentreath Lane. Mr Lyne told me that the cattle were held in the corner of the green outside "Tranquilla" before they were permitted to pass into Pentreath Lane. Mr Stephens put up ropes to prevent the cattle from trampling on or eating his flowers, and Mr Lyne's father took down the ropes after the cattle had left the area. Mr Stephens acknowledged



that he had no right to complain either of the presence of the cattle, or of the taking down of the rope. Mr Stephens told me that he never took a deck chair out to sit on the objection land, nor did he use it for barbecues or picnics. Mr Stephens junior played on the land, but as he also played on virtually all other parts of the Green I do not find this activity significant. Consequently I find that the objection land has never been "garden" ancillary to "Tranquilla": it is for the most part merely part of the Green which the occupiers of "Tranquilla" have tidied up to enhance the approach to the property. The planting of flowers, which in any event, is de minimis in terms of the area occupied, only commenced in 1946, and accordingly did not continue throughout the period from 5 August 1945.

I therefore consider that the requirements of section 1(2) of the 1989 Act are not satisfied in the case of any of the land to which this objection relates.

The Parish Council did not ask for costs if their opposition was successful, so I make no order as to costs.

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 26th day of January 1994


Commons Commissioner