



COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of Land at Whitehall Farm, forming part of Trefullock Moor

DECISION

These references relate to objections 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.485 in the Register of Common Land maintained by the Cornwall County Council.

They are occasioned by Objection No. 42a made by Ivor Frederick Matthews and Objection No. 42b made by Anthony Michael Matthews both of which were referred to a Commons Commissioner on 2 February 1993.

I held a hearing to inquire into these objections at Newquay on 25 January 1994.

At the hearing both the objectors were represented by Mr Holman of Ralph and Co, Solicitors of Wadebridge and both of them gave evidence.

The land the subject of the objections ("the land") is shown on plans attached to the Notices. It is very roughly square in shape, I F Matthews being the Objector in relation to the north-west portion of the land ("the I F M part") and A M Matthews being the objector in relation to the rest of the land ("the remainder").

It was submitted that the land is now and has since 5 August 1945 been the site of dwellinghouses and outbuildings and gardens ancillary thereto within the meaning of the 1989 Act.

No-one made any representations against either objection, whether at the hearing or prior thereto.

I F Matthews ("I F M") made two statutory declarations dated 20 July 1992 and 21 January 1994 respectively. He also gave evidence at the hearing. So far as relevant his evidence may be summarised as follows:

1. He was born in 1936, the younger of the 2 sons of W T Matthews ("W T M") and his wife A B Matthews ("Mrs A M").
2. I F M's elder brother S F Matthews ("S F M"), who was born in 1912, married D E Matthews ("Mrs D M") and their son Anthony Michael Matthews ("A M M") is one of the objectors in this case.
3. In about 1924 W T M brought a bus chassis on to the south-west corner of the I F M part, where it fronts on to a lane. He built a caravan on the chassis and lived there until 1934 when this caravan and chassis were replaced by a railway carriage. W T M lived in this railway carriage until his death in 1952 and Mrs A M continued to live there until 1968, since when it has been used by I F M as an outbuilding.
4. I F M lived with his parents in the railway carriage until 1967, when he placed his own caravan in the centre of the I F M part, where he and his wife have resided down to the present day.



5. In about 1939 S F M took up residence in a caravan on the remainder: it is situated in about the middle of the land. In about 1944 this caravan was replaced by another railway carriage, in which S F M and his family resided until his death in 1957; Mrs D M went on living there until her death in 1987, after which a Mr Vincent lived there until his death in 1992.

6. On, and near the middle of the southern boundary of, the land friends of the Matthews family called Mr and Mrs Hughes lived in a shed from the 1930s until 1947 when they replaced the shed with half a railway carriage (to which they attached a caravan) and resided there during the rest of their lives, Mr Hughes dying in 1979 and Mrs Hughes in 1984. Since 1984 A M M has used this half railway carriage as an outbuilding.

7. Since a date prior to 1945 each of the railway carriages and caravans mentioned above enjoyed, when lived in, a supply of electricity from its own generator. Cooking was by Calor gas. Water was obtained from 3 wells on the land. Drainage was into a cesspit, also on the land.

8. Apart from the structures on the I F M part mentioned above, that part has been used as a garden.

A M M made two statutory declarations, one dated 20 July 1992 the other 21 January 1994. He also gave evidence at the hearing. His evidence may be summarised as follows:

1. He confirmed the evidence of his uncle, I F M.
2. In 1964 A M M was married and with his wife took up residence in a caravan in the north-east corner of the land. Previously there had been on this site a chicken house, hen run, and outbuildings ancillary to the railway carriage mentioned in paragraph 5 above. In 1976 this caravan was replaced by a chalet, where A M M, his wife and their son have lived down to the present time.
3. A M M said that his grandfather, W T Matthews was a well respected engineer and scrap metal merchant. This was corroborated by a newspaper cutting which showed a very large attendance at his funeral in 1952. In particular he was renowned for his traction engines, of which A M M produced photographs.
4. A M M also produced photographs of the land and various structures on it from the mid-1940s onwards.
5. In about 1960 an electric pump was installed which pumps water from the wells into a tank which supplies all the occupiers of the land except I F M who has his own separate supply.
6. Telephone has been available since about 1984.

I accept the evidence of I F M and A M M summarised above.

After the hearing I inspected the land. It appears to have a total area of about 1 acre. It has a well defined and apparently long established boundary to the south and east. To the north and west it is bounded by hedges and public highways. Near I F M's caravan on his land is a substantial vegetable garden. A M M's chalet has (and as the photographs show has since the 1940s had) lawns and flowers about it. The various railway carriages and outbuildings mentioned above can be seen, some now dilapidated. Much of the land is covered with



dense bushes and undergrowth in which rusty old motor cars are to be seen. There are, however, several fruit and other trees on the land.

My conclusions are as follows:

1. The railway carriages and caravans mentioned above are all "dwellinghouses" for the purpose of the 1989 Act.
2. The evidence of I F M and A M M, corroborated by the age of the boundaries and also the age and widespread scattering of old motor vehicles and other scrap metal, satisfies me that since a date prior to 1945 W T Matthews occupied the whole of the land and used it as ancillary to the railway carriage in which he dwelt until his death.
3. For the purposes of the Act that land is presumed to be "garden" - see Cresstock Investments Ltd v Commons Commissioner 1992 1WLR 1008.
4. That presumption is not to be rebutted by the absence of fruit, flowers or vegetables, or of any evidence of tending, or by the extreme untidiness of the site - see Cresstock (above).
5. There is no other evidence to rebut the presumption.
6. It follows that since a date prior to 1945 the whole of the land has, for the purposes of the Act, been the site of one or more dwellinghouses and gardens and outbuildings ancillary thereto.

I accordingly consider that the requirements of Section 1(2) of the 1989 Act are satisfied in the case of the whole of the land to which these objections relate.

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

4th

day of

February

1994

Alan Rauer

Commons Commissioner