



Application Decision

Inquiry held on 9 December 2014

By Peter Millman BA

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 23 December 2014

Application Ref: COM 547

- The application was made by Mr M N Savage and is dated 12 March 2013.
- The application was made under paragraph 6 of Schedule 2 to the Commons Act 2006 ("the 2006 Act").
- The application is to remove land from Cornwall Council's Register of Common Land on the grounds specified in paragraph 6 of Schedule 2 to the 2006 Act (buildings registered as common land).

Summary of Decision: The application is granted.

Procedural matter

1. Mr P Kessell, Vice-Chairman of the Portreath Improvements Committee, appeared at the inquiry for the objectors. He was assisted by Mr P and Mrs D Cousins, neither of whom intended to give evidence, but both of whom had objected to the application. It became clear during the course of the inquiry that Mrs Cousins had relevant information about some of the photographs provided in evidence and she agreed to be cross-examined on that evidence.

The Statutory Requirements

2. Paragraph 6(3) of Schedule 2 to the 2006 Act provides that any person may apply to a commons registration authority to remove land from its register of common land. The Commons Registration (England) Regulations 2008 ("the 2008 Regulations") set out the procedures to be followed.
3. The application form in this case indicates that it was made in accordance with the provisions of Schedule 2, which provides that an application can be made where:
 - (a) the land was provisionally registered as common land under section 4 of the Commons Registration Act 1965 ("the 1965 Act");
 - (b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;
 - (c) the provisional registration became final; and
 - (d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.

It is not disputed that this application was properly made.

Reasons

Whether the land at issue was provisionally and finally registered as common land under section 4 of the 1965 Act

4. Surf Cottage and the land that is held with it (registered at HM Land Registry under title number CL109793) ("the Land") are situated at the edge of Portreath Beach. The area of the Land is 325.2 square metres. It is about 50 metres long, and varies in width up to a maximum of about 10 metres. It lies mostly on flat ground at the edge of the beach, but its southern side includes a small part of the coastal slope, which rises steeply behind it. Portreath Beach is part of a very large area of common land with the Register Number CL 334 in Cornwall Council's Register of Common Land. It is a 5 mile long coastal strip of cliff-top, cliff and shore, comprising 73.2 hectares. The Register Map is based on an Ordnance Survey ("OS") map at a scale of 1:10560 (six inches to the mile). The map provided with the application to register was also an OS map, of the same scale. The maps do not show a date of publication, and the surveys on which they were based were probably carried out many years before 1968. They do not show any buildings on the Land.
5. The Land abuts the edge of CL 334, and is a tiny proportion, roughly 0.04%, of the area of the whole. It seems to me that it is quite possible that there was no intention to include the Land as part of CL 334, given that the maps showed no buildings on the Land. None of the parties involved in this application and the objections to it realised until 2010 that the Land was registered as common land; but nevertheless it is quite clear, and it is the view of Cornwall Council, that the Land does lie within CL 334, and that it was provisionally registered as common land on 8 October 1968. The registration became final on 24 August 1973.

Whether the Land was covered by a building or was within the curtilage of a building at the dates of provisional and final registration as common land and whether at all times since then it has been, and still is, covered by a building or has been within the curtilage of a building

6. It is accepted by all parties that at the time of provisional and final registration there was what was described as a 'beach cabin' on the Land, from which were sold beach goods such as kites and buckets and spades, and that since then there has been a building of some description on the Land. The present cottage was erected in 1989, although used as a shop until 2007. The issue is whether the part of the Land not built upon is included within the curtilage of the building (or at times buildings) on the Land.
7. The Land was first separated from the neighbouring land on the beach by a conveyance in 1922. Its position is to some extent defined on the south by the edge of the coastal slope, but it has not, until recently, been separated from the beach to its north by any fence or physical structure.
8. There is no straightforward legal definition of the term 'curtilage' as used in the 2006 Act. Defra's current Guidance to Part 1 of the 2006 Act refers to recent judgments of the courts and points out that it is a matter of fact and degree in each case.
9. In the case of *Dyer v Dorset County Council* [1988] QB 346 it was held that 'curtilage' connoted: *a small area forming part or parcel with the house or building which it contained or to which it was attached*. It seems to me that

- the Land fits this description – it is small, it has been conveyed since 1922 as a single parcel (with the possible exception of a very small area at the eastern end which was compulsorily purchased by Cornwall County Council for road improvement works in 1974) and it is attached to a building within it.
10. In the case of *The Hon David McAlpine v Secretary of State* [1995] LGR 249 it was held that a curtilage is constrained to a small area about a building, and that although the land in question need not be physically enclosed, it at least needs to be regarded in law as part of one enclosure with the house. It is clear that the Land meets these criteria. It was also held, however, that there must be an intimate association with land which is undoubtedly within the curtilage in order to make the land under consideration part and parcel of that undoubted curtilage. This 'intimate association' seems to echo the requirement in *Sinclair-Lockhart's Trustees v Central Land Board* (1950) 1 P&CR 195 that a curtilage is: *the ground which is used for comfortable enjoyment of a house or building*, and that the land: *must serve the purpose of the house or building in some necessary or useful way*.
 11. The objectors acknowledge that there was at least one building – the beach cabin, which was some sort of shop, selling beach goods – on the Land in October 1968 and that there has been a building on the Land since that time. Their argument is that the land surrounding the building is not within its curtilage. The argument appears to be based on the facts that the Land was unfenced, the shop only operated in the summer months and the public were not prevented from going on the Land (apart from the buildings on it when not open).
 12. None of these facts is denied by the applicant, but it is argued (which I accept) that the fact that the land was not fenced or enclosed does not mean there cannot have been a curtilage around the building (see paragraph 10 above); the Land, it is argued, would have been used or available for parking, for deliveries of goods to the shop, for the storage of goods and material and for further building – these were its 'necessary and useful' functions.
 13. The relevant evidence consists of written statements from people who were familiar with Portreath Beach during the period after 1968, from photographs of the area, from plans drawn up for various purposes, from Cornwall Council's records of planning applications, and from deeds and Land Registry documents.
 14. None of this evidence, however, explains why, in 1922, 325 square metres or so of land was conveyed as a single parcel. The applicants argue that there was a building, or there were buildings, on the Land from around that time, the objectors that there were no buildings until the 1960s. The photographic evidence does not assist. The earliest reasonably reliable evidence appears to be a planning application made in 1948 by the then owner of the Land for the renovation and enlargement of tearooms.
 15. It seems unlikely that such a relatively small area of land, on or adjacent to the beach at Portreath, would have been conveyed if it was not considered by the parties to the conveyance that the whole of it was necessary or useful for whatever was intended to be done with the Land. It was of a size, I consider, commensurate with the operation of some sort of small business and in particular with the sort of business that was being carried out in 1968. In other words it was of the appropriate size to have been useful as ancillary to the buildings, for the sort of purposes that might have been expected, such as parking and deliveries of goods and materials.

16. The earliest relevant photographs, i.e. those that can be fairly reliably dated and which fairly clearly show some or all of the Land, date from around 1967 or 1968. There are two, one taken from the eastern end of the Land, the other from the western end. Both show two wooden buildings on the Land, a large lean-to shed and another shed next to it with a pitched roof. There are cars parked on the Land to the east of the buildings, and a notice which reads NO PARKING BY ORDER. There is nothing to be seen on what is visible of the Land west of the buildings. Another photograph, said only to date from the 'early 1960s' shows only the shed with the pitched roof on the Land. A little of the ground to either side of the shed is visible, but nothing identifiable can be seen on it. One objector wrote that his second cousin had owned the beach hut and the surrounding land and that he allowed Surf Club members to park there.
17. I conclude from this evidence that at least some of the Land probably helped to enable the 'comfortable enjoyment' (paragraph 10 above) of the buildings on it by controlling the parking of vehicles around it.
18. An incomplete copy of a plan associated with the 1974 conveyance (paragraph 9 above) shows the outline of one of the two buildings and part of the other. Next to them is written on one line _____CH and below _____S & CAFÉ. The applicant suggests that had the remainder of the plan been copied the full wording would have been seen to be 'Beach Goods and Café'. The objectors do not disagree, but suggest that the plan might have been an old one, drawn up some time before 1974 and used as a base map to show the land conveyed in that year. That suggestion, however, is not consistent with the objectors' argument that there was never more than one building and that before the early 1960s there were no buildings on the Land.
19. In 1988 a new building, also originally a shop, but since 2007 a dwelling, was erected on the Land where the shed or sheds had been, but it covered a much bigger area. The adjoining beach to the north is owned by the Portreath Improvements Committee, which alleged at the time that the concrete plinth on which the new building was placed encroached on its land. In 1992, court proceedings led to a consent order which set out the position of the boundary between the Improvement Committee's land, i.e. the beach, and the Land. At the time the Improvements Committee was unaware that the Land was registered common, but it is of some significance, it seems to me, that in the proceedings the Land seems to have been treated by all parties as part and parcel of the buildings on it and not merely part of the beach.
20. It is accepted by the applicants that until very recent years, when the current building on the Land was used for residential purposes, members of the public have not been physically prevented from going on the part of the Land not covered by a building or buildings. I do not consider that it follows from this that that part of the Land cannot have been within the curtilage of the buildings, unless such use by the public interfered with, or was incompatible with, the use of the land by the owner or tenant, and there is no evidence that it was.
21. In conclusion, the registration procedure (paragraphs 4 and 5 above) is clearly compatible with a mistake having been made. The conveyance of the Land since 1922 as part of one enclosure with the building, the continued existence of a building on the Land since at least 1968 and the treatment of the Land at various times as belonging together with the buildings on it, make it more likely than not that the whole of the Land is within the curtilage of the

building(s) on it. The evidence that the Land was unenclosed and that the public accessed it does not alter this conclusion.

Conclusion

22. I conclude that the Land was mistakenly registered under the 1965 Act and that it should be removed from Cornwall Council's Register of Common Land.

Decision

23. The application is granted and the land and buildings shown red (which, for the avoidance of doubt, is the land with registered title CL 109793) on the plan attached to this decision shall be removed from the Register of Common Land.

Peter Millman

INSPECTOR

APPEARANCES

For the applicant: Miss C Hutton of Counsel, instructed by Nalders Solicitors, Truro. She called Mr M Savage and Mr C Walker.

For the objectors: Mr P Kessel, Vice-Chairman, Portreath Improvements Committee. He gave evidence and made submissions.

Representative of Cornwall Council: Mr M Wright

DOCUMENTS HANDED IN AT INQUIRY

1. Second witness statement of Clive Walker
2. Plan of a proposed amusement arcade dated October 1968
3. 'Kirk' plan dated November 1989 showing position of 'old beach hut' and new building

