



Application Decision

Hearing held on 19 January 2012

By Barney Grimshaw BA DPA MRTPI (Rtd)

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs pursuant to Regulation 4 of The Commons Registration (England) Regulations 2008 to hold a Hearing and to determine the application.

Decision date: 22 February 2012

Application Ref: COM 280

West Rosedown Cottage, Caradon Hill, Linkinhorne, Cornwall

Register Unit: CL 205

Registration Authority: Cornwall Council

- The application, dated 18 November 2010, is made under Schedule 2, Paragraph 6 of the Commons Act 2006 ("the 2006 Act").
- The application is made by Dr PJ Webster-Harrison and Ms S Ward.
- The application is to remove land from the 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.

Preliminary Matters

1. A public notice of the application appeared in the 3 June 2011 edition of the *Cornish Times* newspaper. Notice of the application appeared on Cornwall Council's website and was displayed on the application land for the appropriate statutory period. Notice was also served on interested parties as required. A single objection was received following advertisement of the application.
2. I held a public hearing into this application on Thursday 19 January 2012 at Luxstowe House, Liskeard. I made an unaccompanied visit to the land referred to on Wednesday 18 January 2012. It was agreed by all parties present at the hearing that a further accompanied visit was unnecessary.
3. In writing this decision I have found it helpful to refer to different parts of the application land separately. I therefore attach a copy of the plan that was attached to the application to which I have added a broken red line to indicate the boundary between the two parts.

The Application Land

4. The application relates to that parcel of land outlined in red on the plan attached to the application, a copy of which is appended to this decision. The land, which has an area of 0.225 ha., comprises most of one of four parcels of

land registered as common land unit CL 205. There is one right of common of pasture registered in respect of the land, held by Ms PE Davey.

5. The application land has been divided into two sections for land registration purposes. A northern section occupied by the building, West Rosedown Cottage, and part of its curtilage and a southern section, held under a possessory title and said also to be occupied by the curtilage of West Rosedown Cottage. Both sections are owned by the applicants. Another piece of land further to the north also comprises part of common land unit CL 205 and has been conveyed with the rest of the land but this land does not form part of the application and does not appear to be part of the curtilage of the cottage.

The Statutory Requirements

6. Paragraph 6(3) of Schedule 2 to the 2006 Act provides that any person may apply to the Commons Registration Authority (CRA) to remove land from the register of common land. The Commons Registration (England) Regulations 2008 (the 2008 Regulations) set out the procedures to be followed.
7. The application was made on 18 November 2010¹. The application form indicates that it has been made in accordance with the provisions of Paragraph 6 of Schedule 2 to the 2006 Act 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;
 - (d) since the date of provisional registration, the land has at all times been, and still is, covered by a building or within the curtilage of a building.
8. An application must be made in accordance with the 2008 Regulations. Paragraph 16 of the 2008 Regulations requires that an application must –
 - (a) be made in writing on a form provided by the CRA to which the application is made; and
 - (b) be signed by, or by a representative of, every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.
9. In addition, Paragraph 14 of Schedule 4 to the 2008 Regulations requires that an application under Paragraph 6 of Schedule 2 to the 2006 Act must include –
 - (a) a description of the land to which the application applies; and
 - (b) evidence of the application of Paragraph 6(2) of Schedule 2 to the land to which the application relates.

¹ For the purpose of remedying non-registration or mistaken registration under the 1965 Act, the application must be made on or before 31 December 2020.

10. The onus of proving the case in support of the correction of the register of common land rests with the person making the application, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.
11. Defra's published guidance² states that: *"It is particularly important that an application...is fully examined where, if granted, it would have some effect on the public interest, such as where land would be deregistered. It is for the applicant to adduce (convincing) evidence, and in its absence, the application must not be granted"*.

Reasons

The Application

12. It is not disputed that the application was properly made and I am satisfied that it was.

Registration of the land as common

13. The land was provisionally registered as common land on 19 April 1968 (CL 205). The provisional registration being undisputed became final on 13 January 1971.

Whether immediately before its provisional registration the land was covered by a building or within the curtilage of a building and has remained so since

14. The building now known as West Rosedown Cottage is a listed building dating from the mid 19th century although considerably altered since then. The building is clearly shown standing in a defined curtilage which equates to the northern section of the application land on the Ordnance Survey (OS) 2nd Edition map of 1906-1908, the site being annotated with OS reference no. 187. It was not contested on behalf of the objector that the northern section of the application land was covered by the building and its curtilage at the time of its provisional registration as common land and has remained so since then.
15. The situation regarding the southern section of the application land is less clear cut and it is this section to which the only objection made relates. In a Statutory Declaration dated 4 November 1971, a former occupant of the application land, Mr CWF White, states that his late wife purchased the property in January 1962 and that he had lived there since. He then continues *"Although the documentary title to the said property only proves title to the dwellinghouse and land comprising Ordnance Survey Number 187...my late wife and I have always enjoyed the two additional pieces of land to the north and south of the said dwellinghouse... together with the garage which I erected on the southerly piece of land in January 1963 as of right and both I and my late wife always understood that our predecessors in title had similarly enjoyed such additional portions as part of Rosedown Cottage..."*. The land to the north referred to is not part of the current application but that to the south is the southern section of the application land. Mr White subsequently sold the property, including his title and interest in the southern section of the application land, to Mr and Mrs Saich on 9 November 1971.

² Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate for the pilot implementation, Version 1.43, September 2011.

16. A planning application relating to proposed alterations of West Rosedown Cottage in 1963 includes a plan which appears to show all the application land as part of the curtilage of the building. Other later applications dating from 2001 and 2008 also show similar information.
17. In December 1982, the Chief Commons Commissioner considered the ownership of parcels of land included within Register Unit CL 205, including the application land. In his decision he stated that *"In addition Mr and Mrs Saich have a possessory title to the southern half of the northernmost piece of land. This piece of land is the site and curtilage of a dwellinghouse known as West Rosedown Cottage, and again it is not apparent how this land came to be registered as Common Land"*. The land referred to would seem to relate to the southern section of the application land.
18. An aerial photograph submitted by Dr Webster-Harrison and said to date from 1968 shows the northern section of the application land and some of the southern section apparently in use as part of the curtilage of West Rosedown Cottage. In particular a garage, another outbuilding and a caravan are visible on the southern section of the land. The southernmost part of the southern section appears still to be occupied by scrub vegetation and not cultivated or maintained. However, I do not necessarily think that this means that this area was not regarded as part of the curtilage of the cottage; it does not appear to be separated from the rest by any sort of fence or barrier whereas it is separated by a hedge from adjoining land to the east and bounded by a track to the west. The claimed date of the photograph was not contested by other parties at the hearing.
19. It is my view that the northern section of the application land was clearly covered by a building and its curtilage at the time of its provisional registration as common land and has remained so since then. It is also my view that the southern section has also been part of the curtilage of the building since before the date of provisional registration and has remained so since then.

Other Matters

20. It became obvious at the hearing that the main concern of the objector related to ownership of the application land, particularly the southern section rather than its registration as common land. However, in my view this is not a matter which affects the current application which must be determined on the basis of the criteria set out in the 2006 Act. I noted that the Land Registry already appeared to have considered this matter but advised the objector that, should she wish to challenge the registration of title, my decision on the application regarding the registration of the land as common land would not prevent this.
21. After the hearing a further submission was received from Dr Webster-Harrison containing a copy of the Statutory Declaration made by Mr CWF White. As this seemed relevant to the application, a copy was sent to the objector who was given the opportunity to make comments upon it. Having received these comments, I took account of the Declaration in reaching my decision as indicated above (para. 15).
22. Subsequently another submission was made by Dr Webster-Harrison but by this time I considered that I had sufficient information on which to make my decision and the submission did not add materially to the information already

available. This later submission was not therefore copied to other parties nor have I taken it into account in reaching my decision.

Conclusions

23. I conclude that, on the balance of probabilities, all the criteria for deregistration set out in Paragraph 6 of Schedule 2 to the 2006 Act are satisfied in respect of the application land and that it should be removed from the register of common land.

Formal Decision

24. The application is granted and the land outlined in red on the plan attached to the application dated 18 November 2010 shall be removed from the register of common land.

Barney Grimshaw

INSPECTOR

