NORTH YORKSHIRE COUNTY COUNCIL

COMMONS ACT 2006 — SCHEDULE 2, PARAGRAPH 4

Notice of an application to correct non-registration of land as common land

Application Reference Number: CA13 026

Nesfield Dean and the Village Green (CL502)

Application has been made to the North Yorkshire County Council by The Open Spaces Society under Schedule 2(4) of the Commons Act 2006 and in accordance with Schedule 4(14) of the Commons Registration (England) Regulations 2014.

The application, which includes documentary evidence, can be viewed at:
https://www.northyorks.gov.uk/common-land-applications-and-decision-notices

or you can request a copy by contacting the Commons Registration Officer: -

email: commons.registration@northyorks.gov.uk ,

telephone: 01609 534753

or write to: North Yorkshire County Council, Commons Registration, County Hall, Northallerton, North Yorkshire DL7 8AD

Any person wishing to make a representation regarding this amendment:

- should quote the Application No. CA13 026
- must state the name and postal address of the person making the representation and the nature of that person's interest (if any) in any land affected by the application.
- may include an e-mail address of the person making the representation
- must be signed by the person making the representation
- must state the grounds on which the representation is made
- should send the representation to: Commons Registration Officer, Commons Registration North Yorkshire County Council, County Hall, Northallerton, North Yorkshire DL7 8AD or e-mail to commons.registration@northyorks.gov.uk on or before 13 September 2022

Representations cannot be treated as confidential, and a copy will be sent to the applicant in accordance with Regulation 25 of the 2014 Regulations. Should the application be referred to the Planning Inspectorate for determination, in accordance with Regulation 26 of the 2014 Regulations, any representations will be forwarded to the Planning Inspectorate.

A summary of the effect of the application (if granted) is as follows: the Registration Authority will register the application land as common land.

Dated: 25 July 2022

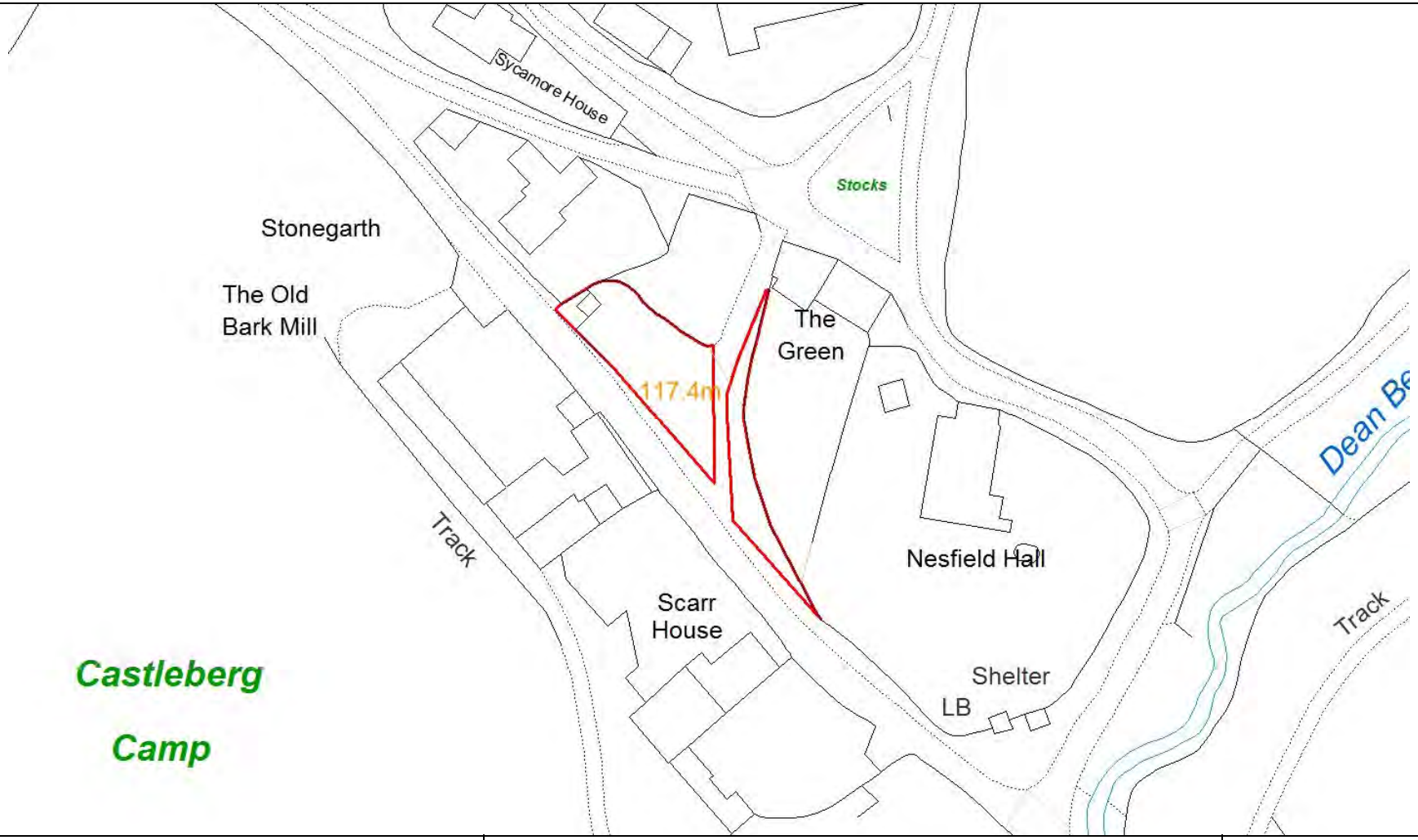
Karl Battersby

Corporate Director – Business and Environmental Services
North Yorkshire County Council

Schedule

Description of the land seeking to be registered as common land

Low Green, Nesfield, as edged red on the notice plan.



North Yorkshire County Council

COMMONS ACT 2006

CA13 APPLICATION (Ref. No. CA13 026) SEEKING TO REGISTER LAND AS COMMON LAND AT LOW GREEN, NESFIELD
LOCATION PLAN

NOTICE PLAN

Application site

Application to re-register CL502

Table of Contents

FORM CA13

Commons Act 2006: Schedule 2

Application to correct non-registration or mistaken registration

This section is for office use only

Official stamp

COMMONS ACT 2006
NORTH YORKSHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
DATE: 9 June 2022

Application number

CA13 026

Register unit number allocated at registration (for missed commons only)

Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

- Any person can apply under Schedule 2 to the Commons Act 2006.
- All applicants should complete boxes 1-10.
- Applications must be submitted by a prescribed deadline. From that date onwards no further applications can be submitted. Ask the registration authority for details.
- You will be required to pay a fee unless your application is submitted under paragraph 2, 3, 4 or 5 of Schedule 2. Ask the registration authority for details. You would have to pay a separate fee should your application relate to any of paragraphs 6 to 9 of Schedule 2 and be referred to the Planning Inspectorate.

Note 1

Insert name of commons registration authority.

1. Commons Registration Authority

To the: North Yorkshire County Council

Tick the box to confirm that you have:

enclosed the appropriate fee for this application: ☐

or

have applied under paragraph 2, 3, 4 or 5, so no fee has been enclosed: ☑

Note 2
If there is more than one applicant, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or an unincorporated association. If you supply an email address in the box provided, you may receive communications from the registration authority or other persons (e.g. objectors) via email. If box 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicant

Name: The Open Spaces Society

Postal address:

c/o Frances Kerner
The Open Spaces Society
25a Bell Street
Henley on Thames
Oxfordshire

Postcode RG9 2BA

Telephone number: [redacted]

Fax number:

E-mail address: [redacted]

Note 3
This box should be completed if a representative, e.g. a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, the representative may receive communications from the registration authority or other persons (e.g. objectors) via email.

3. Name and address of representative, if any

Name:

Firm:

Postal address:

Postcode

Telephone number:

Fax number:

E-mail address:

Note 4
For further details of the requirements of an application refer to Schedule 4, paragraph 14 to the Commons Registration (England) Regulations 2014.

4. Basis of application for correction and qualifying criteria

Tick one of the following boxes to indicate the purpose for which you are applying under Schedule 2 of the Commons Act 2006.

To register land as common land (paragraph 2): ☐

To register land as a town or village green (paragraph 3): ☐

To register waste land of a manor as common land (paragraph 4): ☑

To deregister common land as a town or village green (paragraph 5): ☐

To deregister a building wrongly registered as common land (paragraph 6): ☐

To deregister any other land wrongly registered as common land (paragraph 7): ☐

To deregister a building wrongly registered as town or village green (paragraph 8): ☐

To deregister any other land wrongly registered as town or village green (paragraph 9): ☐

For waste land of a manor (paragraph 4), tick one of the following boxes to indicate why the provisional registration was cancelled.

The Commons Commissioner refused to confirm the registration having determined that the land was no longer part of a manor (paragraph 4(3)): ☑

The Commons Commissioner had determined that the land was not subject to rights of common but did not consider whether it was waste land of a manor (paragraph 4(4)): ☐

The applicant requested or agreed to cancel the application (whether before or after its referral to a Commons Commissioner) (paragraph 4(5)): ☐

Please specify the register unit number(s) (if any) to which this application relates:

CL502

Note 5
Explain why the land should be registered or, as the case may be, deregistered.

5. Description of the reason for applying to correct the register:

The Clerk to Nesfield with Langbar Parish Meeting made an application to register land at Nesfield. An objection was made to part of the land, the subject of this application, and a hearing by a Commons Commissioner was held. The Commissioner considered the land to be waste land of a manor but refused its registration because it had been severed from the manor. The land is eligible for re-registration under paragraph 4(3).
Continuation Sheet to Q5 describes the registration history and provides evidence that the application land is waste land of a manor.

Note 6
You must provide an Ordnance map of the land relevant to your application. The relevant area must be hatched in blue. The map must be at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland. Give a grid reference or other identifying detail.

6. Description of land

Name by which the land is usually known:

Part of 'low green', OS grid refernce SE093495

Location:

In the village of Nesfield

Tick the box to confirm that you have attached an Ordnance map of the land: ☑

Note 7
This can include any written declarations sent to the applicant (i.e. a letter), and any such declaration made on the form itself.

If your application is to register common land or a town or village green and part of the land is covered by a building or is within the curtilage of a building, you will need to obtain the consent of the landowner.

7. Declarations of consent

None required.

Note 8

List all supporting documents and maps accompanying the application, including if relevant any written consents. This will include a copy of any relevant enactment referred to in paragraphs 2(2)(b) or 3(2) (a) of Schedule 2 to the Commons Act 2006 or, in relation to paragraph 4 (waste land of a manor) evidence which shows why the provisional registration was cancelled. There is no need to submit copies of documents issued by the registration authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.

8. Supporting documentation

1. Supporting documents:
a) Site Visit Photographs
b) Copy of R v Doncaster MBC ex p Braim HC 1986

2. Documents relating to the Commons Registration Act 1965 on which we rely are not included pursuant to r.16(3), save where provided in Continuation Sheet to Q5:
a) Register of Common Land (CL502)
b) Register Map (North Yorkshire SE04NE)
c) Application Nos.1532 and 2505.
d) Objection No. 99.
e) Commons Commissioner Decision 268-D-311-312.

Note 9 *List any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.*	**9. Any other information relating to the application** We think that the area applied for is contiguous with the provisional registration but rely on the map to the extent that the map shows any land to be excluded.

Note 10 *The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or an unincorporated association.*	**10. Signature** Date: 9 June 2022 Signatures: [redacted]

REMINDER TO APPLICANT

You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

You are advised to keep a copy of the application and all associated documentation.

Data Protection Act 1998

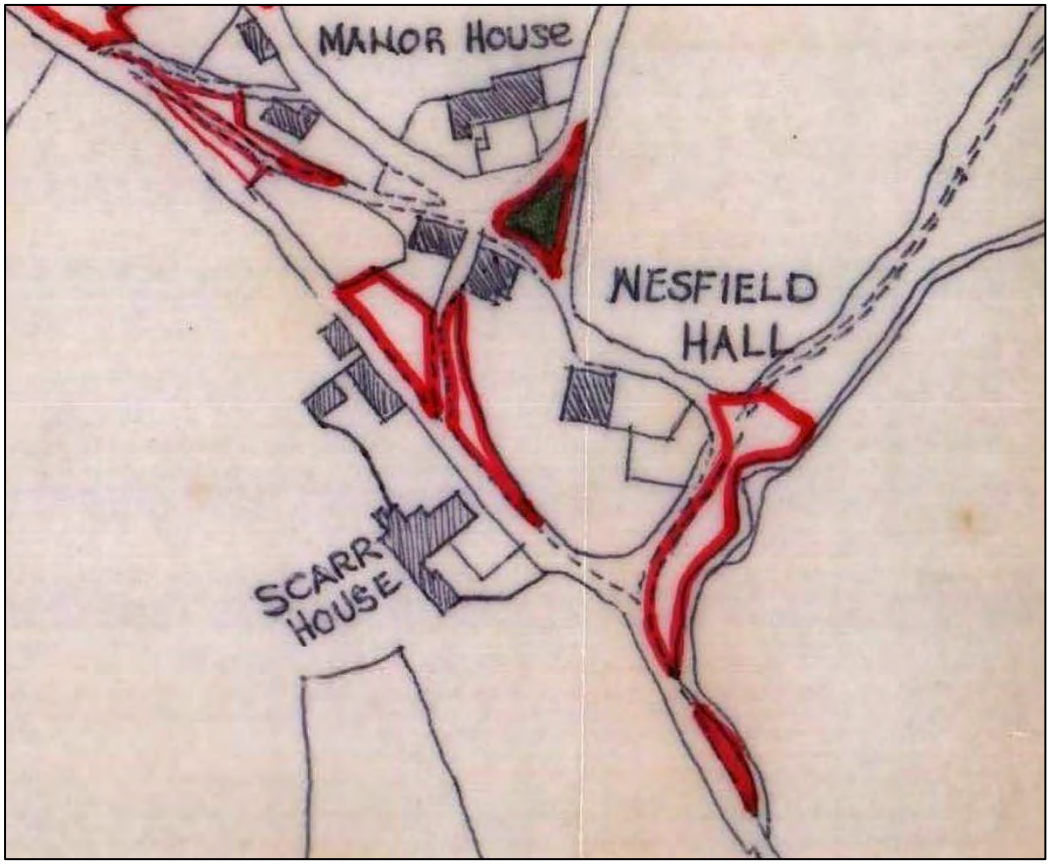
The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the commons registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.

Registration History

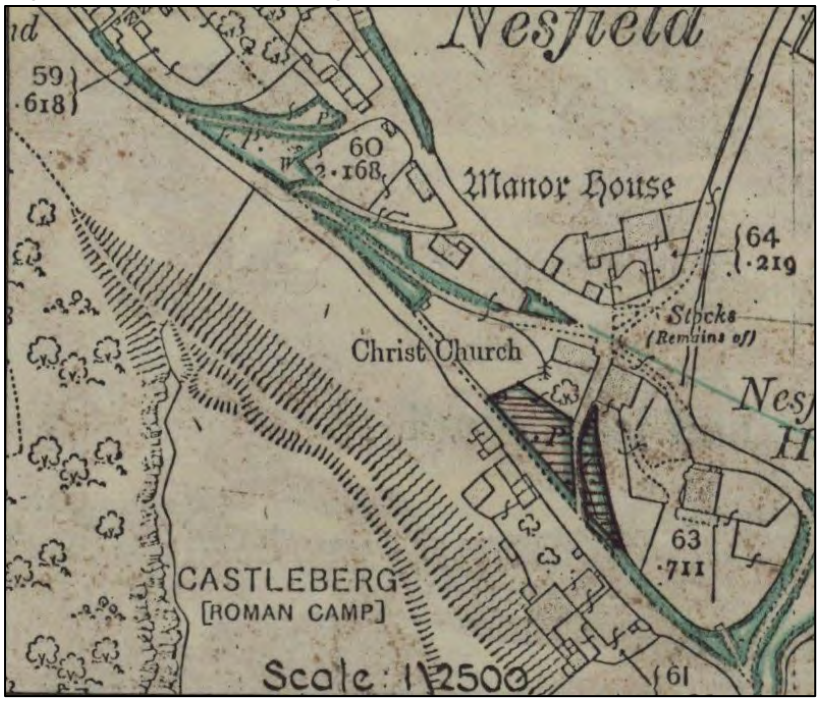
The Clerk to Nesfield with Langbar Parish Meeting made an application to register land in and outside the village of Nesfield on 1 July 1968 (Application No.1532). The provisional registration was entered in the register of common land on 17 November 1969 (see Figures 1 and 2).

Figure 1: Extract from Application No.1532 showing application land.



Source: Commons Registration Authority.

Figure 2: Extract from Register Map.

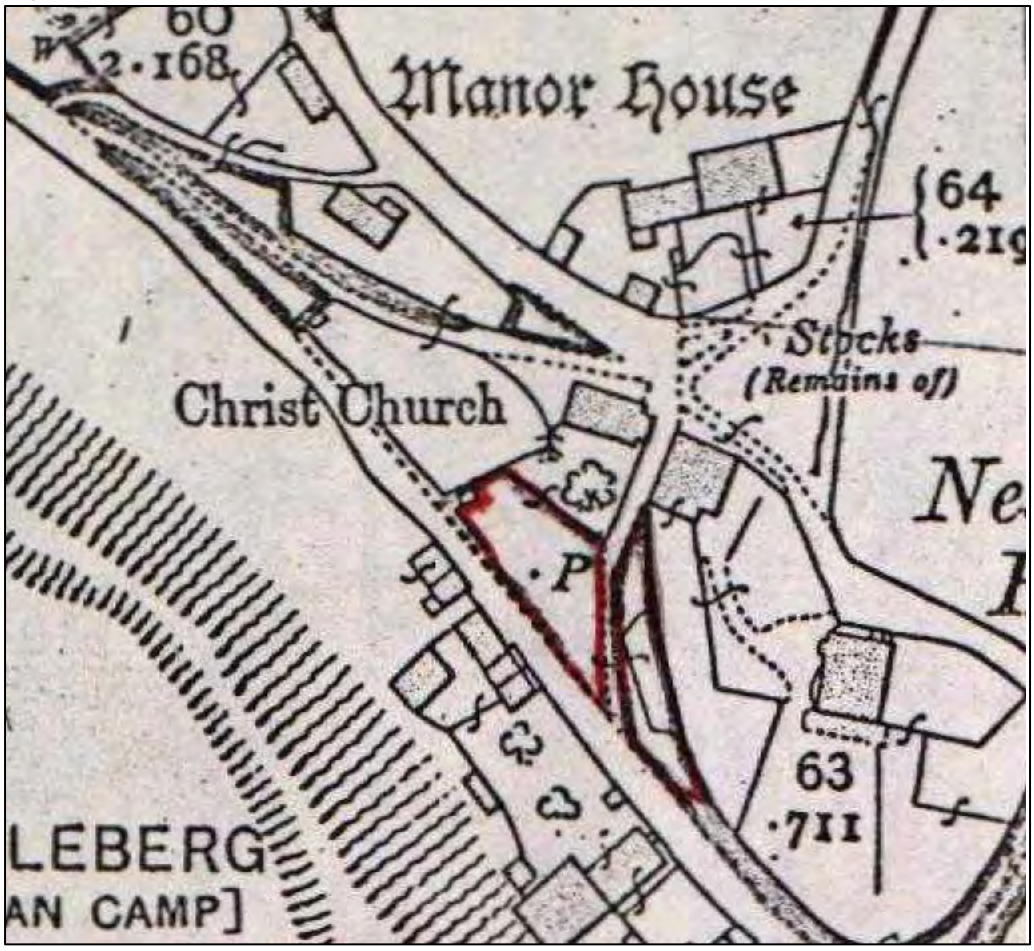


Source: Register Map North Yorkshire SE04NE.

An application for the provisional registration of rights of common was made by Mr William Crabtree on 29 December 1969 and entered in the register of common land on 1 April 1970 (Application No. 2505).

An objection to the provisional registration was made by Mr Stephen Collins Rawson on 4 August 1970 and was entered in the register on 15 September 1970 (Objection No. 99). The objection related solely to the present application land but excluded the north west corner of the land where it met Gill Lane (see Figure 3).

Figure 3: Extract from Objection No. 99.



Source: Commons Registration Authority.

A hearing by a Commons Commissioner was held on 11 March 1981 (Ref: 268/D/311–312) to resolve the dispute. Mr Crabtree having died, and there being no evidence to support the rights application, the Commissioner then considered whether the disputed land was waste land of the manor. A deed poll of 2 July 1891 was produced at the hearing which appeared to show that the disputed land was waste land of the manor of Nesfield with Langbar and that it had been conveyed by the lord of the manor to the vicar and churchwardens of the parish of Ilkley (thus severing the land from the lordship). This land subsequently was sold to Mr and Mrs Rawson in 1969.

Citing the *Box Hill* case in support of his decision, the Commissioner refused to register the disputed land because it had been severed from the lordship of the manor and therefore had ceased to be waste land.[1] However at the hearing, the objector's representative had no objection to the registration of the highway verge which formed part of the disputed land and this was subsequently registered as common land. The *Box Hill* case subsequently was overturned in 1990 and under paragraph 4(2) and (3) of Schedule 2 to the Commons Act 2006, the application land is eligible for registration.[2]

[1] Box Parish Council v Lacey [1979] 1 All ER 113, [1980] Ch 109, [1979] 2 WLR 177, CA.
[2] Hampshire County Council and others v Milburn [1990] 2 All ER 257.

Harrogate Borough Council conducted a Conservation Area Character Appraisal for Nesfield in 2011. It refers to the sloping open space known as 'low green'. This is the application land, part of which is registered common land; this registered land is the verge that the Commissioner confirmed at the hearing (see above).[3] While the application land is included in the 'low green', this name is descriptive only and bears no relation to the land's historic or current legal status. While not relevant to the criteria of paragraph 4 (3), the description does however indicate the land's significance as a green space.

Summary of Historical Evidence

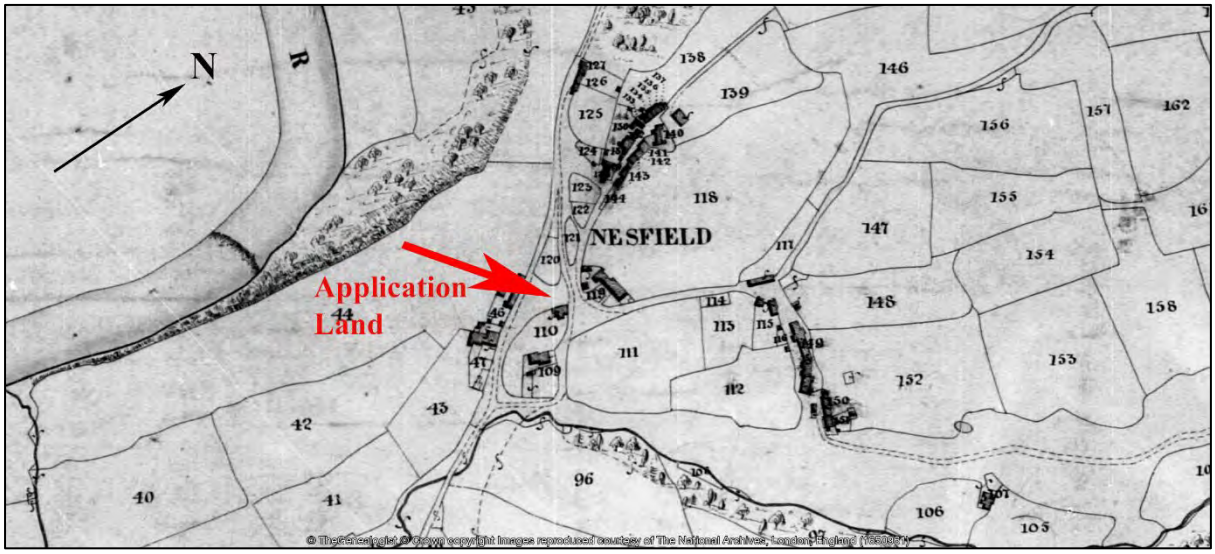
The application land was situated in the township of Nesfield with Langbar which itself was situated in the parish of Ilkley. The village of Nesfield with Langbar is now designated a separate parish.

The Manorial Documents Register (MDR) does not record the manor of Nesfield with Langbar and there are therefore no surviving records. However, in addition to the deed poll of 1891 which was produced at the hearing held by the Commissioner, the manor's descent to the Duke of Devonshire is recorded in *The history and antiquities of the deanery of Craven, in the county of York*.[4]

The Tithe Survey of 1841 for the township of Nesfield with Langbar shows the application land sandwiched between two irregular-shaped enclosures. Closer examination of the survey reveals other ovoid-shaped enclosures taken out of the waste to leave Nesfield's distinct pattern of fields and houses surrounded by remnants of waste (see Figure 4).

[3] Harrogate Borough Council, Nesfield Conservation Character Appraisal, 2 November 2011: 'Opposite The Old Bark Mill the 'low green' extends up to the green', p.9.
[4] Thomas Dunham Whitaker, *The history and antiquities of the deanery of Craven, in the county of York, Parish of Ilkley,* 3rd Edition 1878, p. 286.

Figure 4: Extract from the Tithe Map for the township of Nesfield with Langbar (1847). Note: Red arrow points to the approximate site of the application land.



Source: © Crown Copyright Images reproduced by courtesy of The National Archives, London, England. www.NationalArchives.gov.uk & www.TheGenealogist.co.uk

Description of the land

Visits to the application land in January and April 2022 indicate that it meets the descriptive character of waste land as defined in the case of *Attorney General v Hanmer*,[5] i.e., the application land is open, uncultivated and unoccupied.

The application land is open where it meets the strip of registered common land beside Gill Lane (see Photographs 1–5 at the end of this description). This strip is indistinguishable from the application land. The strip is in turn open to the road below. On the north west, a wall is on the boundary between the application land and houses.

The application land is divided into two parts by a path. The path is indistinguishable from the application land being grassed over. The application land to the east of the path comprises grass, scrub and trees. The application land to the west of the path is predominately grass with a few trees. The path emerges beside the site of the demolished church opposite the registered village green and is excluded from the application land because it was excluded from the provisional registration: nonetheless, this part of the application land is open to the road above, and to the village green beyond. On part of the north and east boundaries of the application land there are walls where the application land meets other enclosures. In summary, the application land is bounded by physical boundaries only where it meets adjacent enclosures, otherwise it is open to the north and the south.

NOTE: There is a remnant of an unenclosed and gated walled structure in the north west corner of the application land where it meets Gill Lane. We do not know the origin of this structure or its purpose. It does not prevent access to the application land and does not appear to serve any particular purpose.

There is no engagement with farming or activity with the soil which causes it to be broken for productive purposes and therefore the land can be described as uncultivated. The grass

[5] *Attorney General v. Hanmer* (1858) 2 LJ Ch 837.

is mown but this does not indicate that the land is cultivated; many registered commons are managed by a regular mowing. In *R. v Doncaster Metropolitan Borough Council Ex p. Braim*, the High Court observed, *obiter*, that rights of access under s.193 of the Law of Property Act 1925 applied to land enclosed by a racecourse because it was manorial waste for the purposes of subsection (1): 'The racecourse, the golf course and possibly other parts of the common would be mown, but not for the purpose of gathering a crop; I would not have thought this was cultivation.'

There is no profitable use of the land to the exclusion of others and therefore the land can be described as unoccupied.

In summary, the land is waste land of the manor of Nesfield with Langbar.

Photographs of Application Land.

Photograph 1: Looking south east along Gill Lane, application land on left.

Photograph 2: Looking north west towards houses bounding application land.

Photograph 3: Looking south west towards Gill Lane showing remnants of an unknown and unenclosed structure.

Photograph 4: Looking north west, the application land on the right extending along Gill Lane.

Photograph 5: Looking south east towards Gill Lane, eastern boundary of application land on left.

R. v. DONCASTER METROPOLITAN BOROUGH COUNCIL, Ex p. BRAIM

QUEEN'S BENCH DIVISION (McCullough J.): October 1, 1986

Commons—Intended lease of part of Doncaster Common—No notice given to public—Whether notice required—Whether Common "open space"—Whether used for public recreation—Whether use as of right—Whether public could be beneficiary of trust to take recreation—Whether trust to be presumed.

Doncaster Common, some 190 acres in extent, passed into the ownership of the Doncaster Corporation in about 1505. Its best known use was as a racecourse upon which the St. Leger was run, its other principal use being for the playing of golf. Public access to the Common could be gained via a number of routes, and the Common was used for a variety of recreational purposes including walking, jogging, flying kites and picnicking. Continuous user stemmed from as far back as 1860. No evidence existed that such persons had been treated as trespassers, nor of any notice prohibiting or restricting such use. The borough council intended to lease part of the Common to the Town Moor Golf Club. The applicant contended that the Common was "open space" and, therefore, that notice of the intended disposal must be advertised in a local newspaper and objections considered as required by section 123(2A) of the Local Government Act 1972, as amended. The council argued that the Common was not open space as defined in section 290(1) of the Town and Country Planning Act 1971 as it was not used for the purposes of public recreation.

Held, allowing the application:

(1) that the only reasonable factual inference to be drawn was that from some date prior to 1860 and at all times thereafter the public had, as of right, used Doncaster Common for what could be conveniently termed recreation;

(2) the rights were those of the public as a whole and not merely the inhabitants of the locality;

(3) since the public already enjoyed such rights, section 193 of the Law of Property Act 1925 added nothing;

(4) hence, the fact that the land was not registered under the Commons Registration Act 1965 could not have detracted from the rights of the public in 1970;

(5) the public could lawfully have been the beneficiary of a trust the object of which was to give them the right to take recreation on Doncaster Common;

(6) a presumption that the public's use of Doncaster Common for the purposes of recreation was not only lawful but as of right was to be drawn;

(7) even if the public's use of Doncaster Common depended upon a bare licence, the corporation would be obliged to comply with section 123(2A) of the Local Government Act 1972, as amended, unless reasonable notice of termination was given and had expired.

Cases cited:

(1) *Att.-Gen.* v. *Antrobus* [1905] 2 Ch. 188, distinguished.

(2) *Box Hill Common, Re* [1980] 1 Ch. 109; [1979] 2 W.L.R. 177; [1979] 1 All E.R. 113; 37 P. & C.R. 181, C.A.

(3) *Ellenborough Park, Re* [1956] Ch. 131, [1955] 3 W.L.R. 892; [1955] 3 All E.R. 667, C.A.

(4) *Goodman* v. *Saltash Corporation* (1882) 7 A.C. 633, H.L., considered.

(5) *Hadden, Re Public Trustee* v. *More* [1932] 1 Ch. 133, considered.

(6) *International Tea Stores Co.* v. *Hobbs* [1903] 2 Ch. 165.

(7) *Lord Rivers* v. *Adams* (1878) 3 Ex.L. 361.
(8) *Mounsey* v. *Ismay* (1865) 3 H. & C. 486, considered.
(9) *Tyne Improvement Commissioners* v. *Imrie; Att.-Gen.* v. *Tyne Improvement Commissioners* (1899) 81 L.T. 174.

Legislation construed:
Town and Country Planning Act 1971 (c. 78), s.290(1). This provision is set out at p. 3, *post.*

Application by way of judicial review. The applicant, Mr. Eric Lawrence Braim, applied by way of judicial review for a declaration that the area of land known as Doncaster Common and lying within the Metropolitan Borough of Doncaster constituted "open space" within the meaning of section 123(2A) of the Local Government Act 1972 (as amended by the Local Government Planning and Land Act 1980, s.118, Sched. 23, paras. 14 and 15.)

The grounds of the application were:

(1) that for section 123(2A), as amended, to apply, it was not necessary for the applicant to demonstrate that the public use was as of right. It was sufficient that the use was lawful;

(2) alternatively, that if use as of right had to be established, the evidence established it;

(3) that the public's use as of right dated from before 1926. It owed nothing to section 193 of the Law of Property Act 1925 and, therefore, after 1970 it continued exactly as it had both before 1926 and between 1926 and 1970. The evidence of such user was not consistent with the exercise of a bare licence and was only consistent with use as of right;

(4) alternatively, in 1926 such a right was created by section 193 of the Law of Property Act 1925 and was not extinguished by non-registration under the Commons Registration Act 1965;

(5) that there was nothing in law which prevented the court from inferring that rights of the kind in question were granted to the public.

C. George for the applicant.
C. Whybrow for the respondent.

McCULLOUGH J. Mr. E. L. Braim applies by way of judicial review for a declaration that the area of land which is known as Doncaster Common and lies within the Metropolitan Borough of Doncaster constitutes "open space" within the meaning of section 123(2A) of the Local Government Act 1972 (as amended by the Local Government Planning and Land Act 1980, s.118, Sched. 23, paras. 14 and 15).

The land is owned by the Metropolitan Borough Council. Mr. Braim's application is prompted by the council's intention to lease part of the land to the Town Moor Golf Club. If, as Mr. Braim contends, the land is "open space," the intended disposal will be subject to section 123(2A) of the Act of 1972 which provides that:

> A principal council [and the Doncaster Metropolitan Borough Council is such] may not dispose of any land consisting or forming part of an open space unless before disposing of the land they cause notice of their intention to do so to be advertised in a newspaper

circulating in the area in which the land is situated and consider any objections to the proposed disposal which may be made to them.

The council have not so advertised and do not intend to do so, because they say that the land is not "open space."

"Open space" is defined in section 290(1) of the Town and Country Planning Act 1971 (to which one is led by way of section 270(1) of the Act of 1972 as amended by the Local Government Planning and Land Act 1980, s.118, Sched. 23, para. 20). It is:

> Any land laid out as a public garden or used for the purposes of public recreation or land which is a disused burial ground.

The words with which this case is concerned are "land used for the purposes of public recreation." The principal question which arises is whether Doncaster Common is so used. Mr. Braim says it is; the council says not.

Doncaster Common, which is also known as Doncaster Town Moor, is some 190 acres in extent. It passed into the ownership of the Doncaster Corporation, who were the council's predecessors in title, when that body became Lords of the Manor in about 1505. Its best known use is as the racecourse upon which the St. Leger is run. Racing there apparently dates from about 1600. The racecourse has two circuits, there being a National Hunt course inside and adjacent to the flat. A section of the flat on the north side of the course is extended to make a straight mile. The racecourse lies partly within and partly outside the common. No racecourse building is within it. Most of the common, but not all of it, is encompassed by the racecourse. One of the parts outside is a triangular area on the south side of the course alongside the Bawtry Road. Over the years the number of days of racing has increased. In 1939 there were six. This year, 25 or 28.

The other principal use of the common is for playing golf. This dates from about 1894. It appears that in 1911 the Town Moor Golf Club was given permission to use the links which lie within the National Hunt course on the understanding that no exclusive use of the land was being granted. The present clubhouse is on the opposite side of the Bawtry Road from the common. Golfers first cross the road, then walk straight on to the triangular area of the common, and then cross the flat and National Hunt courses and so reach the links. To do so they have to duck under the rails on either side of the courses, but otherwise their passage is unimpeded. The club intends to build a new clubhouse on the triangular area and has obtained planning permission to do so. The intention is to lease to the club the land on which it is desired to build the clubhouse.

There are other parts where access to the common can be gained. On the north side, roughly half way along the straight mile, there is a width of some 60 feet where one can walk straight on to the common having ducked under the rails of the racecourse. On the south side Rose Hill Rise leads from the Bawtry Road. Between Rose Hill Rise and the racecourse there are houses. Nineteen houses have gates which lead directly from their gardens to the common. At the east end of this road, beyond the gardens, there is a point of access to the common. At the west end of Rose Hill Rise there is a place where one can conveniently cross the racecourse from the triangular area to that part of the common

which lies within the racecourse. There is unimpeded access to the whole of the triangular area which lies next to Bawtry Road. A post-and-rail barrier at this place separates the carriageway from the pavement. Between pavement and common there is no barrier at all. Further to the west there is a vehicle access from Bawtry Road. For a vehicle to cross the racecourse a gate has to be unlocked, but for pedestrians this point of access is unobstructed.

There are before the court affidavits from a number of people who walk on the common and have done so for many years. One is a Mr. Barr, aged 75, who speaks of doing so since 1920. It is clear that people use it to walk, to jog, to fly kites and model aeroplanes and to picnic. Children kick balls about and play tennis, French cricket and the like. The staff at the racecourse understandably discourage use of the tracks save for crossing, and on racing days they do so in the interests of safety. However, there is no evidence that anyone using the common for the purposes to which I have referred has been treated as a trespasser. Nor on the evidence has there ever been a notice prohibiting or restricting such use.

Mr. Clifford Ward, the Deputy Director of Legal and Administrative Services of the council, who has been in its service since 1974, asserts that their use of the common for the purposes of recreation only occurs because the council "has chosen in effect not to enforce its rights in trespass strictly." However, no minute of the council, nor any other record or document, supporting this view has been placed before the court. Save for his assertion, there is no indication that the council or its predecessors have ever regarded those using the common in the ways I have described as trespassers.

In argument Mr. Whybrow, counsel for the Metropolitan Borough Council, has accepted that Doncaster Common has been lawfully used by the public for the purposes of recreation since at least 1887. He submits that:

> (1) for section 123(2A) of the 1972 Act as amended to apply the use of the land for the purposes of public recreation must be use as of right. Use in pursuance of a bare licence would not suffice. It is for the applicant to show that this use has the necessary quality.
>
> (2) The evidence of public user of Doncaster Common before 1926 when the Law of Property Act 1925 came into force is consistent with the grant of a bare licence.
>
> (3) From 1926 the public had a right to use Doncaster Common for air and exercise, this being derived from section 193 of the Law of Property Act 1925. However, since the land was not registered under the Commons Registration Act 1965, this right was extinguished in 1970. Between 1926 and 1970 the evidence of public user is consistent with the mere exercise of this right.
>
> (4) User after 1970 is again consistent with the grant of a bare licence.
>
> (5) The applicant being unable to produce direct evidence of a grant to the public of such rights, the law does not permit the court to infer that there was such a grant.

Mr. George, counsel for the applicant's, principal submissions are that:

(1) for section 123(2A) as amended to apply it is not necessary for the applicant to demonstrate that the public use was as of right. It is sufficient that the use was, as Mr. Whybrow concedes that it was, lawful.

(2) Alternatively, if use as of right has to be established, the evidence establishes it.

(3) The public's use of Doncaster Common as of right dates from before 1926. It owed nothing to section 193. Therefore, after 1970 it continued exactly as it had both before 1926 and between 1926 and 1970. The evidence of such user is not consistent with the exercise of a bare licence and is only consistent with use as of right.

(4) Alternatively, in 1926, as the council concedes, such a right was created by section 193 of the Law of Property Act 1925. It was not extinguished by non-registration under the Commons Registration Act 1965.

(5) There is nothing in law which prevents the court from inferring that rights of the kind in question were granted to the public.

I will first consider the evidence of user. The facts are largely beyond dispute. What is in issue are the inferences to be drawn from them.

There is evidence of user from as far back as 1860. All the indications are that the user was continuous. At no time in the period is there even a hint that such user was regarded, either by the corporation or by the users or by anyone else, as user by mere tolerance or permission of the corporation. Looking at the evidence as a whole, I have no hesitation in drawing the conclusion that the user was regarded by all as being the *right* of those who enjoyed it.

There are one or two references to the rights of the burgesses rather than of the public as a whole, but I attach little significance to them. Except on race days most of those using the common would no doubt be inhabitants of Doncaster. On race days, however, there would inevitably have been a large influx of persons from outside, and there is a reference to the common being used for big demonstrations such as gatherings of the Yorkshire miners. I am satisfied that the rights which everyone believed to exist were those of the public as a whole and not merely the inhabitants of the locality; and, as I understand it, Mr. Whybrow accepts that in so far as there were rights, they were not rights of this limited class.

Both parties are agreed that between 1926 and 1970 the public did enjoy, at the least, a right of access for air and exercise. For this reason it would not be right to regard reference in this period to the rights of the public as having the same significance as earlier references. A number of the earlier references are contained in newspaper reports. One would not expect reporters to differentiate precisely between something enjoyed as of right and something enjoyed on the sufferance of the landowner, any more than they would be alive to the distinction between rights enjoyed by the general public and rights enjoyed by the local inhabitants. Nor necessarily would one expect councillors always to have such distinctions in mind. However, the general tenor of the references prior to 1926 suggests very strongly that the rights of the public which were believed to exist over Doncaster Common did not

depend upon the tolerance or permission of the corporation. No one i reported as speaking in terms which acknowledge the possibility of use so precariously based.

At a meeting in 1890 concerned with a proposal that the corporation should buy out the rights of common over Doncaster Common and at which seven members of the corporation were present, Alderman Wainright referred repeatedly to the rights of the public, as did Councillor Athron. (The rights were bought out in 1893.) In a draft lease of 1895 (the draft being that of the corporation), there are references to the eatage being let "subject to the use and enjoyment of the common by the public as heretofore"; to "the right of the public to stray and recreation as heretofore enjoyed thereon"; and to "the free use and enjoyment of the common by the public as heretofore." At a public inquiry in 1908 concerned with a proposal to erect an additional stand for the racecourse, attended by 14 members of the corporation together with the town clerk and other employees of the corporation, Councillor Wightman spoke of doing nothing "to infringe upon the legitimate rights of the people on the Town Moor," and referred also to the question of "encroachment upon the liberties of the public." There is nothing to suggest that anyone else regarded such phraseology as inapt.

In March 1939 the town clerk wrote to the Under Secretary of State at the Home Office in connection with the proposed Doncaster County Borough By-Laws under the Advertisements Regulations Acts 1907 and 1925 to the effect that the common was a public park or pleasure ground open to and used by the general public. The by-laws themselves dated February 1940 reflected this. However, by this date one is beyond 1926.

The Doncaster Corporation Act was passed in 1950 (a date again within the period 1926 to 1970). Section 134(3) empowered the corporation for the regulation and protection of the common to make by-laws for a variety of purposes. One purpose, in section 134(3)(*c*), was to regulate the assemblage of persons on Doncaster Common. Several other purposes referred to in section 134(3) involved prohibitions of one kind and another. Mr. George relies on the absence of a provision enabling the corporation to prohibit the assemblage of persons on Doncaster Common, but I do not find this significant. Such a provision might well have been inconsistent with section 193 of the Act of 1925. Of greater impact is the fact that substantially the same powers were given to the Doncaster Borough Council by section 9 of the South Yorkshire Act 1980 passed 10 years after 1970, *i.e.* 10 years after the extinction of any rights created by section 193 of the Law of Property Act 1925. Nevertheless, no power to make a by-law prohibiting the assemblage of persons on the common was granted.

The Act of 1980 provides a further pointer. Section 10 empowers the council to set apart portions of Doncaster Common for bookmakers during and immediately before racing periods. Such a provision would not have been required if the rights of the public over Doncaster Common were merely those of bare licensees.

By this stage, the 1980s, one is well into the periods referred to in the affidavits from those who now use the common.

At no stage is there anything to suggest that the public only used the common on the sufferance of the corporation. No notice to this effect

has ever been erected. No assertion of the right to bring such user to an end was ever made before the present dispute arose. There is nothing to suggest that anyone regarded the years 1926 to 1970 as being governed by any considerations other than those that had appertained before and have appertained since.

In my judgment, the only reasonable factual inference to draw is that from some date prior to 1860 and at all times thereafter the public has as of right used Doncaster Common for what can conveniently be termed recreation. I use the expression "factual inference" because it remains to be considered whether the law permits the court to infer that the public did acquire this right.

Before turning to this question I ought to say something more about section 193 of the Law of Property Act 1925 and the Commons Registration Act 1965. Section 193 granted to members of the public rights of access for air and exercise over four categories of land, one of which was "manorial wastes within boroughs and urban districts." Counsel agree that "manorial waste" can, for present purposes at least, be regarded as land within the parcel of a manor which is open, uncultivated and unoccupied (see *Re Box Hill Common*). Mr. Whybrow, for the Metropolitan Borough Council, argues that Doncaster Common was "manorial waste." Mr. George, for Mr. Braim, accepts that Doncaster Common was "parcel of a manor." Initially he was disinclined to agree that Doncaster Common was "uncultivated" and "unoccupied," but later in his argument he accepted that it probably had these characteristics as well. In this I think he was right. The racecourse, the golf course and possibly other parts of the common would be mown, but not for the purpose of gathering a crop; I would not have thought this was cultivation. The golf club enjoyed certain rights over part of the common, but it did not have exclusive possession, and I would not have thought that it could be said to occupy the land. The racecourse was run by the corporation itself. I do not think the parts of the course which lay on the common could be described as occupied.

It would follow that, in so far as the public did not already enjoy rights over Doncaster Common of the types referred to in section 193, such rights came into existence in 1926 as a result of that section. However, in my judgment the public did already have such rights. A right to what I have described as recreation must, as both counsel accept, include a right to take air and exercise. Therefore, section 193 added nothing.

Mr. Whybrow accepts that if, as I have held, section 193 gave to the public nothing which it did not already have, then the fact that the land was not registered under the Common Registration Act 1965 cannot have detracted from the rights of the public in 1970. The position would have been the same from 1970 onwards as it had been before 1926. If I were wrong in saying that by 1925 the public already enjoyed rights over Doncaster Common which were large enough to embrace what would otherwise have been given by section 193, then it would follow that section 193 added to the public's rights, and it would then be necessary to decide whether what had been added in 1926 was taken away by the fact of non-registration in 1970. Mr. Whybrow submits that it would go; Mr. George submits that it would survive. Since, in my view, the question is academic, I shall do no more than state my conclusion,

which is that I prefer Mr. Whybrow's argument. Mr. George's submission to the contrary was based on the argument that Parliament in 1925, having given rights under section 193 in express terms, should not be taken as legislating in 1965 for their extinguishment in the absence of express words to that effect. I find this less compelling than Mr. Whybrow's submission that a clear implication that rights granted by section 193 were to be extinguished by non-registration arises from the 1965 Act, and in particular section 1(2) and section 21(1).

I turn to the question of whether the law will permit the court to infer that the public have acquired a right to recreation over Doncaster Common. There are two parts to the question. (1) Is such a right one known to the law? (2) If so, does the law permit the inference of its existence to be drawn in this case?

What is claimed is not an easement or a profit or a right of common. It is akin to the right which local inhabitants may enjoy over a town or village green (see the definition in section 22(1) of the Commons Registration Act 1965). But there are differences. Rights over town and village greens are those not of the public as a whole, but of the local inhabitants, and they derive from custom. The present claim is that the rights are those of the public and it is not, and could not be, based upon custom.

Neither counsel has been able to produce a decided case which is on all fours with the situation here. Mr. George, who helpfully summarised this part of his case in writing, begins by submitting that a person is capable in law of dedicating his land to the use of the public for recreation, for example, by the express creation of a trust or by act of dedication. Mr. Whybrow accepted this proposition. [However, I am not sure that "dedication" is strictly the correct word. Generally, I think, that word is used in relation to highways.] In support Mr. George cited *Re Hadden*. This was a case in which a testator sought to leave the residue of his estate on a trust which Clauson J. construed as one to benefit as many people as possible by the provision of such facilities as playing fields, parks and gymnasiums for their recreation. This was held to create a valid charitable trust. It was no objection that the beneficiaries were the public. Mr. George goes on to submit that such an act of dedication would have been within the powers of the Doncaster Corporation between 1507 and 1888. Mr. Whybrow accepts this. [Again I doubt the use of the word "dedication."] This is not an area of the law with which I have great familiarity, and my opinions are the more hesitant on that account. What I take to be agreed between counsel is that Doncaster Corporation, being a corporation capable of disposing of property by way of trust, had the power to declare in proper legal manner that the common was thenceforth held by it in trust for the public with the object of giving it the right to indulge in recreation thereon.

That being agreed, it seems to me not to matter that there is no decided case concerning a corporation which has so declared. I could therefore proceed at once to consider whether, there being no direct evidence that this was done, it is permissible in law to infer that it was done. However, during the citation of authority on the point of whether or not it is open to the court to draw the inference, attention was also focused on passages which, it was submitted, dealt with the question of

whether a public right of recreation could exist in law. In particular, Mr. Whybrow, who likened it to a *jus spatiandi*, drew attention to passages suggesting that a *jus spatiandi* was unknown to English law. As I deal with the cases I will therefore consider this question as well as that of whether the inference may lawfully be drawn.

The earliest cited was *Mounsey* v. *Ismay* which involved a claim by the inhabitants of Carlisle to hold horse races on the defendant's land at Kingsmoor on each Ascension Day. Long uninterrupted user was established. The argument was whether the inhabitants could invoke section 2 of the Prescription Act 1831, the applicability of which turned on whether the claim was a claim at common law by custom to an easement.[1] Martin B. held that what was claimed was not an easement; there was no dominant tenement and the right claimed was not on behalf of the individual but of a class.[2] Further, the word "easement" in section 2 had to be taken as analogous to a right of way and a right of watercourse. It had to be "a right of utility and benefit, not one of mere recreation or amusement."[3] During the argument Martin B. had said "it" (which I take to mean a right to hold races) "cannot properly be a subject of a grant; it is a mere licence."

The decision itself does not stand in Mr. George's way. Mr. George is not relying on custom or arguing for an easement. It is Martin B.'s remark during argument which is more to the point since one holding of races is a form of recreation. This remark was questioned in *Re Ellenborough Park*[4] by Lord Evershed M.R. who delivered the judgment of the court. However, Lord Evershed went no further than to say that the remark must at least be confined to exclusion of rights to indulge in such recreations as were in question in the case before the court (horse racing, or perhaps playing games) and had no application to the facts of *Re Ellenborough* where the right of those who lived in houses around a town square to use the garden in the square was held to be clearly beneficial to the premises to which it was attached and therefore not fairly to be described as one of mere recreation or amusement.

Even so, I do not think that I should regard Martin B.'s remark as fatal to Mr. George's submission. It was made *obiter*. Further, in *Tyne Improvement Commissioners* v. *Imrie*; *Att.-Gen.* v. *Tyne Improvement Commissioners*, Phillimore J. expressed a contrary view,[5] namely, that a landowner may dedicate the use of his land to the public to bathe and fish. (I see he used the word "dedicate"). Bathing, to say nothing of fishing, is pure recreation. Then there is the decision in *Re Hadden*, and Clauson J.'s opinion therein[6] that Parliament recognised in the Mortmain and Charitable Uses Act 1888, s.6, that land may be dedicated to the recreation of the public. And there is Mr. Whybrow's assent to Mr. George's first proposition in this part of the case.

Mr. George goes on to submit that what he has called "dedication" ought in an appropriate case (and this he submits is one) to be inferred

[1] (1865) 3 H. & C. 486 at pp.496–497.
[2] *Ibid.* at p.497.
[3] *Ibid.* at p.498.
[4] [1956] 1 Ch. 131 at pp.178–179.
[5] (1899) 81 L.T. 174 at p.179.
[6] [1932] 1 Ch. 133 at pp.141–142.

in the absence of direct evidence of an express grant to trustees or other act of dedication. In this he relies on *Goodman & Anor.* v. *Mayor of Saltash*. In issue in that case were (a) whether the corporation had established a prescriptive right to a several oyster fishery, and (b) whether the local inhabitants had established a prescriptive right to dredge for oysters therein for part of each year and to carry them away without stint for sale or otherwise. There was convincing evidence of some 200 years of uninterrupted user as of right in support of both (a) and (b). Despite the putting in evidence of the corporation's charters, minutes and other documents, neither side was able to produce in evidence a grant in its favour.

Lord Selborne L.C. said[7]:

> An open and uninterrupted enjoyment from time immemorial under a claim of right seems to me all that is necessary for a presumption that it had such an origin as would establish the right if a lawful origin was reasonably possible in law.

In his opinion the facts were consistent with the grant of the fishery to the corporation's predecessors subject to a condition that the inhabitants of the borough were entitled to fish in the accustomed way.[8] There being no good reason in law why their right might not have been so founded, he held that it should be presumed that this was its origin.[9] Lord Selborne went on to say, instancing *Lord Rivers* v. *Adams*, that had the borough been able to produce title deeds which showed no such trust, the presumption could not have been made.[10] But the borough was not able to do this. No more need be said about the case than that Lords Watson, Bramwell and Fitzgerald agreed with Lord Selborne's approach, whereas Lord Blackburn dissented, the basis of his dissent being that no form of grant could be framed giving a profit to a fluctuating body such as local inhabitants.[11]

Mr. Whybrow makes three points in support of his submission that the presumption which was made in *Goodman's* case should not be made here. The first is that in *Goodman's* case what the inhabitants were claiming was a profit; not so here. The second is that in *Goodman's* case the claim was made not, as here, by the public as a whole, but by a limited class, namely, the inhabitants. I do not think that either distinction is in point. Once one has concluded, as I have, that the public *could* lawfully have been the beneficiary of a trust, the object of which was to give them the right to take recreation on Doncaster Common (and there is nothing in *Goodman's* case to the contrary), the only remaining question is whether the law permits the court to presume that this *was* done. It is only Mr. Whybrow's third point which bears on this. This is that in *Goodman's* case there was no reference to the fishery in any of the documents produced; so there was nothing to say that when the borough acquired it (whenever and however it did) the

[7] (1882) 7 A.C. 633 at p.639.
[8] *Ibid.* at p.642.
[9] *Ibid.* at pp.642 and 647.
[10] *Ibid.* at p.647.
[11] *Ibid.* at p.655.

acquisition was not subject to the presumed trust in favour of the inhabitants. Contrast the position here where it is known (and agreed by the parties) when and how Doncaster Common was acquired. Mr. Braim, in paragraph 3 of his affidavit, says:

> I verily believe that the Council derive title from a charter of Henry VII by which the Doncaster Corporation became Lords of the Manor and thereby acquired ownership of the common.

Mr. Ward's affidavit, in paragraph 4, states:

> I verily believe from the researches I have undertaken that the Doncaster Corporation, in pursuance of its charter powers, became both the Lord of the Manor and the owner of the soil of . . . the present extent of the common in 1505 . . .

Mr. Whybrow's argument is that, this being known, there is no room for the presumption that the acquisition was subject to a trust in favour of the public giving it the rights now claimed. Unfortunately, as it seems to me, neither deponent says whether the corporation's document of title exists, or whether he has looked at it, or whether or not it says anything about the rights now claimed.

What then should I presume? If the document of title exists, it is likely that it would have been inspected, and had it said anything about the rights, this would surely have been said in the affidavits. So the choice is between assuming that it does not exist and assuming that it does exist but is silent on the matter. In the former event a presumption of the type drawn in *Goodman's* case could be made; in the latter it could not. I think the former is the more likely. The phraseology of the extracts which I have read from each affidavit is not such as I would have expected had the document existed. So the court could make a *Goodman* presumption.

What if the document does exist and is silent? In that event, I see nothing to prevent the court from presuming that at some time between 1505 and 1888 the corporation created in favour of the public a trust by means of an instrument now lost granting the rights in question. While the presumption would not be the same as that made in *Goodman's* case, the drawing of it would rest on the same principles.

In *Tyne Improvement Commissioners* v. *Imrie* and *Att.-Gen.* v. *Tyne Improvement Commissioners*, the question was whether the general public had a right of way over part or all of a pier one mile long built by the commissioners between 1854 and 1895. The right asserted was a right of way to use it to go to the sands for boating and bathing. The claimants argued for a presumption of lost modern grant. The commissioners argued that the right claimed would be incompatible with the proper performance of their statutory duties. Phillimore J. rejected the claim save to a right of way over a limited portion of the pier.[12] Beyond that the user had been interrupted.[13] The commissioners had bought the land as recently as 1857. It is implicit that there was no mention of any right of way in their deeds. Phillimore J. held that it would be ridiculous in such a case to presume a lost modern grant unless

[12] (1898) 81 L.T. 174 at p.182.
[13] *Ibid.* at p.181.

driven to it; had any grant been made one would expect a record of it to have been strictly preserved.[14]

These matters serve to distinguish that case from the present, but certain further dicta in it call for consideration. First Phillimore J. said that,[15] assuming that there could be dedication for bathing and fishing, it would be "rather difficult to prove and would require very conclusive evidence." A little later he said[16]:

> As between the two possible views, the one that there has been a dedication by an owner of his land for such purposes as bathing and fishing and recreation, and the other view that the whole thing has been permissive, there is a strong probability that the user is permissive rather than of right. In fact, to put it shortly, the very largeness of the defendants' claim militates exceedingly against its being proved.

While expressed in general terms, these remarks must be considered in the context in which they were made. The landowner in question was a public body charged with statutory responsibilities in pursuance of which it had built the pier. In the present case the landowner is a borough corporation. The land, so far as the evidence goes, has never been used for anything other than recreation of one kind or another. The corporation would have had an interest in affording the amenity to its residents and a further interest in encouraging others from outside the borough to attend the races, in particular the St. Leger, which in the eyes of many must have been Doncaster's most celebrated attribute. Phillimore J. did not suggest that the presumption could never be drawn. The present is a case in which I think it clearly should be drawn.

Counsel for the Tyne Improvement Commissioners had submitted that what was being claimed was a *jus spatiandi* which he submitted was not known to English law.[17] Mr. George submitted that Phillimore J.'s belief that there could be a right to bathe, to fish and to recreation[18] amounted to a rejection of this submission. I am not sure that the two are the same. Phillimore J. did not use the phrase "*jus spatiandi*" in his judgment so far as I have detected. The term *jus spatiandi* has been treated elsewhere as a right to stray rather than to use a defined way between one point and another. No doubt a right to enjoy recreation on a particular piece of land includes the right to wander over it at will, but that is not to equate the two (see Lord Evershed M.R. in *Re Ellenborough Park*.[19]) I prefer not to regard Phillimore J. as having expressed any view about a *jus spatiandi*.

Att.-Gen. v. *Antrobus* was an action brought against the owner of the land upon which Stonehenge stands after he had erected certain fences around it. On the relation of the chairman of the local parish

[14] *Ibid.* at p.178.
[15] *Ibid.* at p.179.
[16] *Ibid.*
[17] *Ibid.* at p.177.
[18] *Ibid.* at p.179.
[19] [1956] 1 Ch. 131 at p.179.

council and others the Attorney-General sought an order for the removal of the fencing and an injunction against the erection of any further fencing. It was put on two grounds: (1) that Stonehenge was subject to a trust for its free user by the public; (2) that the fencing blocked what were public roads. Both grounds were held to be bad and the action failed.

The first ground is relevant for present purposes. Farwell J. said[20]:

> The plaintiff produces no evidence in support of his first claim, but he asks the court to presume a lost grant or a lost Act of Parliament because for many years past the public have been in the habit of visiting Stonehenge. The defendant, on the other hand, produces his title-deeds shewing a purchase in fee by his great-great-uncle from the trustees of the Duke of Queensberry more than seventy years ago, and an absolute fee simple title in himself.
>
> It is impossible for the court, under those circumstances, to make any such presumption as is suggested. The public as such cannot prescribe, nor is *jus spatiandi* known to our law as a possible subject-matter of grant or prescription; "and for such things as can have no lawful beginning, nor be created at this day by any manner of grant, or reservation, or deed that can be supposed, no prescription is good." It is true that in some cases in the books the courts have presumed trusts, but they have been cases where corporations holding the fee have been held to be trustees for some of their corporators, or of the inhabitants, to the exclusion of the others. *Goodman* v. *Saltash Corporation* is a good illustration of this, but in that case Lord Selborne expressly negatives the application of such a principle to a case like the present. "The principle," he says, "on which I have arrived at this conclusion, would not, in my opinion, be applicable to such a case as *Lord Rivers* v. *Adams*, in which, if the defendants had alleged the plaintiff to be their trustee, that allegation would have been met by the production of the plaintiff's title-deeds, shewing that he held under conveyances made to him and his ancestors (in the usual way in which titles to land are established in this country), without any trust. Against such a title, a trust could not, in my opinion, be presumed from any evidence of mere fishing in a stream which passed, and of which the plaintiff had possession, under those conveyances." Moreover, I adhere to the view that I expressed in *Att.-Gen.* v. *Simpson* that the gist of the principle on which such presumptions are made is that the state of affairs is unexplained without such presumption. But the liberality with which landowners in this country have for years past allowed visitors free access to objects of interest on their property is amply sufficient to explain the access which has undoubtedly been allowed for many years to visitors to Stonehenge from all parts of the world. It would indeed be unfortunate if the courts were to presume novel and unheard of trusts or statutes from acts of kindly courtesy, and thus drive landowners to close their gates in order to preserve their property.

[20] [1905] 2 Ch. 188 at pp.198–199.

Considering the unique character and great archaeological interes of Stonehenge and its position on downs where no harm is likely t be done to the land, it is most improbable that permission t visitors to inspect would have been ever refused, and as the right o walking around and inspecting the stones is not one which could be the subject-matter of a grant, the owner may well have dispensec with requests for permission, relying on the fact that no right could grow thereout.

Farwell J.'s reasons for rejecting the first ground were[21]:

(1) The plaintiff produced no evidence to support it. He asked the court to presume lost grant or lost Act of Parliament from the fact that the public had for many years visited Stonehenge. On the other hand, the landowner produced his title deeds which went back to 1826. They did not mention the right claimed. This made it impossible to presume a lost grant. The case was like *Lord Rivers* v. *Adams* and distinct from *Goodman* v. *Saltash Corporation*.

(2) A public right cannot be based on prescription.

(3) A *jus spatiandi* is not known to our law as a possible subject-matter of grant or prescription.

(4) *Goodman's* case was distinguishable because the presumed trust was for the benefit of only some inhabitants to the exclusion of others.

(5) No presumption of a grant could be made unless the state of affairs could not be explained without it, which was not the case. The liberality of the landowner was sufficient explanation.

I need say nothing about:

(1) save to observe that in the matter of title deeds the position in the present case is akin to that in *Goodman's* case and distinct from that in *Lord Rivers* v. *Adams*.

(2) calls for no comment. Mr. George is not relying upon prescription.

(3), which was about the *jus spatiandi*, was not necessary to the decision. There is an extended discussion in *Re Ellenborough Park* about *jus spatiandi*.[22] Farwell J.'s remarks about it in *Antrobus* are considered and also other *obiter* of his to the same effect in *International Tea Stores* v. *Hobbs*. On neither occasion had Farwell J. cited authority for his opinion. The Court of Appeal did not go so far as to say that the public *could* enjoy a *jus spatiandi*, for the case which they were deciding concerned private rights. Even so, considerable doubt must now attach to Farwell J.'s view, even in relation to public rights. I have already referred to the part of the discussion which is to the effect that a right to use a garden in the ordinary way is not a mere *jus spatiandi*.[23] This must the more be true of a right to use an area like Doncaster Common for recreation in general.

[21] *Ibid.*
[22] [1956] Ch. 131 at pp.177–185.
[23] *Ibid.* at p.179.

In favour of the possibility of the existence of public rights of recreation are Phillimore J.'s remarks in *Tyne Improvement Commissioners*[24] and *Re Hadden*, to both of which I have already referred.

I need say no more about point (4) than I already have.

Point (5) is in reality a distinction of fact. In the present case I do not regard liberality on the part of the Doncaster Corporation as a sufficient explanation.

Before leaving *Ellenborough Park* I ought perhaps to refer to a passage where it was said that there was[25]:

> no doubt but that *Antrobus* was rightly decided; for no right can be granted (otherwise than by statute) to the public at large to wander at will over an undefined open space, nor can the public acquire such a right by prescription.

The right claimed in the present case is not to wander over an undefined area. It is a right to take recreation in a defined area. *Re Hadden* recognises that such can be granted.

For these reasons I accept:

(1) that had an *express* grant of the rights now claimed by the public been produced the law would have recognised their validity;

(2) that the law allows the court to presume that at some time prior to 1860 these rights were validly granted;

(3) that the evidence before the court cannot sufficiently be explained by mere sufferance or by licence from the corporation; and

(4) that the presumption is therefore to be drawn.

In other words, what everyone had assumed to be the case until 1984 was and is correct, namely, that the public's use of Doncaster Common for purposes of recreation is not only lawful but as of right.

One further point remains. What quality of user "for purposes of public recreation" is required before the land is "open space" for the purposes of section 123(2A) of the Local Government Act 1972 as amended? Mr. Whybrow contends that it must be as of right, *i.e.* that user under a bare licence will not suffice. He suggests that any other construction would be absurd and inconvenient. I do not agree. Section 123(2A) appears to have been enacted to protect the interests of those lawfully using open spaces. A bare licensee has no interest in land, but so long as his licence exists he has something which he can enjoy. It can only be brought to an end on giving him reasonable notice. In many cases such notice need only be very short, but it is possible to envisage circumstances in which a significant period would be required. Where a licence has been given, there is no hardship or absurdity in a council having to choose between postponing its disposal of the land until such notice has been given and expired and, alternatively, advertising the intended disposal in the way required.

Thus, even if I were wrong in holding that the public's use of Doncaster Common is as of right, and its use depended upon the

[24] (1899) 81 L.T. 174 at p.179.
[25] [1956] Ch. 131 at p.184.

existence of a bare licence, the corporation would be obliged to comply with section 123(2A) unless it first gave reasonable notice of termination and that period had expired. Such notice has not been given. The applicant is entitled to relief, and the court makes the declaration sought in paragraph (1) of the notice of application.

Application allowed with costs.

Solicitors—Dibb & Clegg, Doncaster; Sharpe Pritchard & Co., agents for W. R. Bugler; solicitor for the Doncaster Metropolitan Borough Council.

C.R.
Form 2

COMMONS REGISTRATION ACT 1965

NOTE: This section contains the registration of the land comprised in this register unit.

Registration authority
WEST RIDING COUNTY COUNCIL

Register unit No. C.L.502

Edition No. 1

See Overleaf for Notes

Register of COMMON LAND

LAND SECTION—Sheet No. 1

No. and date of entry	Description of the land, reference to the register map, registration particulars etc.
1 17th November, 1969	The piece of land known as Nesfield Dean and the Village Green in the Parish of Nesfield with Langbar in the Rural District of Wharfedale in the West Riding of the County of York as marked with a green verge line inside the boundary on sheets 36, 132 and 135 of the register map and distinguished by the numberof this register unit. Registered pursuant to application No. 1532 made 1st July, 1968 by Nesfield with Langbar Parish Meeting. (~~Registration provisional~~)
2 6th August, 1982	In pursuance of Section 6 (2) of the Commons Registration Act 1965, in accordance with a Notice of Final Disposal of Disputed Registration, dated 6th July, 1982, made by L. J. Morris Smith, Commons Commissioner the registration at Entry No. 1 above became FINAL on the 21st July, 1982, with the following modification, namely the exclusion of the land comprised in the Register Unit the areas coloured red on the plan attached to Objection No. 99, other than any part of these areas which forms the verge (to a width not exceeding 2 metres) of the highway on their south-western boundary. Ref: 268/D/311-312

No. and date of note	*Notes*	*No. and date of note*	*Notes*
1 15th September, 1970	Objection No. 99 of Stephen CollinsRawson of The Manor House Nesfield, Ilkley made the 4th August, 1970 is noted in respect of registration entry No. 1 in this section. Objection Upheld (See Entry No. 2 overleaf)		

C.R.
Form 3

COMMONS REGISTRATION ACT 1965

NOTE: This section contains the registration of every right of common registered under the Act as exercisable over the whole or any part of the land described in the land section of this register unit.

Registration authority

WEST RIDING COUNTY COUNCIL

Register unit No. C.L.502

Edition No. 1

See Overleaf for Notes

Register of COMMON LAND

RIGHTS SECTION—Sheet No. 1

1 *No. and date of entry*	2 *No. and date of application*	3 *Name and address of every applicant for registration, and the capacity in which he applied*	4 *Particulars of the right of common, and of the land over which it is exercisable*	5 *Particulars of the land (if any) to which the right is attached*
1 1st April 1970 ~~(See entry No. 2 below)~~	2505 29th December 1969	William Crabtree, Bank House Farm Pudsey. (Owner)	1. Right of turbary 2. To graze:- (a) 8 cows or (b) 8 heifers and (c) 10 sheep and (d) 8 geese over that part of the land comprised in this register unit as shown edged red on the register map and over the whole of register unit No. C.L.615. (~~Registration provisional~~) (~~Registration provisional~~)	~~"Hall Croft"~~, Nesfield, Ilkley as shown edged red on the supplemental map bearing the number of this registration. * Current owner of Hall Croft has no knowledge of rights and does not wish to be contacted in the future.
~~2~~ ~~29th December,~~ ~~1972.~~	~~The registration at entry No. 1 above, being undisputed, became final on 1st August, 1972.~~			
2 6th August, 1982	In pursuance of Section 6 (2) of the Commons Registration Act 1965, in accordance with a Notice of Final Disposal of Disputed Registration, dated 6th July, 1982, made by L. J. Morris Smith, Commons Commissioner the registration at Entry No. 1 above became FINAL on the 21st July, 1982. Ref: 268/D/311-312 (See Entry No. 2 in the Land Section of this register unit.)			

No. and date of note	*Notes*	*No. and date of note*	*Notes*
1 15th September, 1970	Every objection to the registration, whether as common land or as a town or village green, of any land comprised in this register unit has effect as an objection to any registration (whenever made) under section 4 of the Commons Registration Act, 1965 of any rights over that land, whether that registration appears in this register or in the Register of Town or Village Greens. If any of the land is also registered as a Town or Village Green, a note to that effect will appear in each section of this register unit.		

C.R.

Form 4 COMMONS REGISTRATION ACT 1965

REGISTER OF COMMON LAND

OWNERSHIP SECTION – Sheet No 1

NOTE: This section contains the registration of every person registered under the Act as owner of any of the land described in the land section of this register unit. It does not contain any registration in respect of land of which the freehold is registered under the Land Registration Acts 1925 and 1986, but the absence from this section of a registration in respect of any land described in the land section does not necessarily indicate that the freehold of that land is registered under those Acts.

Registration Authority
WEST RIDING COUNTY COUNCIL

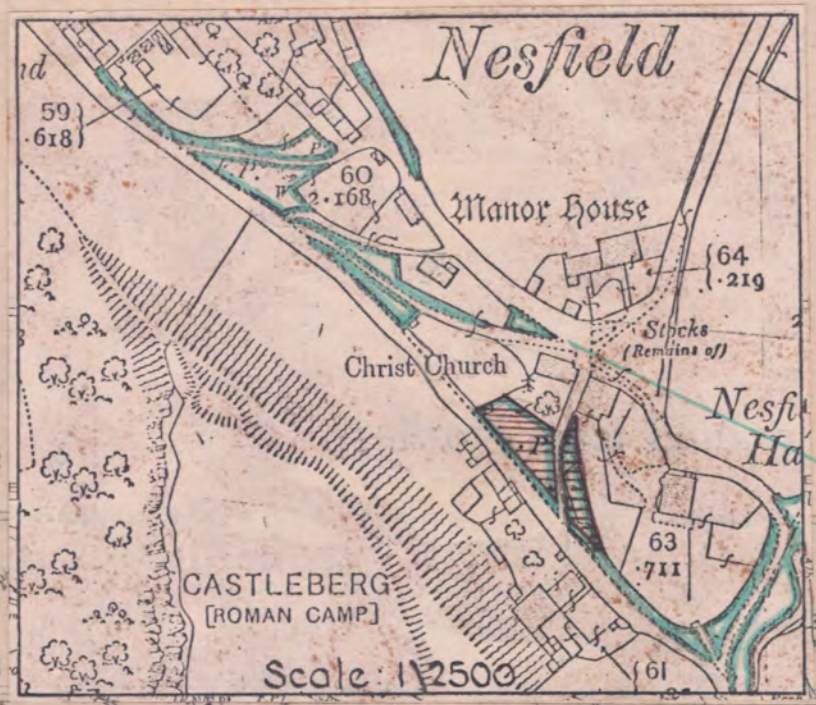
Register Unit No CL 502
Edition No 1

See Overleaf for Notes

1. No and date of entry	2. No and date of application	3 Name and address of person registered as owner	4 Particulars of the land to which the registration applies
1 26 July 1983	N/A	The above registration was made in pursuance of Section 9 of the Commons Registration Act 1965 in accordance with a Direction made by G T Hesketh, Chief Commons Commissioner, dated 26 May 1983. Ref: 268/U/281.	

Register Map for part of CL502

132



CE SURVEY

6 Inches to 1 Mile

SHEET SE 04 NE

KSHIRE

NG ADMIN CO

240 Chains

C.L.502.

C.L.615.

R1

CR Form

This section for official use only.

Official stamp of registration authority indicating date of receipt

WEST RIDING COUNTY COUNCIL
REGISTRATION AUTHORITY
- 1 JUL 1968

Application No. 1532.

Register Unit No(s):

CL 46
CL 502.
CL

COMMONS REGISTRATION ACT 1965

Application for the registration of land as common land

IMPORTANT NOTE: Before filling in this form, read carefully the notes on the back. An incorrectly completed application form may be rejected.

[1]*Insert name of registration authority (see Note 1).*

To the[1] WEST RIDING COUNTY COUNCIL

Application is hereby made for the registration as common land of the land described below.

Part 1.

(Give Christian names or forenames and surname or, in the case of a society or other body, the full title of the body. If part 2 is not completed all correspondence and notices will be sent to the applicant.)

Name and address of the applicant.

NESFIELD WITH LANGBAR PARISH MEETING

CLERK OF THE MEETING

LAWRENCE N. CORDINGLEY

SCARR HOUSE

NESFIELD, NEAR ILKLEY.

Part 2.

(This part should be completed only if a solicitor has been instructed for the purposes of the application. If it is completed, all correspondence and notices will be sent to the solicitor.)

Name and address of solicitor, if any.

Part 3.

(See Notes 2, 3 and 4).

Particulars of the land to be registered, i.e. the land claimed to be common land.

Name by which usually known

1. LANGBAR MOOR
2. NESFIELD DEAN
3. ~~NESFIELD LANE~~
4. SUNDRY AREAS IN NESFIELD VILLAGE

Locality NESFIELD AND LANGBAR.

Colour on plan herewith[2] RED OUTLINE.

[2]*Delete reference to plan where none is submitted. A plan must be used except as mentioned in Note 4.*

Part 4.

(See Note 7.)

For applications submitted after 30th June, 1968 (to be disregarded in other cases).

Does the prescribed fee of £5 accompany this application? If not, state whether this is for reason (a) or (b) mentioned in Note 7, and give the appropriate particulars required by that note.

**The application must be signed by the applicant personally, unless the applicant is a body corporate or unincorporate, in which case it must be signed by the secretary or some other duly authorised officer.*

*Signature of applicant or of person on applicant's behalf.

[redacted] (blank. Neofield with Langbar Parish Meeting

Date 25th June, 1968.

(See Note 5)

Statutory Declaration in Support

To be made by the applicant personally, unless the applicant is a body corporate or unincorporate, in which case the declaration must be made by the person who has signed the application. Inapplicable wording should be deleted throughout.

[1]*Insert full name.*

[1], LAWRENCE NORTON CORDINGLEY
solemnly and sincerely declare as follows:

1. I am the person who has signed the foregoing application.

[2]*Strike out this paragraph if it does not apply.*
[3]*Insert capacity in which acting.*

2. [2]I am[3] CLERK to the applicant and am duly authorised by the applicant to make the foregoing application.

3. I have read Notes 2 and 3 on the back of the application form and believe that the land described in the application is common land.

[4]*Strike out this paragraph if there is no plan.*
[5]*Insert "marking" as on plan (see Note 5).*

4. [4]The plan now produced and shown to me marked [5]"A" is the plan referred to in the application.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said LAWRENCE NORTON CORDINGLEY

at TOWN CENTRE HOUSE, LEEDS

in the AFTERNOON of THURSDAY

this 27TH day of JUNE 1968

[redacted]

Before me

Signature [redacted]

Address TOWN CENTRE HOUSE
THE MERRION CENTRE LEEDS 2

Qualification COMMISSIONER FOR OATHS.

REMINDER TO OFFICER TAKING DECLARATION:
Please initial all alterations and mark any plan as an exhibit.

Notes

1. Registration authorities

The applicant should take care to submit his application to the correct registration authority. This depends on the situation of the land which is claimed to be common land. Except where there is an agreement altering the general rule (see below), the registration authority for land in an administrative county is the county council; for land in a county borough, it is the county borough council, and for land in Greater London, it is the Greater London Council.

In the case of land which is partly in the area of one registration authority and partly in that of another, the authorities may by agreement provide for one of them to be the registration authority for the whole of the land. Public notice is given of such agreements, but an applicant concerned with land lying close to the boundary of an administrative area, or partly in one area and partly in another, should, if in doubt, enquire whether an agreement has been made and, if so, which authority is responsible for that land.

2. Meaning of "common land"

Common land is defined in the Commons Registration Act 1965 as—

(a) land subject to rights of common (as defined in the Act—see Note 3 below) whether those rights are exercisable at all times or only during limited periods;

(b) waste land of a manor not subject to rights of common.

It does not include a town or village green or any land forming part of a highway. (There is a separate form available for town or village greens, which are also registrable under the Act.) "Land" includes land covered with water, so that common land can, for instance, include ponds and lakes.

3. Meaning of "rights of common"

Rights of common are not exhaustively defined in the Act, but it is provided that they include cattlegates or beastgates (by whatever name known) and rights of sole or several vesture or herbage or of sole or several pasture. They do not, however, include rights held for a term of years or from year to year. Further information is contained in the official explanatory booklet "Common Land" available free from local authorities; the following extract is not an authoritative statement of the law, but is intended for general guidance only:

"A right of common is generally taken to mean a right which a person may have (generally in *common with* someone else) to take part of the natural produce of another man's land; for example, a rigbt to the herbage (a right of common of pasture); a right to take tree loppings or gorse, furze, bushes or underwood (a right of estovers); a right to take turf or peat (a right of common of turbary); a right to take fish (a right of common of piscary); a right to turn out pigs to eat acorns and beechmast (pannage). There are various otber types of rights of common, some existing only in particular areas, and it is impossible to give a complete list. The Act does not therefore attempt to give a comprehensive definition of the expression 'rights of common.'"

4. Land descriptions

Except wbere the land has already been registered under the Act (as to which see below and Note 6), the particulars asked for at part 3 of the form must be given, and a plan must accompany the application. The particulars in part 3 are necessary to enable the registration authority to identify the land concerned, but the main description of the land will be by means of the plan. This must be drawn to scale in ink or other permanent medium and be on a scale of not less, or not substantially less, than six inches to one mile. It must show the land to be described by means of distinctive colouring (a coloured edging inside the boundary will usually suffice), and it must be marked as an exhibit to the statutory declaration (see Note 5).

Where the land has already been registered and comprises *the whole of the land* in one or more register units, a plan is unnecessary provided the register and register unit number(s) are quoted (see Note 6). If the application concerns only part of the land comprised in a register unit, however, it will not always be possible to dispense with a plan. A plan will not be needed if the land can be described by reference to some physical feature such as a road, river or railway, so that the description might, for example, read "The land in register unit No. ..... lying to the south of tbe road from A to B". Where this method is not practicable the land must be described by a plan prepared as mentioned above. In cases where the procedure of reference to an existing register unit is adopted, part 3 of the form should be adapted accordingly, and where no plan is submitted inappropriate references to a plan should be deleted.

5. Statutory declaration

The statutory declaration must be made before a justice of the peace, commissioner for oaths or notary public. Any plan referred to in the statutory declaration must be marked as an exhibit and signed by the officer taking the declaration (initialling is insufficient). A plan is marked by writing on the face in ink an identifying symbol such as the letter 'A'. On the back of the plan should appear these words:

This is the exhibit marked 'A' referred to in the statutory declaration of (name of declarant) made this (date) 19 before me,

.....

(Signature and qualification)

If there is more than one plan care should be taken to choose a different identifying letter for each.

6. Previous registration: inspection and search of registers

It is possible that the land has already been registered under the Act. If it has been registered as common land, it will not be registered as such again pursuant to a further application, but the further application will be noted on the register. This will entitle the applicant to notice of any objection to the registration. If the land has been registered as a town or village green, registration as common land will take effect as an objection to the earlier registration as a town or village green, and the latter will take effect as an objection to the later registration as common land. It is also possible that the land is exempt from registration; the registration provisions of the Act do not apply to the New Forest, Epping Forest or the Forest of Dean, nor to any land exempted by order under section 11. To ascertain whether land bas been registered under the Act, or is exempt, anyone may inspect the registers at the office of the registration authority, or the copies of register entries affecting land in their areas held by other local authorities including parish councils. Alternatively, an official certificate of search may be obtained from the registration authority. A requisition for an official search must be made in writing on C.R. Form No. 21, a separate requisition being required for each register. If the land is registered, the certificate will reveal the register unit number(s) and whether any rights of common and claims to ownership are registered. If the land is exempt from registration, the certificate will say so, and it will not be possible to register it under the Act.

7. Submission of application: fees

The application must reach the registration authority properly completed during one of the registration periods allowed under the Act. The first registration period begins on 2nd January, 1967 and ends on 30th June, 1968, and tbe second begins on 1st July, 1968 and ends on 2nd January, 1970. There is no charge for applications made during the first registration period, but every application made during the second registration period must be accompanied by a fee of £5, unless—

(a) during the first registration period the applicant gave the registration authority notice in C.R. Form No. 5 of his intention to make the application, or

(b) the land did not become registrable as common land until after 30th April, 1968.

If (a) applies, the applicant should quote in part 4 of the application the number on the acknowledgment from the registration authority. If (b) applies, he should state in part 4 when and by what means tbe land became common land.

8. Action by registration authority

The registration authority will on receipt of the application send an acknowledgment. If this is not received within 10 days the applicant should communicate with the authority. Later, the applicant will be informed whether the application has been accepted or rejected. If it is accepted, then—

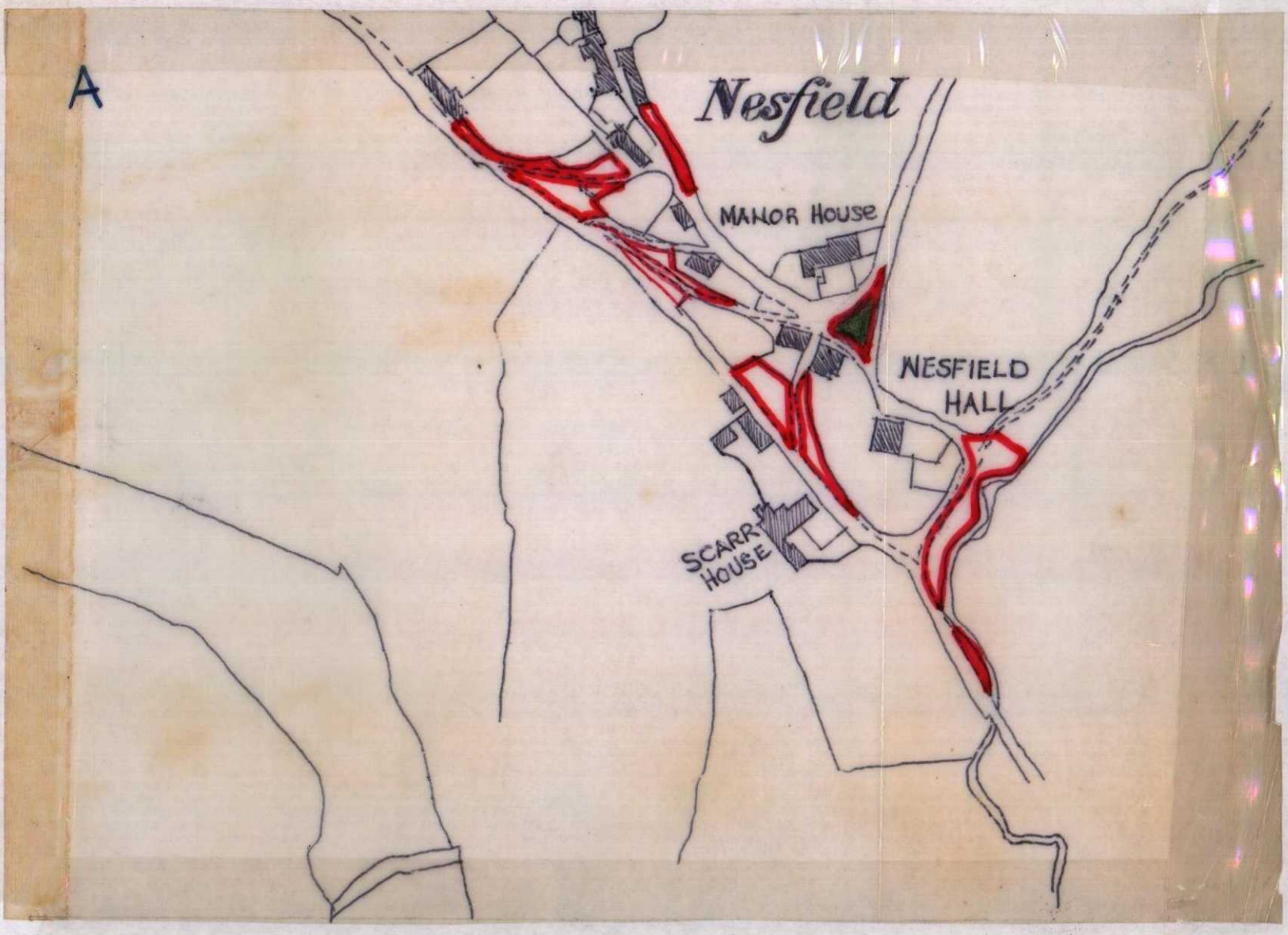
(a) if the land is not already registered as common land, it will be provisionally registered as such, or

(b) if it is already registered as common land, the application will be noted on the register.

The applicant will in either case be informed, and will in due course be notified of any objection to the registration. (As to objections, see the official explanatory booklet "Common Land", available free from local authorities.)

9. False statements: groundless applications

The making of a false statement to procure registration may render the maker liable to prosecution. Moreover, a registration which is objected to will, unless the registration autbority permits it to be cancelled, or the objection is withdrawn, be referred to a Commons Commissioner. If, at the hearing before the Commissioner, the registration cannot be substantiated, it will be removed from the register, and the applicant may be ordered to pay the costs of the objector.


A
Nesfield
MANOR HOUSE
NESFIELD HALL
SCARR HOUSE


A
BEAMSLEY
BEAMSLEY MOOR
LANGBAR MOOR
NESFIELD WITH LANGBAR
MIDDLETON
MIDDLETON MOOR
MIDDLETON MOOR ENCLOSURE
ADDINGHAM
Moorside
Bolton Abbey
Bolton Bridge
Beamsley
Storiths
Hazlewood
Maidenkirk
Summerscales
Addingham
Nesfield
Nesfield Hall
Middleton
ILKLEY
River Wharfe
Golf Course
Black Fell
Round Hill
Beamsley Beacon or Howber Hill
Middleton Hospital
March Ghyll Reservoir (Otley U.D. Council Water Works)

This is the exhibit marked 'A' referred to
in the statutory declaration of
Lawrence N. Bowdingley - Labels, Westfield with
Langbar Parish meeting made this
27th DAY OF JUNE 1968
before me.

[redacted]

Commissioner for Oaths

CR Form 9 (Revised).
This section for official use only.

Official stamp of registration authority indicating date of receipt

REGISTRATION AUTHORITY
29 DEC 1969

Application No. 2505

Register Unit No(s)
C.L. 502 (Part).
C.L. 615.

COMMONS REGISTRATION ACT 1965

Application for the registration of a right of common

IMPORTANT NOTE: Before filling in this form, read carefully the notes on the back. An incorrectly completed application may be rejected.

[1] *Insert name of registration authority (see Note 1).*

To the [1] West Riding County Council

Application is hereby made for the registration of the right of common of which particulars are set out below.

Part 1.
(Give Christian names or forenames and surname or, in the case of a body corporate, the full title of the body. If part 2 is not completed all correspondence and notices will be sent to the first-named applicant. See Note 2 for information as to who may apply.)

Name and address of the applicant or (if more than one) of every applicant.

William Crabtree
Bank House Farm,
Pudsey,
Yorkshire.

Part 2.
(This part should be completed only if a solicitor has been instructed for the purposes of the application. If it is completed, all correspondence and notices will be sent to the solicitor.)

Name and address of solicitor, if any.

J. Chadwick, L.L.B.
Solicitor,
Abbey House,
11/12, Park Row,
Leeds,1.

Part 3.
(Read Note 2 and insert "owner" "tenant" or as the case may be. If there is more than one applicant the capacity of each must be stated against his name in this space.)

Capacity in which the applicant is entitled to apply for registration.

Owner

Part 4.
(See Notes 3 and 4.)

Description of the land over which the right of common is exercisable.

Name by which commonly known The Dean

Locality Nessfield with Langbar, Wharfedale R.D.C. in the West Riding of the County of York

[2]*Delete reference to plan where none is submitted. A plan must be used except as mentioned in Note 4.*

Colour on plan [2] edged blue

Part 5.
(See Notes 3 and 7. If the right is exercisable only during limited periods, full particulars of these periods must be given.)

Description of the right of common.

1. Right to graze eight cows or heifers ten sheep and eight geese over the whole of the land comprised in this register unit.

2. Right of turbary over the whole of the land known as The Dean

---

Part 6.
(See Note 4. If the right is not attached to any land, the fact should be stated here.)

Description of the farm, holding or other land to which the right is attached, if any.

"Hall Croft", Nessfield, Ilkley in the County of York more particularly delineated by way of identification on the plan annexed hereto

---

Part 7.
(See Note 8.)

For applications submitted after 30th June, 1968 (to be disregarded in other cases).

Does the prescribed fee of £5 accompany this application? If not, state whether this is for reason (a) or (b) mentioned in Note 8, and give the appropriate particulars required by that note.

No. (a) 5/110

---

[3] Signature(s) of applicant(s) or of person on his or their behalf.

[redacted]

Date

[3] *If the applicant is a body corporate or charity trustees the application must be signed by the secretary or some other duly authorised officer.*

Statutory Declaration in Support

(See Note 6)

To be made by the applicant, or every applicant, personally, unless the applicant is a body corporate or charity trustees, in which case the declaration must be made by the person who has signed the application. Inapplicable wording should be deleted throughout.

[1] *Insert full name(s).*

[I] [~~We~~][1] William Crabtree

solemnly and sincerely declare as follows:

[2] *Strike out this paragraph if it does not apply.*
[3] *Insert capacity in which acting and adapt as necessary.*

1. [2][I am] [~~We are~~] the person(s) who [has] [~~have~~] made the foregoing application.
2. [2]~~I am~~[3] ~~to the applicant(s) and am authorised [by the applicant(s)] [in manner stated in the application] to make the foregoing application on [his] [their] behalf.~~

3. [I] [~~We~~] have read the Notes on the back of the application form and believe that [I] [~~we~~] [the ~~applicant(s)~~] [am] [~~are~~] [~~is~~] entitled, in the capacity or respective capacities stated in the application, to apply for the registration under the Commons Registration Act 1965 of the right of common described in the application.

[4] *Strike out this paragraph if there is no plan.*
[5] *Insert "marking" as on plan (see Note 6).*

4. [4] The plan now produced and shown to me marked [5] " A " is the plan referred to in part 4 of the application.

5. [4] The plan now produced and shown to me marked [5] " B " is the plan referred to in part 6 of the application.

And [I] [we] make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said [redacted]
.....
.....
.....
.....
.....
.....

at Pudsey

in the County of York

this 29th day of December 1969.

Before me,

Signature ... [redacted]

Address 143 East Road
Calverley Pudsey

Qualification Justice of the Peace

REMINDER TO OFFICER TAKING DECLARATION:
Please initial all alterations and mark any plan as an exhibit.

Notes

1. Registration authorities

The applicant should take care to submit his application to the correct registration authority. This depends on the situation of the land over which rights of common are claimed. Except where there is an agreement altering the general rule (see below), the registration authority for land in an administrative county is the county council; for land in a county borough, it is the county borough council, and for land in Greater London, it is the Greater London Council.

In the case of land which is partly in the area of one registration authority and partly in that of another, the authorities may by agreement provide for one of them to be the registration authority for the whole of the land. Public notice is given of such agreements, but an applicant concerned with land lying close to the boundary of an administrative area, or partly in one area and partly in another, should, if in doubt, enquire whether an agreement has been made and, if so, which authority is responsible for that land.

It is not necessary for the land over which a right of common is exercisable to be registered before an application for the registration of the right itself is made : see Note 9.

2. Who may apply for registration

An application for the registration of a right of common may be made—

(a) by the owner of the right or in certain cases (see below) by someone on his behalf or in his stead;

(b) where the right is attached to any land, and is comprised in a tenancy of the land, by the landlord, the tenant, or both of them jointly;

(c) where the right belongs to an ecclesiastical benefice of the Church of England which is vacant, by the Church Commissioners.

In a case where the landlord and the tenant of any land are both entitled to apply for the registration of a right of common attached to the land, they may consider it advisable to apply jointly, because—

(a) if two separate applications relating to the same right are accepted for registration and differ in any material particular, a conflict arises, and each registration has to be treated as an objection to the other. Such a case would normally have to be referred to a Commons Commissioner for decision;

(b) if a joint application is submitted, and is accepted for registration, both applicants will be entitled to appear before the Commons Commissioner in support of the registration, should any objection to it be referred to him;

(c) a person entitled to make an application who is content to leave it to another person (independently so entitled) to make it will, on the other hand, have no right to appear at the hearing of any objection to the registration and may have no claim against that other person if for any reason the right is not registered or the registration does not become final, or becomes final with modification.

Where the Church Commissioners apply for the registration of a right belonging to a vacant benefice, the fact should be stated, and the name of the benefice given, in part 3.

In certain cases a person may be entitled to apply on behalf of the owner of the right or in his stead. Examples are (a) a receiver appointed under section 105 of the Mental Health Act 1959; (b) charity trustees where the right of common is vested in the Official Custodian for Charities; (c) trustees for the purposes of the Settled Land Act 1925 authorised by order under section 24 of that Act. In such cases mention should so far as possible be made in part 3 of (a) the Act of Parliament, statutory instrument, order of court or other authority under which the applicant claims to be entitled to apply; (b) the capacity in which he applies; and (c) the name and address of the person on whose behalf or in whose stead the application is made, and whether that person is owner, landlord or tenant. The registration authority has power to call for such further evidence of the right of the applicant to make the application as it may reasonably require.

Where charity trustees apply (whether the right is vested in themselves or in the Official Custodian) the fact should be stated, and the name of the charity given, in part 3.

3. Meaning of "rights of common"

Rights of common are not exhaustively defined in the Act, but it is provided that they include cattlegates or beastgates (by whatever name known) and rights of sole or several vesture or herbage or of sole or several pasture. They do not, however, include rights held for a term of years or from year to year. Further information is contained in the official explanatory booklet "Common Land", available free from local authorities, from which the following extract is taken :

> " A right of common is generally taken to mean a right which a person may have (generally in *common with* someone else) to take part of the natural produce of another man's land; for example, a right to the herbage (a right of common of pasture); a right to take tree loppings or gorse, furze, bushes or underwood (a right of estovers); a right to take turf or peat (a right of common of turbary); a right to take fish (a right of common of piscary); a right to turn out pigs to eat acorns and beechmast (pannage). There are various other types of rights of common, some existing only in particular areas, and it is impossible to give a complete list. The Act does not therefore attempt to give a comprehensive definition of the expression ' rights of common ' "

This extract must not be taken as an authoritative statement of the law. Anyone who is not sure whether a right is registrable under the Act should seek legal advice.

4. Land descriptions

(a) *For purposes of part 4.* Except where the land has already been registered under the Act (as to which see below and Note 5), the particulars asked for at part 4 of the form must be given, and a plan must accompany the application. The particulars in part 4 are necessary to enable the registration authority to identify the land concerned, but the main description of the land will be by means of the plan. This must be drawn to scale in ink or other permanent medium and be on a scale of not less, or not substantially less, than six inches to one mile. It must show the land to be described by means of distinctive colouring (a coloured edging inside the boundary will usually suffice), and it must be marked as an exhibit to the statutory declaration. (See Note 6.)

Where the land has already been registered and comprises *the whole of the land* in one or more register units, a plan is unnecessary provided the register and register unit number(s) are quoted (see Note 5). If the application concerns only part of the land comprised in a register unit, however, it will not always be possible to dispense with a plan. A plan will not be needed if the land can be described by reference to some physical feature such as a road, a river or railway, so that the description might, for example, read " The land in register unit No. ..... lying to the south of the road from A to B ". Where this method is not practicable the land must be described by a plan prepared as mentioned above. In cases where the procedure of reference to an existing register unit is adopted, part 4 of the form should be adapted accordingly, and where no plan is submitted inappropriate references to a plan should be deleted.

(b) *For purposes of part 6.* If the right is attached to any farm, holding or other land, that land should be described in part 6. This may be done either by a plan prepared as explained in (a) above, or, alternatively, by reference to the numbered parcels on the most recent edition of the ordnance map (quoting the edition), supplemented, where necessary to describe part of a parcel, or any land not numbered on the ordnance map, by a plan prepared in accordance with (a) above. Sufficient particulars of the locality must in any case be given to enable the land to be identified on the ordnance map.

If the right is held in gross, that is, not attached to any land, that fact should be stated in part 6.

5. Inspection and search of registers

To ascertain whether land has been registered under the Act, anyone may inspect the registers at the office of the registration authority, or the copies of register entries affecting the land in their areas held by other local authorities including parish councils. Alternatively, an official certificate of search may be obtained from the registration authority. A requisition for such search must be made in writing on C.R. Form No. 21, a separate requisition being required for each register. If the land is registered, the certificate will reveal the register unit number(s) and whether any rights of common and claims to ownership are registered. It is also possible that the land is exempt from registration : the registration provisions of the Act do not apply to the New Forest, Epping Forest or the Forest of Dean, nor to any land exempted by order under section 11. If the land is exempt, the certificate will say so, and it will not be possible to register rights of common over it under the Act, but such rights as exist will not be prejudiced by non-registration.

6. Statutory declaration

The statutory declaration must be made before a justice of the peace, commissioner for oaths or notary public. Any plan referred to in the statutory declaration must be marked as an exhibit and signed by the officer taking the declaration (initialling is insufficient). A plan is marked by writing on the face in ink an identifying symbol such as the letter "A". On the back of the plan should appear these words :

> This is the exhibit marked "A" referred to in the statutory declaration of (name of declarant) made this (date)
>
> 19 before me,
>
> .....
> (Signature and qualification)

If there is more than one plan care should be taken to choose a different identifying letter for each.

7. Grazing rights

If the right of common consists of or includes a right to graze animals, or animals of any class, the application must state the number of animals, or the numbers of animals of different classes, to be entered in the register. This presents no difficulty where the right to graze is already limited by number. However, for registration purposes grazing rights not limited by number (sometimes called rights "sans nombre", or without stint) must be quantified. This means that the applicant must enter in part 5 of the application form the number of animals, or the numbers of animals of different classes, which he believes himself entitled to graze. If the application is accepted, the right of grazing will be provisionally registered in accordance with the number or numbers which have been so entered. When the registration has become final the right of grazing will be exercisable in relation to animals not exceeding the number or numbers registered or such other number or numbers as Parliament may later determine. The applicant should not insert a figure higher than that which he believes himself entitled to. If he puts in an excessive figure the provisional registration is likely to be objected to. In that case, unless the registration authority permits it to be cancelled, or the objection is withdrawn, the matter will in due course be referred to a Commons Commissioner for decision, and if the Commissioner orders the figure to be reduced he may also order the applicant to pay the costs of the objector.

8. Submission of application: fees

The application must reach the registration authority properly completed during one of the registration periods allowed under the Act. The first registration period begins on 2nd January 1967 and ends on 30th June 1968, and the second begins on 1st July 1968 and ends on 2nd January 1970.

There is no charge for applications made during the first registration period, but every application made during the second registration period must be accompanied by a fee of £5 unless—

(a) during the first registration period the applicant gave the registration authority notice in C.R. Form No. 5 of his intention to make the application, or

(b) the right of common did not become registrable until after 30th April 1968.

If (a) applies, the applicant should quote in part 7 of the form the number on the acknowledgment from the registration authority. If (b) applies, he should explain in part 7 why the right was not registrable until after 30th April 1968.

9. Action by registration authority

The registration authority will on receipt of the application send an acknowledgment. If this is not received within 10 days the applicant should communicate with the authority. Later, the applicant will be told whether the application has been accepted or rejected. If it is accepted, then—

(a) if the land over which the right of common is claimed to be exercisable is not already registered under the Act, it will be provisionally so registered, and the right of common will be provisionally registered as exercisable over it, or

(b) if that land is already registered under the Act, the right of common will be provisionally registered as exercisable over it.

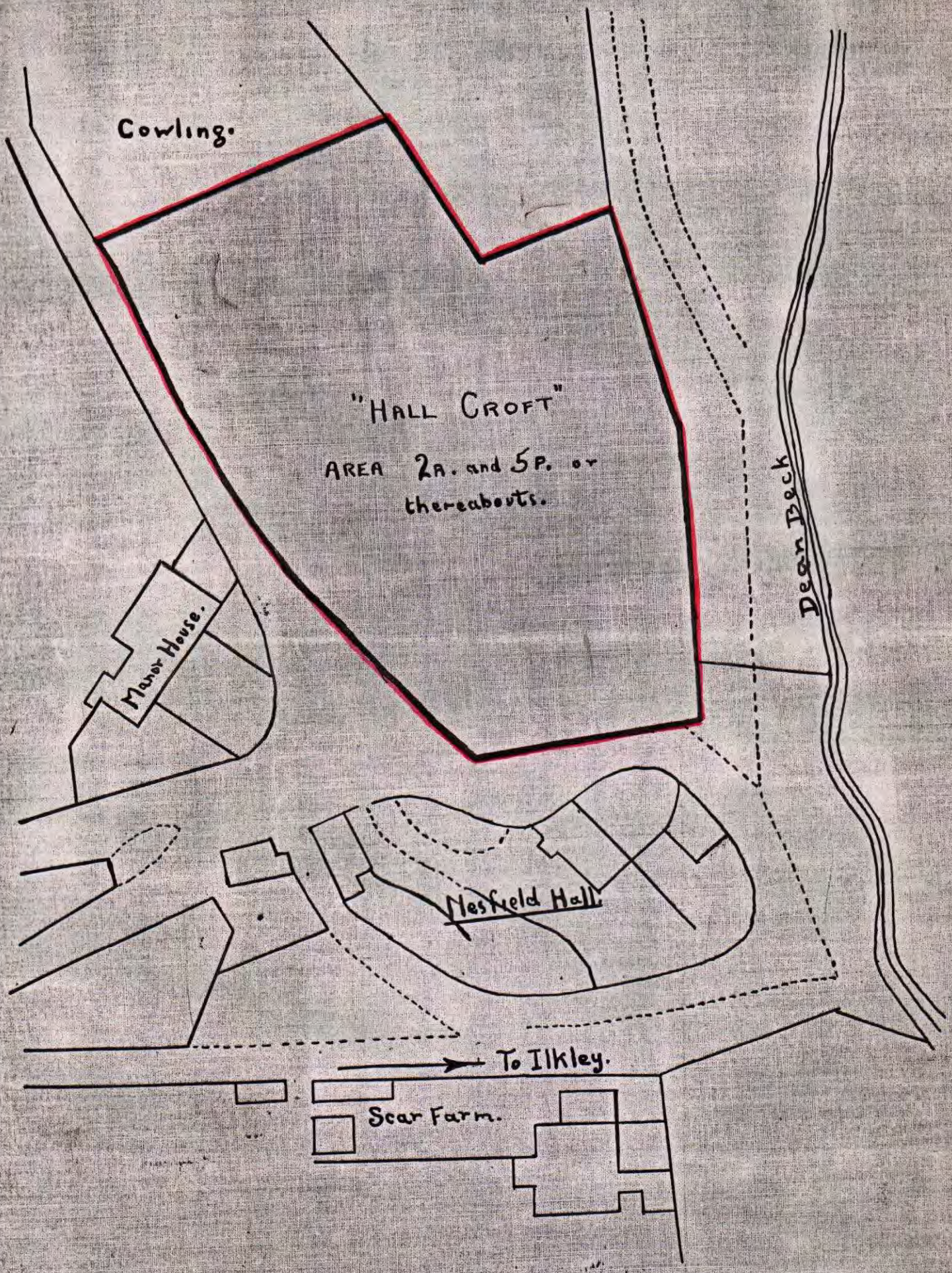
The applicant will also in due course be told of any objection to the registration. (As to objections, see the official explanatory booklet "Common Land", available free from local authorities.)

10. False statements: groundless applications

The making of a false statement to procure registration may render the maker liable to prosecution. Moreover, a registration which is objected to will, unless the registration authority permits it to be cancelled, or the objection is withdrawn, be referred to a Commons Commissioner. If, at the hearing before the Commissioner, the registration cannot be substantiated, it will be removed from the register, and the applicant may be ordered to pay the costs of the objector.

51-8727 2/68 I.Bros. Ltd. 5032

PLAN REFERRED:



SCALE:- 1" = 75 Ft., (Appox).

36
135

This is the exhibit marked "B" referred to in the statutory declaration of William Crabtree made this 24th day of December 1969

Before me, [redacted]
Justice of the Peace.

LANGBAR MOOR
MIDDLETON MOOR
Langbar
Beamsley Beacon or Howber Hill
White Hill
Green Gate Spring
Old Quarry
Harry Crow Well
Riding Stone Well
The Old Pike
Black Hill
Trundle Stones
Beacon Hill House
Hurdy House
Farrand House
Currer Hall
Beach House Farm
Meth. Chap.
Hardisty
Spring Well House
Blackhill House
Badgers Gate
Wards End
Long Ridge
Middle Ridge
Delves Ridge
Delves Tarn
Round Hill
Lurgy Delf
Ellishaw Slack
Ellishaw Hill
Ling Park Plantation
Upper Austby
Ling Park
Leyfield
Black Foss Waterfall
Low Lathe
Oliver
Low Moor
Old Quarries
High Lathe
Nessfield Court
Nesfield
Manor House
Christ Church
Nesfield Hall
Castleberg Ancient Earthwork
High Austby
Austby Wood
Lister's Dub
MIDD
10 Metres
LONG 1°50′ W 11

This is the exhibit marked "A" referred to in the statutory declaration of William Crabtree made this 24th day of December 1969

Before me, [redacted]
Justice of the Peace

This portion to [illegible] sent to the re[illegible]

ENCLOSURE 394

C.R. Form 26 (OBJECTION FORM)

COMMONS REGISTRATION ACT 1965

For official use only

Official stamp of registration authority indicating date of receipt.

-4 AUG 1970

Objection No. 99

OBJECTION to registration(s) under the Commons Registration Act 1965.

To the (name of registration authority) West Riding County Council.

I hereby object to the under-noted registration(s) on the grounds stated.

1. Name and address of person making the objection. Stephen Collins Rawson, The Manor House, Nesfield, Ilkley.
2. Name and address of solicitor if any. (Fill this space only if a solicitor has been instructed for the purposes of the objection. If it is filled, all correspondence and notices will be sent to the solicitor.) J. Eaton & Co., Provincial House, Market Street, Bradford. BD1 1NJ
3. Reference (if any) of the objector or his solicitor. JCJE
4. Register in which the registration(s) objected to appear(s). *Common Land/~~Town or Village Greens~~
5. Register unit number. CL 502
6. Section of register in which registration appears. *Land/~~Rights/Ownership~~ Land
7. Registration entry number(s). 1
8. Grounds of objection. (If a plan is sent, the fact should be mentioned here. The plan must be signed by the person who signs the form.)

The land coloured red on the attached plan was not Common Land at the date of registration.

Dated 30th July, 1970.

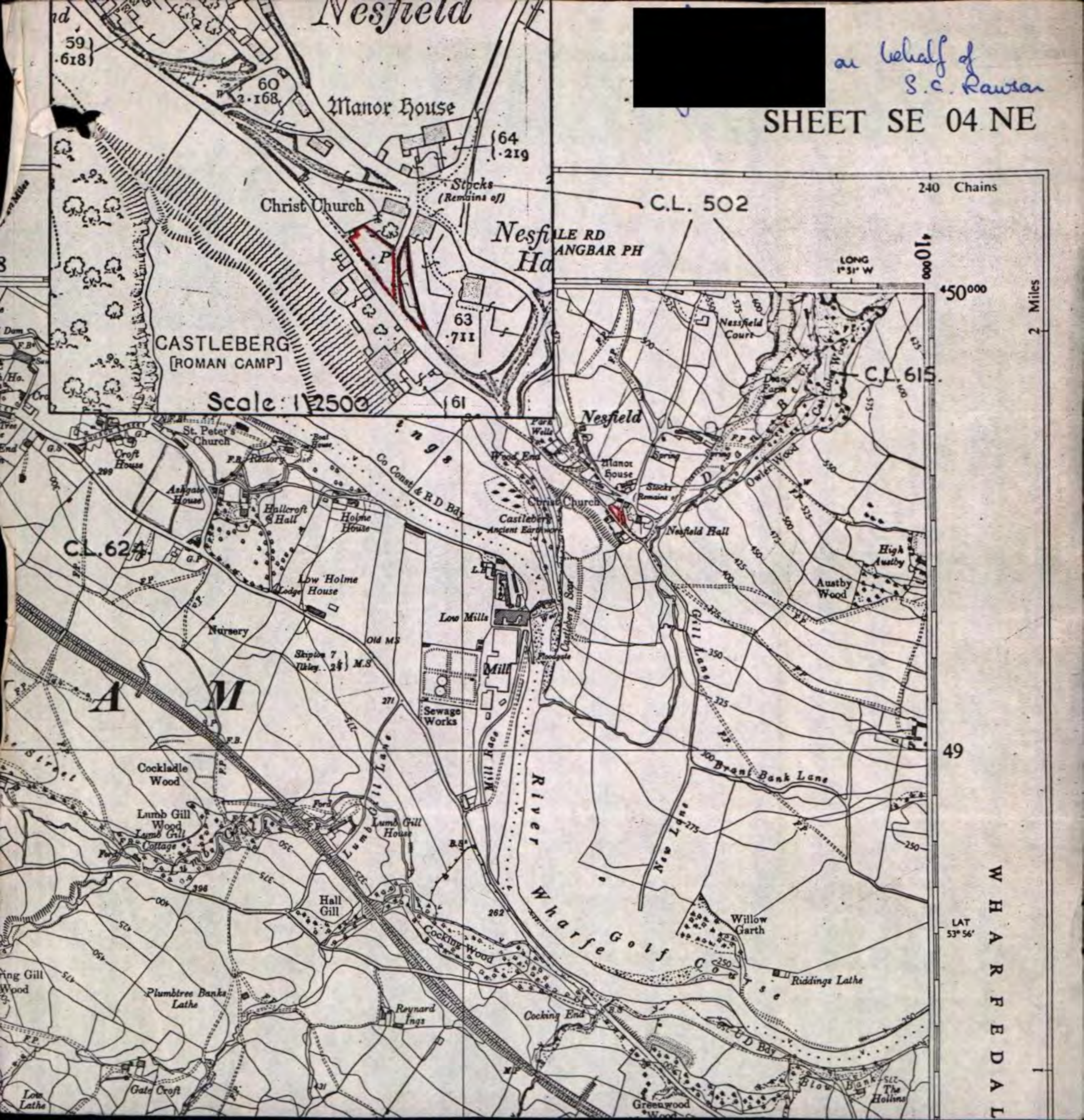
Signatur[redacted]

(In the case of an objection by a body corporate or unincorporate, or charity trustees, this form must be signed by the secretary or some other duly authorised officer.)

*Strike out whichever does not apply.

[redacted] on behalf of S.C. Rawson

SHEET SE 04 NE



1532

COMMONS REGISTRATION ACT 1965

41

Reference No. 268/D/311-312

Notice of Final Disposal of Disputed Registration

IN THE MATTER OF Nesfield Dean and the Village Green, Nesfield with Langbar, Harrogate B

To the North Yorkshire County Council

I HEREBY GIVE YOU NOTICE in pursuance of Section 6(2) of the Commons Registration Act 1965 that on the 21 day of January 1982 the registration at Entry No. 1 in the Land Section and Entry No. 1 / in the Rights Section of Register Unit No. CL 502

in the Register of Common Land maintained by you became final modified by excluding from the land comprised in the Register Unit the areas coloured red on the plan attached to Objection No. 99, other than any part of these areas which forms the verge (to a width not exceeding 2 metres) of the highway on their south-western boundary.

Given under my hand and seal this 6th day of July, 1982.

COMMONS COMMISSIONER

[redacted]

Commons Commissioner

COMMONS REGISTRATION ACT 1965

Reference No. 268/D/311-312

NOTICE OF FINAL DISPOSAL
OF DISPUTED REGISTRATION

Dated 6 JULY 1982.

A. J. CLEAVER
~~B. FLETCHER~~

Clerk of the Commons Commissioners

BD'S

COMMONS REGISTRATION ACT 1965 Reference No. 268/D/311-312

In the Matter of Nesfield Dean and the Village Green, Nesfield with Langbar, Harrogate B

DECISION

This dispute relates to the registrations at Entry No. 1 in the Land Section and Entry No. 1 in the Rights Section of Register Unit No. CL 502 in the Register of Common Land maintained by the North Yorkshire County Council and is occasioned by Objection No. 99 made by Stephen C Rawson and noted in the Register on 15 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Harrogate on 11 March 1981. The hearing was attended by Mr W Hannar, Clerk to Mid Wharfedale Parish Council and by Mr N S Digby, of Counsel, appearing on behalf of Mrs S C Rawson.

The registration in the Land Section was made on the application of Nesfield with Langbar Parish Council, which I understand is grouped under the constituent Mid Wharfedale Parish Council. Entry No. 1 in the Rights Section was made on the application of William Crabtree and is a right of turbary and of grazing over part of the land comprised in this Register Unit ("the Unit land").

The Unit land consists of a number of separated pieces of land and the objection relates to two of these pieces which, it is said, were not common land at the date of registration. The two pieces are shown on the plan attached to the Objection and I will refer to them as the disputed pieces. The Objection is on the ground that the disputed pieces were not common land.

I was told that Mr Crabtree has died: his estate or successor was not present or represented at the hearing and it appeared that the right he registered was not claimed over the disputed pieces. In the absence of evidence to support the right, I find that it did not exist so far as the disputed pieces are concerned. In the absence of a valid registered right the disputed pieces can only qualify as common land if they are waste land of a manor.

Mr Hannan gave evidence and produced letters from two residents of long standing in the Parish. The evidence showed that during a period of some 40 years one of the pieces has been used by local residents as a drying ground, that children have played on them, that there has been some maintenance by residents, and that there has been no objection by the owner. This evidence was not disputed by Mr Digby.

Mr Digby produced title deeds which, as he submitted, showed ownership of the two pieces by Mr and Mrs Rawson. For the purposes of this Decision, I do not have to make a finding of ownership, but it appears from a Deed Poll dated 2 July 1691 that land which appeared to include the disputed pieces and was a portion of the waste of the Manor of Nesfield with Langbar was conveyed by the then Lord of the Manor to the Vicar and Churchwardens of the Parish of Ilkley and was subsequently sold to Mr and Mrs Rawson in 1969.

The only evidence before me that the disputed pieces were waste land of a manor is the Deed Poll, which itself shows that they were then severed from the lordship of the manor and consequently ceased to be waste land "of a manor" (See Re Box Hill Common 1980 1Ch.109). Accordingly they do not qualify for registration as common land on this basis.

Mr Digby said that, so far as the disputed pieces include the roadway verge along the south western boundary to a width of 2 metres, that extent of verge was not objected to.

In the result I confirm the registration in the Land Section modified by excluding from the land the disputed pieces other than such part of those pieces as forms the verge (up to a width of 2 metres) of the highway on the S.W Boundary of the disputed pieces. I confirm the registration in the Rights Section, (which will, as the result of the exclusion, not apply to the disputed pieces).

Mr Digby asked for costs. I have found in his client's favour, but the registration was made by the Parish Council as long ago as 1969, since when it does not appear that there had been any approach by the parties concerned in the dispute (among whom was Mr Crabtree) to negotiate on the dispute, and I shall make no order as to costs.

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 14 April 1981

[redacted]

Commons Commissioner