



In the Matter of The Great Common,  
Rock, Cornwall

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DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 554 in the Register of Common Land maintained by the Cornwall County Council and is occasioned by Objection No. X798 made by the Duchy of Cornwall and noted in the Register on 2 May 1972.

I held a hearing for the purpose of inquiring into the dispute at Bodmin on 10 July 1979.

There appeared at the hearing, Mr D M Gill of the Registration Authority, Mr K G Wherry a member of and representing St Minver Lowlands Parish Council, Mr J R Hickish, Land Steward of the Duchy of Cornwall, Mr J Morris, Secretary, and Mr R J Beaver a member of St Enodoc Golf Club and Mr D G Bousfield on behalf of a number of residents on part of the land in question ("the Unit Land").

The registration was made on the application of the Ramblers' Association. The grounds of the Objection are that the land was not common land at the date of registration. There are no rights of common registered. The Ramblers' Association is not, but the Parish Council is, seeking confirmation of the registration.

2. The Unit Land is a large area of over 150 acres, belonging to the Duchy of Cornwall: the eastern section of the Unit Land forms part of the St Enodoc Golf Links, the subject matter of a lease by the Duchy. The western section is bounded by the River Camel estuary, and in the southern part of that section is an Old Quarry and car park, to the east of which are the properties of the residents represented by Mr Bousfield. At the hearing Mr Wherry accepted that the freehold areas sold for residences are not common land. Mr Hickish produced a plan ("the Duchy plan") of the unit and other land: on this plan the sold freehold areas are, as I understood, those lying to the east of the car park inside the boundary coloured mauve on that plan, and the boundary coloured green of the Unit Land, and include the properties on the plan called The Boat House, Cocklebar, Spindrift, Ferry Cottage, Rock Bottom and Club and the area to the N.E. of these properties numbered 0191 on the plan. Since as regards these sold freehold areas, the registration as common land is not sought to be maintained, I refuse to confirm the registration to that extent. (It will, I take it, be practicable to indicate these areas on the register map satisfactorily).

3. The case made by Mr Wherry started with the Tithe Book and plan of 1838 in which the Unit Land then called "The Great Common" and numbered 734 was described as Pasture and Waste, with some tenants, but with no rent-charges apportioned to them. In addition he furnished written statements by a number of local inhabitants, past and present, from which it appeared that at least since about 1914 the Unit Land was regarded as common land and there was freedom of access to it. Mr Hickish accepted that at one time the Unit Land was probably waste land of the Duchy manor, and this I find to be the case. However, as regards the part leased to St Enodoc Golf Club ("the Club Section"), Mr Hickish produced certified copies of



three leases by the Duchy to the Trustees of the Club (i) dated 5 June 1929 of an area of 59 acres which included part of the Unit Land for a term beginning in 1959, (ii) dated 2 April 1951 of an area of 228 acres which included a part of the Unit Land more extensive than that comprised in the 1929 lease for a term expiring in 1971, (iii) dated 16 February 1965 of the same area of 228 acres for a term expiring in 1985. Before 1951, the Club Section included a Clubhouse and other buildings used for Club purposes: and in my opinion the Club Section, if at an earlier date it was waste land of the manor, has ceased to be so for at least 30 years and has been occupied by the Golf Club. As regards the Club Section, accordingly I refuse to confirm the registration.

4. The Car Park is on a site of 1.75 acres demised by the Duchy by a lease dated 23 November 1960 to Wadebridge Rural District Council for a term of 31 years. This again has in my opinion ceased to be waste land of the manor and I refuse to confirm the registration as regards this part of the Unit Land.

5. The remainder of the Unit Land is the area ("the remaining area") to the west and southwest of the Club Section, excluding the sold freehold areas (paragraph 2 above) and the Car Park site. Mr Hickish produced certified copies of leases by the Duchy dated respectively 3 February 1849 and 25 March 1853.

The 1849 lease was of 103 acres of the Unit Land including the remaining area and also part of what is now the Club Section. This was for a term of 31 years and contained a covenant by the tenant to cultivate the land on a rotation system, and to erect a stone fence on the eastern boundary and other fences as directed by the landlord for the purpose of enclosing the land. This lease seems to have terminated prematurely since by the 1853 lease, the same area was demised to another tenant for a term of 21 years: this contained no covenant to fence, but a covenant to keep the land in pasture and cultivate and manage the same in a good and husbandlike manner. If the covenants in the leases were performed then the remaining land would for the term of the leases cease to be waste land: but no evidence was given that they were carried out, and in any event the 1853 term would terminate in 1874, and there was no evidence of cultivation since then. In 1874 there was a 21 year licence granted by the Duchy to the holder of the 1853 lease (by now terminated) to enter on the remaining area and to stock and breed rabbits and form a rabbit warren: and in 1885 another 21 year licence to quarry and get rock and stone from a part of the remaining area adjoining the River Camel.

On this evidence I find that the remaining area has not ceased to be waste land; if it did so cease during the periods when it was held under the Leases of 1849 and 1853, it has since their termination reverted to waste land. Mr Hickish stated that some two acres of dunes in the remaining area had been enclosed, but I understood that this was not for any permanent purpose and Mr Hickish did not submit that these two acres should be treated differently from the rest of the remaining area.

In the result I confirm the registration as regards the remaining area. Otherwise I refuse to confirm the registration.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 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 12<sup>th</sup> August 1979

*L. J. Morris Smith*

Commons Commissioner