



In the Matter of Churt Common, Frensham,  
Waverley D

DECISION NO.2

This dispute relates to the registration at Entry No. 3 in the Rights Section of Register Unit No. CL 313 in the Register of Common Land maintained by the Surrey County Council and is occasioned by Objections No. 626/made by Hambledon Rural District Council and noted in the Register on 3 July 1972 *and 7 October 1972* *and No. 29.*

I held a hearing for the purpose of inquiring into the dispute at Farnham on 13 July 1982. The hearing was attended by Mr A R Hart, Solicitor, of Waverley District Council, successor Authority to Hambledon RDC, and by Mr R S Godfrey, Solicitor, appearing on behalf of Mrs B M Tussler, the applicant for registration at Entry No. 3.

This Entry claims rights of herbage, estovers, turbary and pannage, attached to property called Ponds Cottage. Evidence was given by Mrs Tussler's son, Mr W J Tussler, and by Mrs Tussler herself: and on behalf of the Objector by Mr B J Youngman, a Warden in the employ of the District Council, and Miss L M Leeson. This common is one of special scientific interest and has a specially guarded heronry and is the habitat of the rare natterjack toad. The Objector's main concern relates to the claimed right of herbage, to which the evidence and the cross-examination by Mr Hart were mainly directed. The right claimed is in fact to the grazing of one horse and since the hearing Mrs Tussler has decided to waive this claim.

As to the other rights claimed, Mr Tussler told me that though pigs were kept at Ponds Cottage until the 1970's they were not turned out on this common, and in my view the right of pannage is not established.

*limitedly*  
As regards turbary and estovers, on the evidence I think prescriptive rights of this kind do exist but limited in their extent. In the result I confirm Entry No. 3 but modified so as to exclude the rights of herbage and pannage and to retain rights of estovers/limited to the taking of bracken deadwood and young saplings for domestic purposes and of turf for fuel.

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

*29 September*

1982

*L. J. Morris Sewell*

Commons Commissioner