



In the Matter of The Cricket Ground,
Frensham

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and Entry No 1 in the Rights Section of Register Unit No. CL.227 in the Register of Common Land maintained by the Surrey County Council. They are occasioned by the conflicting registration at Entry No 1 in the Land Section and Entry No 1 in the ownership section of Register Unit No. VG.45 in the Register of Town or Village Greens maintained by the Council and also as regards the Entry in the Rights Section by two Objections, No. 433 by Surrey County Council and No. 622 by Hambledon RDC, noted in the Register on 19 October 1970 and 3 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Guildford on 5 February 1981. The hearing was attended by Mr C Stagg, chairman of and representing Frensham Parish Council (the applicant for the VG. registration); by Mr R A Hart, Solicitor, representing Waverley District Council (successor to Hambledon RDC, the applicant for the CL. registration and also one of the Objectors), by Mr B E H Cotter Solicitor representing Surrey County Council; by Mr R Godfrey, of the firm of W H Hadfield and Son, Solicitors, appearing on behalf of Mrs B M Tussler, the applicant for the registration in the Rights Section.

As regards the conflicting registration, in consequence of agreement on the matter I have refused to confirm the VG. registration (see the decision reference No. 236/D/570-573), and I confirm the registration in the Land Section of this register unit (CL.227).

The land in this register unit ("the unit land") adjoins at its northern boundary, Frensham Great Pond which is not part of the unit land. The Rights registered under Entry No 1 are the right of turbary and the right of piscary, stated to be attached to Pond Cottage (now called Kilima). From the evidence by Mrs Tussler and her son Mr W J T Tussler, it emerged that they had not taken turf from the unit land and were not in fact claiming a right of turbary over the unit land. As regards the right of piscary, Mr Godfrey referred me to a deed of enfranchisement dated the 6 July 1894 between the then Lord of the Manor and a Mr F Lintock, the owner of Pond Cottage, which contained a proviso that the deed was not to deprive Mr Lintock of any commonable rights to which he was entitled. This proviso was neither a grant nor a recognition of the existence of any specified rights attached to the cottage, and does not amount to evidence of a right of piscary attached to the cottage. The evidence given by Mrs Tussler and her son was to the effect that from the late 1930's her husband and from about 1950 her son had fished in Frensham Great Pond from the bank on the unit land. A right of piscary over land is a right to take fish from water on that land, and whatever rights of fishing in the pond may have been acquired they, in my view, are not rights of piscary over the unit land, which was used for access to the pond, for a ~~plot~~ ^{plot} from which to fish in the pond, and does not itself contain the water which was fished.



For these reasons I refuse to confirm the registration in the Rights 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 this 23 day of March 1981

L. J. Morris Smith

Commons Commissioner