



COMMONS REGISTRATION ACT 1965

Reference No. 236/D/673-689

In the Matter of Frensham Common including Frensham
Little Pond, Waverley D

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and Entries 1, 2 and 3 in the Rights Section of Register Unit No. CL 430 in the Register of Common Land maintained by the Surrey County Council. They are occasioned by a number of Objections which are as follows:-

Objection No.	Objector	Date of Noting in Register
513	National Trust	23 June 1971
588	A E Aitkins	31 May 1972
591	E J Baker	31 May 1972
594	Tilhill Forestry Ltd	31 May 1972
660	Surrey County Council	1 August 1972
589	A E Aitkins	31 May 1972
590	A E Aitkins	31 May 1972
592	E J Baker	31 May 1972
593	E J Baker	31 May 1972
595	Tilhill Forestry Ltd	31 May 1972
596	Tilhill Forestry Ltd	31 May 1972
627	Hambledon R.D.C.	3 July 1972

The first five of the Objections are Objections to the Land Registration (and consequentially to all three Rights Entries): the remainder are Objections to Rights Entries.

I held a hearing for the purpose of inquiring into the disputes at Farnham. At the hearing there were the following appearances: Mrs G A Shipp, representing the National Trust; Mr D C Rice, Solicitor on behalf of Surrey County Council; Mr A R Hart, Solicitor, on behalf of Waverley District Council, successor authority to Hambledon RDC; Mr R S Godfrey, Solicitor, on behalf of Mrs B M Tussler, the applicant to register Rights Entries Nos. 1 and 3; and Mr D Barnard, of Counsel, on behalf of Mr C Howry. The Objectors who made Objections Nos. 588, 591, 594, 589, 590, 592, 593, 595 and 596 were not present or represented. Solicitors acting for the family of Mrs D E C Wylie, the applicant to register Rights Entry No. 2 but now deceased, had written to say that they were not interested in maintaining the application. Accordingly I refuse to confirm the registration at Rights Entry No. 2.

The registration as common land was made in consequence of Mrs Tussler's application to register rights.



Mr Barnard on behalf of his client wished to challenge the Land Registration in respect of part of the land comprised in the Register Unit ("the Unit land"). The part ("the southern part") is the area at the southern tip of the Unit land which is separated from the remainder of the Unit land by a roadway running from west to east. The southern part, I understand, is in private ownership: all parties present consented to the exclusion of the southern part from the registration and I shall exclude it accordingly.

Objection No. 660 by Surrey County Council relates to a small strip of what is claimed to be highway, shown on the plan accompanying the objection, and this strip also it was agreed should be excluded from the registration.

There remain~~s~~ for consideration the disputes as to Rights Entries Nos. 1 and 3 occasioned by Objection Nos. 513 and 927. (I do not propose to consider separately the remaining objections where there was no appearance by the Objectors).

Entries Nos. 1 and 3 are of rights claimed to be attached to Pond Cottage, now called Kilima: the rights are, in Entry No. 1, estovers, piscary and right of common in the soil of sand, and in Entry No. 3, ~~est~~ piscary and turbary. The National Trust's Objection No. 513 relates to part only of the Unit land; this part includes Frensham Little Pond and an adjoining stretch of land, which are owned by the National Trust. The land area was let for use as a car park in 1965 until about 1973 but is now a recreation area: the pond is in part a nature reserve and partly for public use, canoeing being permitted in July to September and the fishing let to Farnham Angling Society on a yearly lease.

As regards the rights claimed, Mr Godfrey said that the claim~~s~~ to estovers was limited to the taking of bracken and deadwood. Mr Tussler is aged 45 and has lived at Pond Cottage for the last 43 years: giving evidence he said that the bracken was used as litter for animals kept at Pond Cottage and for protection of plants against frosts. There are no animals there now - there have been no pigs since 1974 and no horses since 1970 but there have been poultry up till a few weeks ago. He has also regularly taken fallen firewood but does not lop trees. He has taken bracken and firewood equally from the area owned by the National Trust as from the rest of the Unit land.

As regards piscary Mr Tussler's evidence was to the effect that he had fished in the Pond on many occasions, both from the bank and in a boat - his catch was coarse fish; small fish he returned to the water and others he took home to be eaten. His father and grandfather fished there regularly every year. As regards turbary he took turf to be used as fuel at Pond Cottage - this was taken from different scattered places on the common: his father and grandfather had do~~ne~~ the same, his father, who lived till 1964, perhaps 10 or 12 times a year. As to sand the evidence given was to the same effect as that in relation to the adjoining common CL 87 (Ref: 236/D/294).

Mrs Tussler gave evidence and confirmed what her son had said. Her husband, father and grandfather had exercised the same rights from Pond Cottage, and she herself had on occasions accompanied them when they went fishing.



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Both Mr Tussler and Mrs Tussler were cross-examined, but their evidence was not shaken and I accept it.

Mrs Shipp called as a witness Mr B J Youngman, who has been employed by the local Council as warden. He said that during the period 1966-1973 the then owner of the common used the northern section of the common adjoining the Pond as a public car park and hired out boats on the Pond. This no doubt suggests that during the period there was no exercise of the rights claimed, but it seems to me to have no bearing on the position from 1940 to 1965. Mrs Shipp also made the point that the National Trust's title deeds made no reference to rights of common, but this has little significance should rights be shown to exist.

In the result I think the evidence establishes prescriptive rights of the kind claimed and I confirm the registrations with modifications as follows:- estovers limited to the taking of bracken and deadwood, turbary for fuel, ~~and~~ piscary limited to taking for domestic use, and sand for horticultural purposes (as in the case of CL 87). Consequentially I confirm the registration in the Land Section.

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

Commons Commissioner