



COMMONS REGISTRATION ACT 1965

Reference No. 206/R/1

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of "Homestead" part of Polhigey Moor,  
Carmenellis, Redruth

#### 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 the Land Section of Register Unit Nos. CL.455 and CL.686 in the Register of Common Land maintained by the Cornwall County Council.

It is occasioned by Objection No. OB4 made by Arthur Henry Smith and Audrey Gwendoline Smith and referred to a Commons Commissioner on 4 February 1991.

Save as set out below no person wrote to the Clerk of the Commons Commissioners stating that he wished to oppose the objection.

On 19 February 1991 I gave notice under regulation 8(1) of the Common Land (Rectification of Registers) Regulations 1990 that I proposed to give a decision allowing this objection without holding a hearing.

No person gave notice requiring a hearing but on further consideration I decided that a decision allowing the objection with the exception of the driveway (see below) would not be a "decision allowing this objection" as stated in the notice under section 8(1).

On 26 March 1991 the Clerk of the Commons Commissioners wrote to the objectors' solicitors pointing this out enclosing a draft decision allowing the objection with the exclusion of the driveway and stating that if the objectors still wished to contend that the driveway could be excluded from registration it would be necessary to hold a hearing. The objectors' solicitors have since indicated that they no longer wish so to contend.

On 4th April however the Clerk of the Commons Commissioners received a letter from Mr Colin Gillingham solicitor for the present owners of the grazing rights registered at Entry No.3 in the Rights Section, raising various objections to the boundaries of the land to which the objection relates.

There followed a very long correspondence between the solicitors for the parties to which I need not further refer since on 7 January 1992 the Clerk of the Commons Commissioners received a letter from Mr Gillingham withdrawing his clients' opposition to the objection.

That being so I can now give my decision on this objection without holding a hearing.



The objectors have produced -

(1) a statutory declaration by Ethel Maud Tregoning dated 13 May 1969 declaring that Elizabeth Jane Pascoe from 1926 until her death on 27 October 1968 lived in the property and premises known as "Homestead", Polhigey Moor Carnmenellis identified by a plan which is identical with the objection plan except that it does not include the driveway at the south connecting the land to the road.

(2) a statutory declaration by William Henry Choak dated 4 December 1990 declaring that he had purchased "Homestead", identified by a plan which is identical with the objection plan, on 6 July 1970 and resided there until 26 October 1983 when he sold it to the objector and that during that time the use of the garden and outbuildings was ancillary to the enjoyment of the dwellinghouse.

(3) a joint statutory declaration by the objectors dated 4 December 1990 declaring that since 26 October 1983 they had resided at "Homestead" identified by a plan which is identical with the objection plan and that they had used the property as a dwellinghouse and the garden and outbuildings have been used and enjoyed ancillary to the dwellinghouse.

On this evidence, in the absence of any sustained opposition, I am satisfied that, with the exception of the driveway referred to below, the land to which this objection relates consists of a dwellinghouse and outbuildings and a garden used and enjoyed with it and has done so at all times since 5 August 1945.

#### The driveway

At the south of the objection plan there is a small area connecting the main area with the main road. This is described by Mr Choak in his statutory declaration as a "driveway" and is shown coloured blue on the plan attached to that declaration. Mr Choak says that from his own knowledge as someone who lived in the area before his purchase of "Homestead" he can confirm that it was on 5 August 1945 and since then has been used and enjoyed as ancillary to "Homestead". The objectors in their declaration say that since their purchase they have "occupied" this driveway the use of which is ancillary to the dwellinghouse. I notice, however, that neither in the conveyance dated 26 October 1983 nor in any earlier conveyance is there any reference to this driveway.

It seems to me that whether the objectors have a possessory title to this land or whether they have merely a right of way (as to which I express no opinion) it certainly cannot be described as part of the "garden".

That being so it is not ancillary to the dwellinghouse within the very limited definition of that word in section 1(3) of the 1989 Act and I have no power to exclude it from registration.

I would emphasise that this decision in no way prejudices such rights as the objectors may have over this land. I merely decide that it cannot be excluded from registration as common land under the terms of this particular Act.



Conclusion

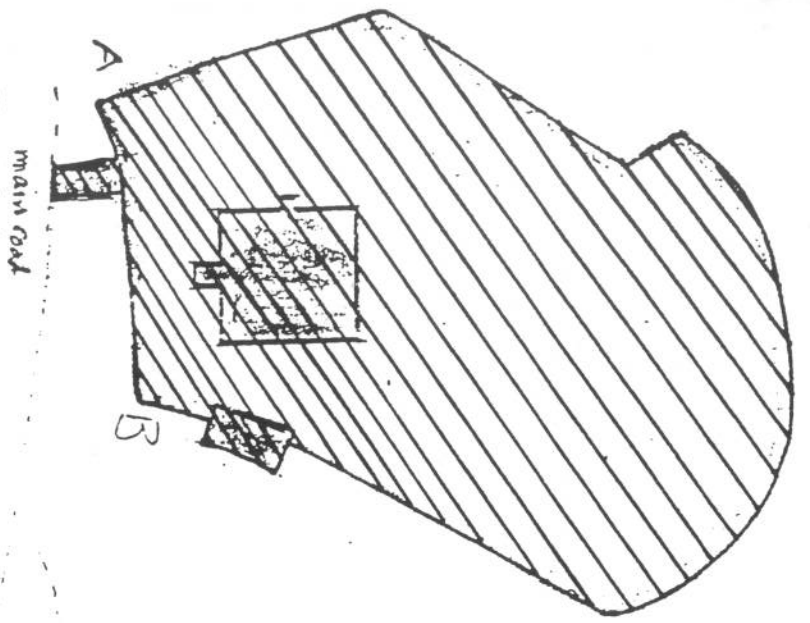
I therefore consider that the requirements specified in section 1(2) of the 1989 Act are satisfied in the case of so much of the land to which this objection relates as lies to the north of the line AB on the plan attached to this decision.

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 14<sup>th</sup> day of January 1992

*Peter Landon-Davis*

Chief Commons Commissioner



Reference no. 206/R/11  
 This is the plan referred to in my  
 Decision dated 14 January 1992

*Peter Langston - Davis*  
 Chief Commons Commissioner

