



In the Matter of Bealeswood Common,  
Frensham, Waverley D

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DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section and Entries No. 1 and 2 in the Rights Section of Register Unit No. CL 231 in the Register of Common Land maintained by the Surrey County Council and are occasioned by three Objections: No. 11 made by Mrs B M Tussler, No. 435 made by Surrey County Council and No. 624 made by Hambledon RDC, noted in the Register respectively on 31 October 1968, 19 October 1970 and 3 July 1972.

I held a hearing for the purpose of inquiring into the disputes at <sup>Godfrey</sup> ~~Chelmsford~~ 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 Mrs Tussler and of Mrs D E C Wylie's successors; by Mr B E H Cotter, Solicitor, of and representing Surrey County Council; by Mr R Hart, Solicitor of and representing Waverley District Council (successor authority to Hambledon RDC); and by Mr C Stagg, Chairman of and representing Frensham Parish Council.

Objection No. 11 is an Objection to the registration in the Land Section (and consequentially to the registrations in the Rights Section). It relates not to the whole area of the land comprised in the Register Unit ("the Unit land") but to a small part which is coloured blue on the plan accompanying the Objection and of which the Objector claims ownership. The registration in the Land Section was made on the application of Hambledon RDC and it was agreed by all parties that the part to which the Objection relates should be excluded from the registration, which accordingly I confirm modified by that exclusion.

Objections Nos. 435 and 624 are Objections to the two Entries in the Rights Section. Objection No. 435 by Surrey County Council relates, Mr Cotter told me, to strips claimed to be highway and this Objection was not pressed by the County Council, <sup>is</sup> content to rely on the provisions as to highway in Sections 21 (2) and 22 of the Commons Registration Act: I need not further consider this Objection.

Objection No. 624 is on the ground that the rights registered do not exist. Entry No. 2 was made on the application of Mrs D E C Wylie, and Mr Godfrey was not in a position to adduce evidence in support of the rights claimed. I refuse to confirm this registration.

Entry No. 1 was made on the application of Mrs Tussler. It comprises the right of herbage for 7 horses, 7 cows, 7 goats and 7 sheep, pannage for 7 pigs, estovers and turbary and is stated to be attached to Pond Cottage



(the part mentioned above to which Objection 11 relates).

In a Deed of Enfranchisement dated 6 July 1894 between the Lord of the Manor and one F Lintott, then apparently the owner of Pond Cottage, there is a proviso to the effect that the Deed was not to deprive Lintott of any commonable rights to which he was entitled. The Deed did not however, specify any rights to which he was entitled and is not evidentiary of the rights now claimed.

Mrs Tussler and her son Mr William Tussler gave evidence and were both cross-examined by Mr Hart. On this evidence I find that since the last war and during the 1950s and 1960s, 1 horse and 2 goats were turned out on the Unit land fairly regularly in the 1950s but less often in the 1960s, ('whenever', as Mr Tussler put it, 'our own land was in poor fettle'). Pigs were turned out in the same period to eat acorns. Mrs Tussler said 4 pigs at a time, Mr Tussler said 1 boar and 1 sow in the 1960s: and Mrs Tussler also stated that her father in the 1920s exercised the right for two sows. No animals have been turned out since about 1970.

The evidence also showed that in the years both before and after the last war and down to 1977, bracken has been taken - mainly to use for protection against frost but also for litter for animals: and Mr Tussler also said that firewood had been taken. The right of estovers is primarily a right to take wood for repairs or fuel and other necessary purposes, and it does not seem to me that the evidence establishes the right in its full sense, but at most a right limited to bracken and firewood.

The evidence as regards turbary was that turf was taken over the same period as that of taking bracken, strips of turf being taken for repair of the lawn of Ponds Cottage. The right of common of turbary is a right to take turf for fuel and this evidence does not establish a right of that nature.

Mr Hart called two witnesses. Mr Bernard Young has been employed as Countryside Officer since 1968 and said that he used to inspect the Common every 3 or 4 weeks: he was not aware or told of any grazing by horses or goats and never saw any pigs. Mr John Taylor the Chairman of Dockenfield Parish Council who has lived in Dockenfield since 1966 and said he was very familiar with the Common had no knowledge of goats or horses on the Common and had not seen or heard of pigs on the Common. I accept their evidence, but it does not in my view materially affect the evidence given by Mrs Tussler and her son, and relates only to a more recent period during which there was little if any grazing.

My decision as regards Entry No. 2 is as follows: I confirm the grazing right modified to a right of herbage for 1 horse and 2 goats (and no other animals): I confirm the right of pannage modified to a right for 2 pigs only: I confirm the right of estovers modified by limiting it to the taking of bracken and firewood: and I refuse to confirm the right of turbary.

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