



In the Matter of Part of Frensham Common,  
Frensham, Waverley D

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DECISION

These disputes relate to the registration at Entry Nos. 1 to 3 in the Rights section of Register Unit No. CL 232 in the Register of Common Land maintained by the Surrey County Council and are occasioned by Objection No. 625 made by Hambledon RDC and Objection No. 436 made by Surrey County Council, noted respectively in the Register on 3 July 1972 and 19 October 1970.

I held a hearing for the purpose of inquiring into the disputes at Guildford on 5 February 1981. The hearing was attended by Mr R Godfrey of the firm of W H Hadfield and Son, Solicitors, appearing on behalf of the applicants for registration of the Entries in the Rights Section: by Mr R Hart, Solicitor, of and representing Waverley District Council (successor to Hambledon RDC): by Mr B E H Cotter, Solicitor, of and representing Surrey County Council: and by Mr C Stagg, Chairman of Frensham Parish Council.

Entries No. 1 (rights of estovers, piscary, and in the soil of sand) and No. 3 (rights of piscary and turbary) were made on the application of Mrs B M Tussler: Entry No. 2 (right of piscary) on the application of Mrs D E C Wylie.

The land comprised in this Register Unit ("the Unit land") consists of Frensham Great Pond, a track running north from the west side of the Pond, and an area of land ("the land area") separated from and lying at the south eastern end of the Pond.

The rights registered by Mrs Tussler under Entries Nos. 1 and 3 are claimed to be attached to Pond Cottage (now called Kiltima), of which she is the owner. Mr Godfrey referred me to a Deed of Enfranchisement dated 6 July 1894 between the Lord of the Manor and a Mr F Lintoit of Pond Cottage which contained a proviso to the effect that the Deed was not to deprive Mr Lintoit of any commonable rights to which he was entitled. While this proviso indicates that there may have been commonable rights attached to Pond Cottage, it is not evidence that there were in fact such rights or of their nature and extent, and does not help to establish the specific rights claimed.

Mrs Tussler and her son Mr William Tussler both gave evidence. The Tussler family have lived in Pond Cottage since the 1920's. It is some 2½ miles distant from the Unit land, but I was satisfied on the evidence that from the mid 1950s Mrs Tussler's husband had fished in the Pond from time to time, though not frequently, and that Mr William Tussler had regularly fished there since about 1950. Bracken and firewood had been collected from the land area in the 1920s by Mrs Tussler's father, then by her husband and since 1950 by her son, and was taken away in a cart or van. In my opinion, the rights of estovers and piscary have been established.

As regards turbary it appeared from the evidence that small quantities were occasionally taken for the purpose of repairs to the cottage lawn. The right of common of turbary is a right to take turf for fuel and I do not think that the



evidence established a right of that nature. As to the right to take sand, it appeared that over the years a bucket of sand was taken occasionally - at most once or twice a year - and this in my view does not amount to sufficiently continuous user, of the kind which can give rise to a presumption of acquiescence by the owner, to justify a claim of acquisition by prescription.

The result so far as Entries Nos. 1 and 3 are concerned is that I confirm the rights modified by excluding in Entry No. 1 the right in the soil of sand and in Entry No. 3 the right of turbary. As to the County Council's Objection No. 436, it was agreed that the Entries be further modified by excluding from the land over which they are exercisable the parts which consist of highway or verges.

As regards Entry No. 2 Mr Godfrey was not in a position to adduce evidence in support of the Entry, and I refuse to confirm its 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

23 March

1981

*L. J. Morris Smith*

Commons Commissioner

