



In the Matter of Frensham Common,  
Frensham, Surrey

---

DECISION

This dispute relates to the registration at Entry No. 2 in the Rights Section of Register Unit No. CL 87 in the Register of Common Land maintained by the Surrey County Council and is occasioned by Objection No. 616 made by the former Hambledon Rural District Council and noted in the Register on 3 July 1972, Objection No. 707 made by the National Trust and noted in the register on 1 August 1972, and Objection No. 419 made by the Surrey County Council and noted in the Register on 16 October 1970.

This hearing (a re-opening with respect to Entry No. 2 of the hearing held on 19 March 1980) was held for the purpose of inquiring into the dispute at Farnham on 13 July 1982. The hearing was attended by Mr A R Hart, Solicitor, appearing on behalf of Waverley District Council, successor authority to Hambledon Rural District Council, by Mr D C Rice, Solicitor on behalf of Surrey County Council, by Mrs G A Shipp, representing the National Trust, and by Mr R S Godfrey, Solicitor on behalf of Mrs B M Tussler, the applicant for registration at Entry No. 2, ~~\_\_\_\_\_~~

The rights claimed under Entry No. 2 are estovers piscary and right of common in the soil of sand attached to Pond Cottage (now called Kilima). The right to estovers was conceded: as to piscary, the common ("the Unit land") adjoins, but does not include, two fishable ponds, and in my opinion a right of piscary cannot be claimed except in waters which are part of the Unit land.

Evidence was given by Mr William Tussler: he is the son of Mrs B M Tussler, is aged 45 years and has lived at Kilima for the past 43 years. He said that the right of common in the soil which was claimed is the right to take sand for building repairs to Kilima and for horticultural purposes eg. compost and cuttings on an allotment which is part of Kilima. In 1981 he took sand on one occasion for concrete to repair a path and on another for horticultural purposes, and that he takes two or three barrowfuls of sand in a season for horticultural purposes. His father, who died in 1964, used to take sand for the allotment in the same way.

Mrs Tussler in evidence confirmed the truth of what her son said. She was born in 1906 and has lived at Kilima since 1918 and she said that the right had been exercised by her grandfather, her father and her husband.

The evidence in my view sufficiently establishes a prescriptive right to take sand for horticultural purposes, but not for repairs. I accept that Mr Tussler has on occasion taken sand for concreting the path but I do not think the evidence establishes a regular taking for repairs over the necessary period to establish a prescriptive right for that purpose.



- 2 -

In regard to Objection No. 419 Mr Rice told me that Surrey County Council is only concerned as to the exercise of rights over the verges of the roadway which runs across the Unit land. Mr Tussler agreed that he took nothing from those verges.

In the result I confirm Entry No. 2 but modified so as to read "The right of estovers, and the right of common in the soil of sand, namely to take sand for horticultural purposes, over the whole of the land comprised in this Register Unit other than the verges to a width of 6 feet on either side of the roadway crossing the Common".

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 this

29<sup>th</sup>

day of

September

1982

Commons Commissioner