



COMMONS REGISTRATION ACT 1965

Reference Nos. 206/R/11  
206/R/12

COMMONS REGISTRATION ACT 1965

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of (1) Land at Daymer Bay House, Daymer Bay  
(2) Land at Daymer House, Daymer Bay  
part of land known as The Greenaway,  
Trebetherick

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### DECISION

#### REFERENCES

These references relate to two Objections 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.532 in the Register of Common Land maintained by the Cornwall County Council.

#### NOTICES OF OBJECTION

These references are occasioned by the following Notices of Objection:-

- (1) Notice dated 13th August 1991 by Christopher James Hoddell and Susan Frobisher Hoddell in respect of land at Daymer Bay House
- (2) Notice dated 3rd July 1991 by Brian George Burrows, Linda Lilian Burrows and Aubrey Hills in respect of land at Daymer House

#### ENTRIES ON REGISTER

The Greenaway Trebetherick was registered as Common Land by the Trebetherick House Owners' Association, a body which is now defunct. The registration was confirmed subject to modification after a hearing before a Commons Commissioner on 16th January 1980. There are no Entries in the Rights Section of the Register.

#### OWNERSHIP INQUIRIES

There have been two ownership inquiries before Commons Commissioners, one before the then Chief Commons Commissioner, Mr George Squibb on 10th February 1983, and the other before me on 23rd October 1990.

In his Decision dated 15th June 1983 Mr Squibb decided (inter alia) that Eileen Alice Drew was the owner of the piece of the Register Unit adjacent to Daymer Bay House shown edged red on Sheet 92D of the Register Map.

In my Decision dated 5th November 1990 I decided that Mr and Mrs Burrows and Mr Hills were the owners of the piece of the Register Unit adjacent to Daymer House shown edged red on Sheet 92F of the Register Map.

#### THE OBJECTION LAND

Reference No. 268/R/11 relates to the piece of land adjacent to Daymer Bay House shown edged red on Sheet 92D.



Reference No. 268/R/12 relates to the piece of land adjacent to Daymer House shown edged red on Sheet 92F.

I shall refer to these two pieces of land together as "the Objection land".

#### HEARING

I held a hearing to inquire into these references on 21st July 1992 at Wadebridge and I made an inspection of both the sites on the afternoon of the hearing.

#### WRITTEN REPRESENTATIONS

Prior to the hearing written representations opposing the Objections were received by the Commons Commissioners from:-

- (1) Mrs M Troy
- (2) St. Minver Lowlands Parish Council
- (3) The Open Spaces Society
- (4) Mr P N Tetlow.

#### ATTENDANCE AT HEARING

The hearing was attended by Mr Martin Wright and Mrs Stiff of Cornwall County Council Mr Worthington-Edridge of Macmillans, Solicitors of Wadebridge representing the Objectors in both cases (acting as agent for Tuck & Mann, Solicitors of Epsom in the case of Mr & Mrs Hoddell) Mr C J Hoddell Mr & Mrs Burrows Mr M G B Male and Mrs Troy. St. Minver Lowlands Parish Council and The Open Spaces Society were not represented. Mrs Troy told me that Mr Tetlow was unable to attend because he had gone to hospital as an outpatient, but that she would look after his interests .

#### OBJECTIONS HEARD TOGETHER

These two Objections relate to adjoining pieces of land within the same Register Unit. Prior to the hearing Macmillans applied to have the two cases consolidated. I felt doubt whether the power conferred on a Commons Commissioner by Regulation 12(2) of the Commons Commissioners Regulations 1971 to make an order consolidating proceedings applied to the present references, since although both Objections relate to the same Register Unit, they are not "in respect of the same land". I indicated however that I was willing to hear both cases together, and no-one present at the hearing raised any objection to this course. I therefore heard both cases together, and am giving a single Decision in the two cases.

#### STATUTORY DECLARATIONS

The Objection in respect of the land at Daymer Bay House was supported by Statutory Declarations made by Brian George Burrows on 3rd July 1991 and by Martyn Basil Male on 8th May 1991.

The Objection in respect of the land at Daymer House was supported by Statutory Declarations made by Christopher James Hoddell on 13th August 1991 and Martyn Basil Male on 26th March 1991.



### PROOF OF DECEASED WITNESS

Mr Worthington-Eldridge produced an original Death Certificate of Eileen Florence Clara Gascoyne who died on 17th June 1992 aged 81. He asked for leave (which I gave) to put in a Proof of Evidence signed by her together with accompanying correspondence. This evidence related only to the land at Daymer Bay House.

### ORAL EVIDENCE

Mr Worthington-Eldridge called the following witnesses in support of the Objections:-

- (1) Mr C J Hoddell
- (2) Mr Burrows
- (3) Mr Male
- (4) Mr Martin Cole

Mrs Troy also gave evidence.

### SUMMARY OF EVIDENCE

Mr Male said in his Statutory Declarations that he had lived in the vicinity since 1918 and the Objection land had at all times formed part of the gardens of the respective houses. There was before me substantial other evidence to similar effect and none to the contrary.

### THE SAND DUNES

It transpired in the course of the hearing that the opposition to these Objections was caused largely by confusion over the public footpath which runs between the Objection land and the sea-shore. On the 1907 Ordnance Survey map no coastal footpath appears and none is shown on the Register map. Walkers could have reached the beach from the footpath at the bottom of Daymer Lane, proceeded along the sands and, if they wished, continued on the footpath to St. Enodoc Church.

At some date after Commons Registration a definitive footpath was created running along the sand dunes close to the seaward boundary of the Objection land. Owing to storm damage or the shifting of the dunes or some similar cause a Temporary Diversion Order in respect of the footpath was made in 1986, but notwithstanding that its duration was stated to be for a maximum of 2 years, the footpath over the dunes has never been restored and remains closed. Apparently for reasons of safety the dunes themselves were fenced in with a post and wire fence, and it seems that this led the persons who opposed these Objections into believing that the Objectors wished to incorporate part of the dunes in their gardens.

### MRS TROY'S EVIDENCE

Mrs Troy said that she had no objection to the de-registration of the flat gardens. What she and Mr Tetlow were interested in was in preserving public access to the sand dunes.



### SITE VISITS

I was satisfied on my site visits that the Objection land had long formed part of the gardens of the respective houses.

### CONCLUSION

On this evidence, I consider that in both cases requirements of Section 1(2) of the 1989 Act are satisfied in respect of the Objection land.

### APPEAL

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

25<sup>th</sup>

day of

August

1992

*Marti Rott*

Commons Commissioner