

NORTH YORKSHIRE COUNCIL

COMMONS ACT 2006 — SCHEDULE 2, PARAGRAPH 4

Notice of an application to register waste land of the manor as common land

Application Reference Number: CA13 039

Land at Egton Village, Egton (CL 216)(part of)

Application has been made to the North Yorkshire 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/environment-and-neighbourhoods/land-and-waterways/common-land-and-village-greens/common-land-applications-and-decision-notice>

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 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 039
- 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 Council, County Hall, Northallerton, North Yorkshire DL7 8AD or e-mail to commons.registration@northyorks.gov.uk on or before 6 October 2026

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: 12 August 2026

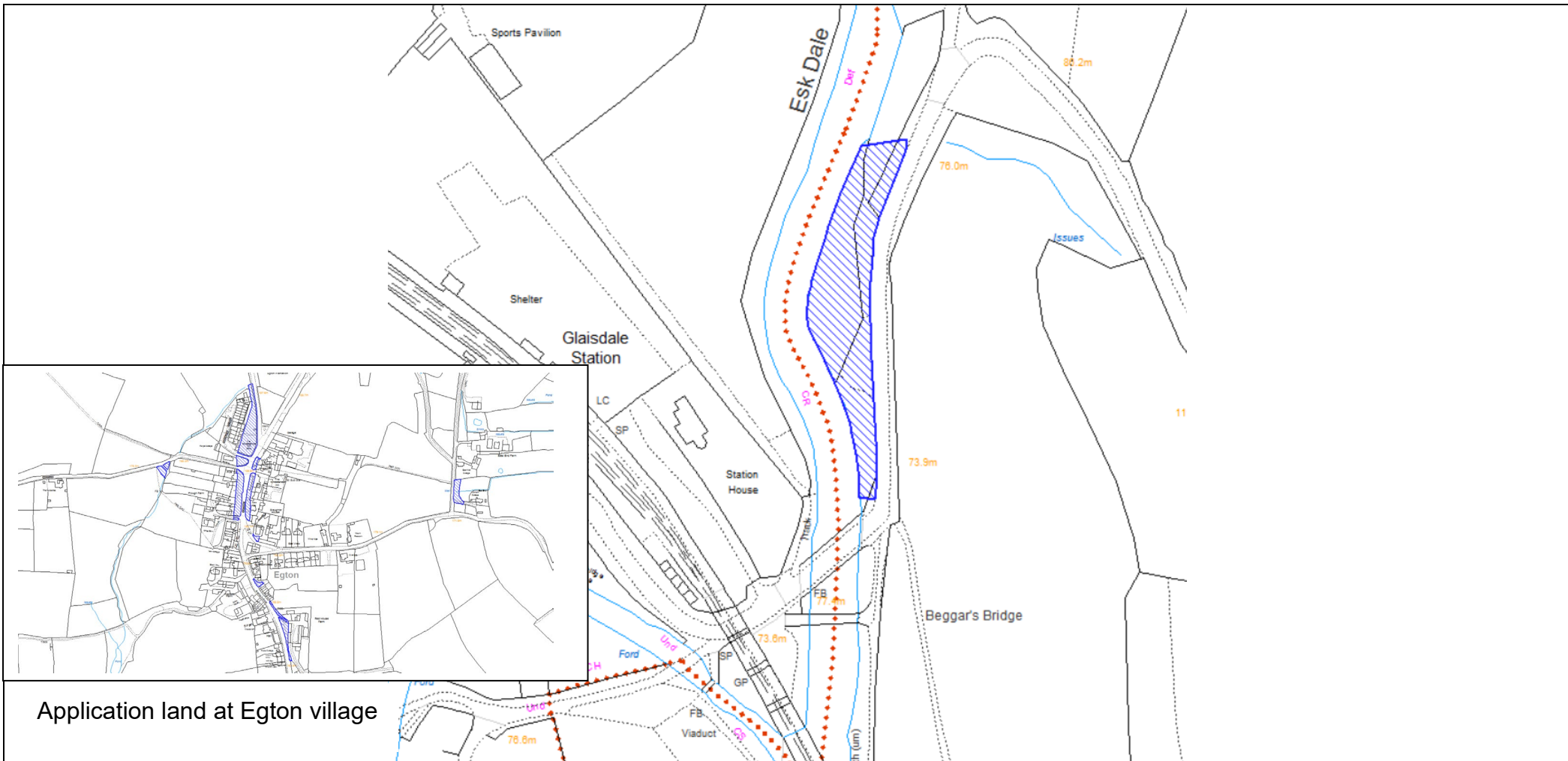
Karl Battersby

Corporate Director – Environment
North Yorkshire Council

Schedule

Description of the land seeking to be registered as common land

Land at Egton village, as edged and hatched blue on the notice plan.

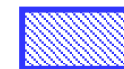


Application land at Egton village

COMMONS ACT 2006

**CA13 APPLICATION (Ref. No. CA13 039) SEEKING TO
REGISTER LAND AT EGTON VILLAGE, AS COMMON
LAND (CL 216)**

NOTICE PLAN



Application
land



Commons Act 2006: Schedule 2**Application to correct non-registration or mistaken registration****This section is for office use only**

Official stamp

Application number

COMMONS ACT 2006

NORTH YORKSHIRE COUNCIL

COMMONS REGISTRATION AUTHORITY

DATE: 22 JUL 2026

CA13 039

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 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.

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.

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

Telephone number:

Fax number:

E-mail address:

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:

CL 216 (part of)

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:

CL216 was provisionally registered as common land on 16 May 1968. Following an objection, the applicant withdrew the application. Part of CL216 is eligible for registration under para.4(5) of Schedule 2 to the Commons Act 2006.

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.

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.

6. Description of land

Name by which the land is usually known:

Not known by any name

Location:

Various parcels of land in the village of Egton, a parcel of land at East End, a parcel of land on Egton Lane and a parcel of land north of Beggar's Bridge.

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

**7. Declarations of consent**

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. Site Visit Photographs**

2. Documents relating to the Commons Registration Act 1965 on which we rely are not included pursuant to r.16(3):

- a) Register of Common Land (CL216)
- b) Register Maps (North Yorkshire NZ80SW, NZ80NW, NE70NE)
- c) Application No.1365
- d) Objection No. 0280 (0279)

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**Note 10**

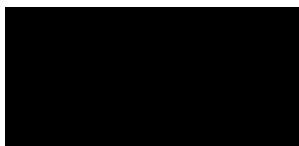
The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or an unincorporated association.

10. Signature

Date:

16 July 2026

Signatures:

**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.

¹ Email from CRA, 17 February 2026 refers.

Figure 2: Extract from papers informing applicant of the objection (Form 28).

NORTH RIDING COUNTY COUNCIL, COUNTY HALL, NORTHALLERTON

COMMONS REGISTRATION ACT, 1965

NOTICE OF OBJECTION

the person ~~(if any)~~ on whose application the under-mentioned registration was
~~application has been registered over~~
on whose application has been noted on the

PLEASE TAKE NOTICE that the registration entry no. ^{s 1 to 4}..... in the (Land) (Ownership)
section of register unit number²¹⁶ in the Register of (Common Land) (Town
or Village ~~Greens~~) has been objected to by the person(s) whose name(s) and address(es)
is set out in the Annex below, that the objection~~(s)~~ (has) ~~(have)~~ been noted in the
register, and that the grounds of objection are as stated in the Annex.

Source: CRA.

Following the objection, the provisional registration of all the parcels of land was cancelled, however, papers from the applicant relating to the objection have not survived.² This is not unusual. Either through loss, misfiling or weeding, papers relating to provisional or final registrations do not always survive. However, the sequence of events can be traced. The CRA was permitted to cancel the provisional registration only after necessary consents had been obtained. The CRA was not permitted to cancel an application on its own volition. See s.5(5) of the Commons Registration Act 1965 (which provides that a CRA may cancel or modify a provisional registration at the request of the applicant, or where the land was registered on the initiative of the authority under s.4(2)(a)), and s.5(3), which enables the CRA to lodge an objection to a provisional registration where no owner has been registered. This latter provision is the sole facility afforded to a CRA to enable it to address (in certain circumstances) a provisional registration which it believes to be inappropriate.

The application land was registered provisionally as common land, an objection was made and the applicant therefore sought or agreed to its cancellation. The application land meets the criteria of para.4(5) and is eligible for registration.

² The society requested sight of and was provided with, all papers relating to CL216.

General description of the land

All the application land (the nine parcels of land), meets the descriptive character of waste land as defined in the case of *Attorney General v Hanmer*, i.e., the application land is open, uncultivated and unoccupied.³

Open

The application land is open to a highway. None of the application land is physically enclosed by a physical structure, e.g., fence, wall or hedge.

Uncultivated

There is no engagement with arable farming or activity with the soil which causes the soil to be broken for productive purposes on any part of the application land. Parts of application land are mown, but mowing of grass does not render the land cultivated. 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 subs.(1) of that section: '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'.⁴

Unoccupied

There is no profitable use of the application land to the exclusion of others, such as intensive grazing, quarrying or paintball events and therefore the land can be described as unoccupied.

³ *Attorney General v. Hanmer* (1858) 2 LJ Ch 837.

⁴ A copy of this judgment is provided with this application.

Description of numbered parcels of application land

Using the registration map, we identify each numbered parcel of land. The following descriptions are to be used in conjunction with the society's photographs (see Appendix 1) and the society's application plan.

Parcel No.1

The land abuts the highway (see Figure 3).

Figure 3: Parcel No.1. Extract from registration map. Red arrow points to Parcel No.1 which abuts the highway.



Parcel No.1 is mown and is bounded in part by low wooden and linked bollards. There is an ungated path leading to properties. The low wooden and linked bollards are presumably in place to prevent car parking and do not render the land enclosed.⁵ An access road called Browns Road Cottages dissects the land. To the north, the application land continues as a narrow band upon which additional low wooden and linked bollards are situated. The land meets the criteria of open, uncultivated and unoccupied.

⁵ See copy of *Hambledon Rural District Council v Hinde* as tending to show that low railings are not enclosure; a copy is included with this application. See also *Gadsden and Cousins on Commons and Greens*, 3rd ed., (Sweet & Maxwell, 2020), para.10–49 which is also included with this application.

Parcel No.2

The land abuts the highway (see Figure 4).

Figure 4: Parcel No 2. Extract from registration map. Red arrow points to Parcel No.2 which abuts the highway.



The land situated in front of the cottages and which abuts the highway is eligible for registration. The land situated in front of the *Witching Post Inn* is not eligible.

Parcel No.3

This parcel comprises two parcels of land on either side of the tarred highway. Both parcels of land are eligible for registration (see Figure 5).

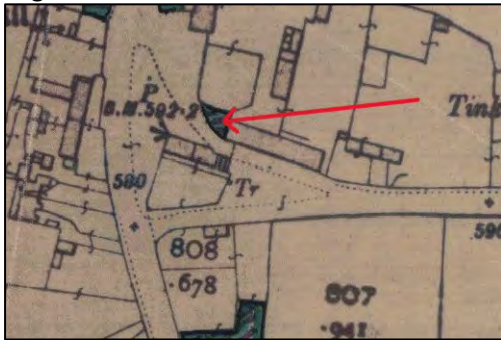
Figure 5: Parcel No. 3. Extract from registration map showing land either side of the highway.



Parcel No.4

The small triangle of land on the corner is eligible for registration (see Figure 6).

Figure 6: Parcel No. 4. Extract from registration map. Red arrow points Parcel No. 4.

**Parcel No.5**

A small part of the provisionally registered land comprises grass and is eligible for registration (see Figure 7).

Figure 7: Parcel No. 5. Extract from registration map. Red arrow points to approximate location of land that is eligible for registration.



Parcel No.6

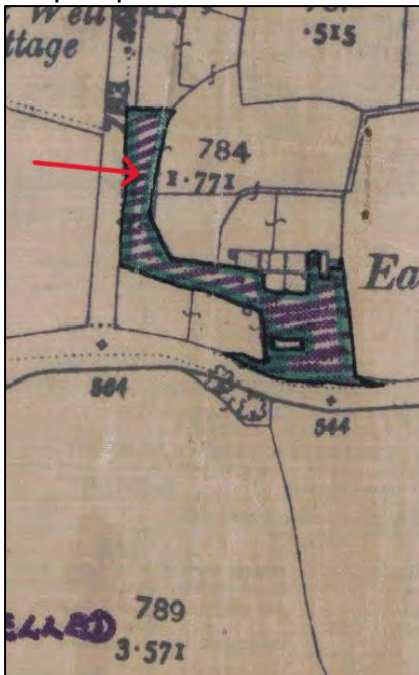
This parcel comprises two parcels, both of which are eligible for registration (see Figure 8).

Figure 8: Parcel No.6. Extract from registration map showing two parcels of land.

**Parcel No.7**

This parcel is situated to the east of the village of Egton, at East End. That part which is eligible for registration is rectangular in shape and abuts the highway. The remainder of the land is not eligible (see Figure 9).

Figure 9: Parcel No.7 Extract from registration map. Red arrow points to rectangular-shaped parcel of land.



Parcel No. 8

This parcel is situated to the west of the village of Egton, on Egton Lane, and comprises two parts (see Figure 10).

Figure 10: Parcel No.8. Extract from registration map. Red arrow points to land.

**Parcel No. 9**

Two parcels of land were provisionally registered, one situated north of Beggar's Bridge and the other, south of Beggar's Bridge (see Figure 11).

Figure 11: Parcel No.9. Extract from registration map showing two parcels of land.



The parcel of land north of Beggar's Bridge is eligible for registration; the parcel south of Beggar's Bridge is not eligible.

Historical Evidence

The application land was situated in the township of Egton, in the parish of Lyth (also spelt Lythe). In practice the township of Egton was 'completely independent of every other part of that parish, except that it pays a small annual sum towards the repairs of Lyth Church'.⁶

The application land was situated in the manor of Egton which in 1869 was sold by the Elwes family to Messrs. Foster of Queensbury.⁷ A map of the manor of Egton made in 1636 confirms that the application land was situated in the manor. The map is orientated with south at the top and north at the bottom which was not unusual for seventeenth-century maps. It shows moors to the north and south.⁸ In many places throughout England a moor is synonymous with waste land (see Figure 15 below). In Cornwall also, the waste is known as a moor or down:

The pasturage of the moors, downs, and *crofts*, as the waste lands in Cornwall are called...⁹

Over time parcels of waste were taken in from the moors in the manor of Egton to form enclosures. The map of 1636 records that enclosures were given names with suffixes e.g., 'close' and 'field'. The taking in of waste before 1636 not only led to new enclosures but it led to the distinctive pattern of remnants of waste surviving at the side of routes. Without further research it is not possible to determine when the parcels of land were taken in from the surrounding moors, but it is reasonable to suggest that parcels named 'intake' may have been recent or new enclosures.

The map of 1636 demonstrates that at the north end of the village of Egton, there were recent intakes, one of which was an ovoid shape. Adjacent to the right of this ovoid-shaped intake was another between which a remnant of waste was left. The two intakes left large tracts of waste either side which eventually formed tracks, (see Figures 12,13 and 14. NOTE: the map has been rotated to show north at the top and therefore the script is upside down).

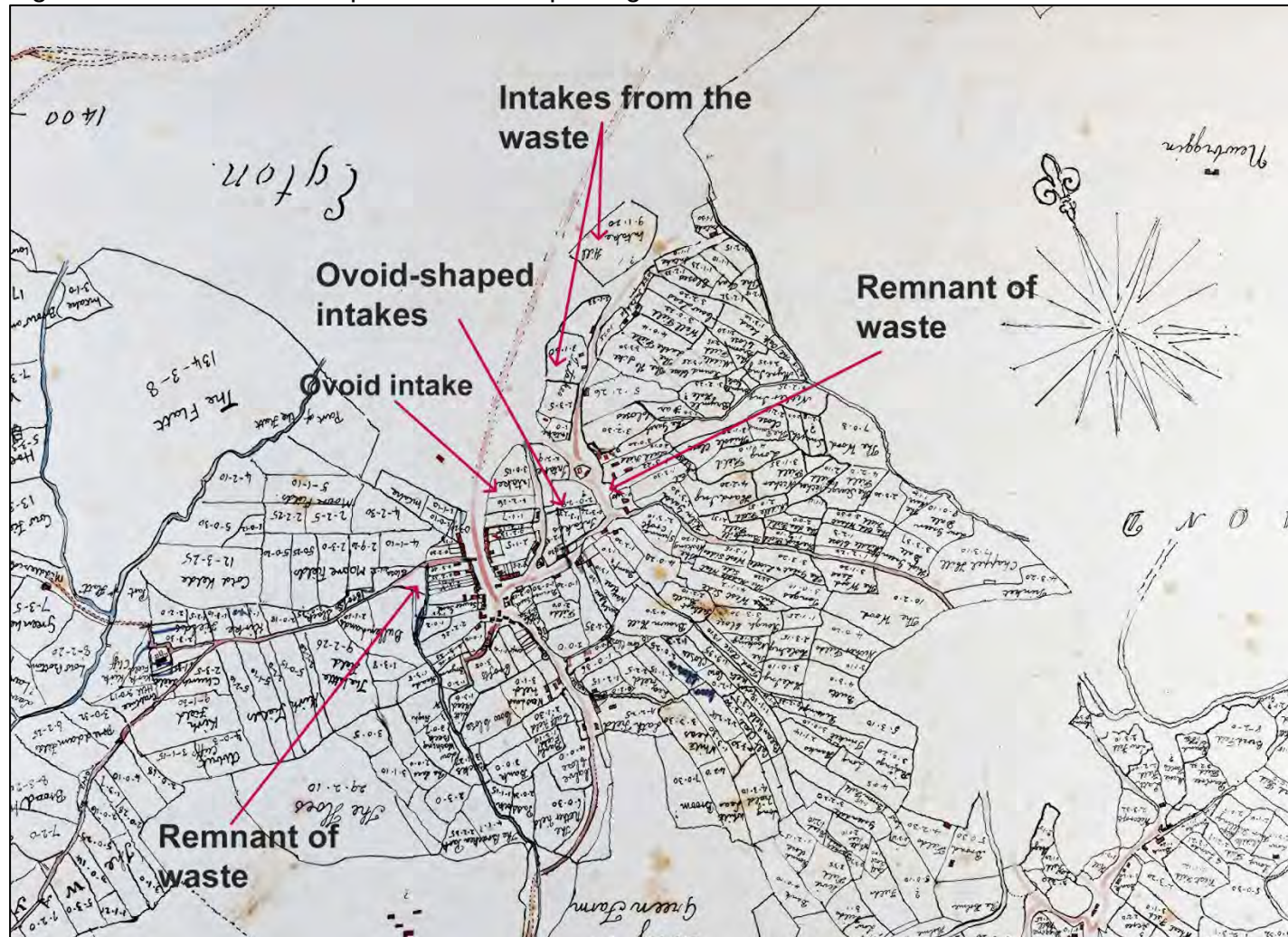
⁶ The National Archives (TNA), IR18/11945. The tithe file records that the township had its own church, conducted marriages and burials, raised its own church-rate and had its own churchwardens.

⁷ 'Parishes: Egton', in *A History of the County of York North Riding: Volume 2*, ed. William Page (London, 1923), *British History Online* <https://www.british-history.ac.uk/vch/yorks/north/vol2/pp343-348> [accessed 7 May 2026].

⁸ North Yorkshire Archives (NYA), ZW[M] 1-5. This map is not recorded on the Manorial Documents Register because it is a copy.

⁹ G. W. Worgan, *General View of the Agriculture of the County of Cornwall*, (London,1811), p.104.

Figure 12: Extract from map of the Lordship of Egton, 1636. The 'Remnants of waste' are Parcel Nos. 7 and 8 (see above).



Source: NRA, ZW[M] 1-5.

Figure 13: Close up of part of Figure 12 to show intakes.



Source: NRA, ZW[M] 1-5.

Figure 14: Extract from map of the Lordship of Egton, 1636. Red arrow points to application land (parcel No. 9). Blue arrow points to 'Limber Intakes'. Note Beggar's Bridge is called 'Ferry Brigg'.



Source: NRA, ZW[M] 1-5.

The Manorial Documents Register records only one manorial document for the manor of Egton. The document comprises notes relating to the perambulation of the manor of Egton which took place on 3 September 1799 in which Robert Cary Elwes participated.¹⁰ Several places recorded during the perambulation can be identified on a modern Ordnance Survey (OS) map and other maps, but in recognition that the map of 1636 shows that the application land was situated in the manor of Egton, the placenames have not been mapped on a modern map. A transcription of the perambulation is provided at Appendix 2.

Inclosure

The inclosure of commons (waste of a manor) in the township of Egton in the parish of Lythe was proposed by the Inclosure Commission in 1848 (see Figure 15).

Figure 15: Extract from Third Report of the Commissioners.

Also for the inclosure of Egton North and South Moors, containing 7312 A. 1 R. 4 P., waste of a manor. In this case no allotment has been made for the labouring poor, as the land is quite unfit for the purpose, and they are all provided amply with gardens attached to their cottages. We consider this proposed inclosure expedient on the grounds that a very large tract of waste land of little value will, by being converted into pasture, tillage, and plantations, be much more beneficially enjoyed by those interested in it, and there will be caused vast employment of labour on a tract of land where scarcely any is now called for.

Source: 1847- 48 [907] Inclosure Commission. Third report of the commissioners. 1848

In 1854, the commons (North and South Moors) in the Township of Egton in the parish of Lythe were inclosed but save for a very small allotment, the inclosure did not affect the application land.¹¹ The inclosure award, which includes three plans, sets out the allotments of land.¹² Two plans (Plan A Part 1 and Plan A Part 2) show the allotments of land. Plan B is a Plan of the Township of Egton... and is dated 1852. Plan B shows the township before inclosure and records 'Lands in respect of which claims allowed and allotments made'. Plan B is for all intents and purposes a pre-inclosure plan of the township (see Figures 16, 17 and 18).

¹⁰ NRA: ZDS.IV.14.6.

¹¹ TNA, MR1//807. The spelling of inclosure is used to denote the process of extinguishing common rights. The word enclosure is used in relation to its physical meaning, i.e., to enclose something on all sides.

¹² The Inclosure Act 1845 authorised inclosures by a provisional order. The inclosure at Egton was authorised under 11 & 12 Vict. c.27: An Act to authorize the Inclosure of certain Lands, in pursuance of the Third and also of a Special Report of the Inclosure Commissioners for England and Wales. (Inclosures (Provisional Orders) Act 1848); an estimated 7,313 acres was inclosed.

Figure 16: Extract from Plan B showing centre of village of Egton and land just outside.



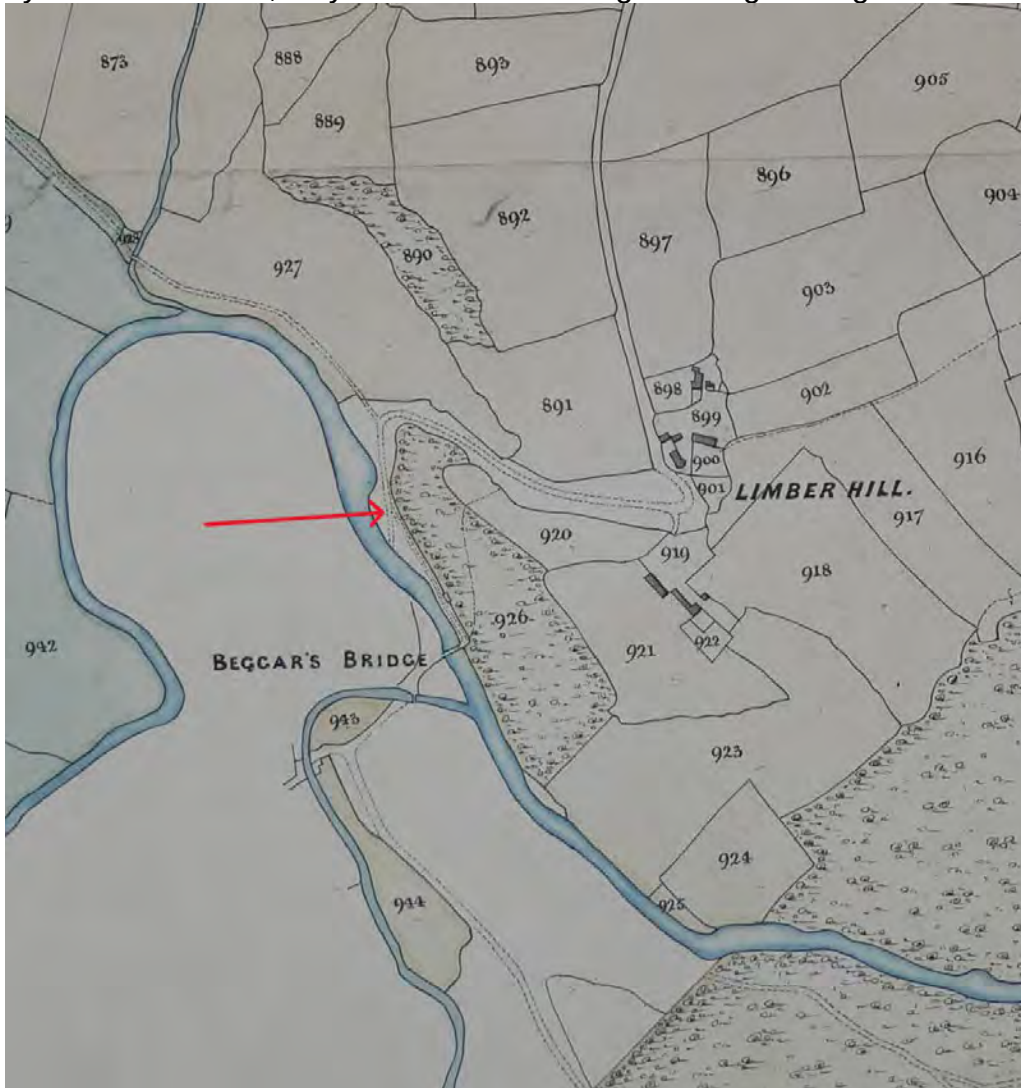
Source: TNA, MR1/807.

Figure 17: Extract from Plan B showing land at Egton. Approximate sites of application land marked by red arrows.



Source: TNA, MR1/807.

Figure 18: Extract from Plan B showing approximate site of application land marked by red arrow. Note, only the land north of Egton Bridge is eligible.



Source: TNA, MR1/807.

Inclosure-parcel Nos.1-9

The following extracts from the inclosure award of 1854 show that the application land was waste land of the manor before 1854 and that it was not inclosed.

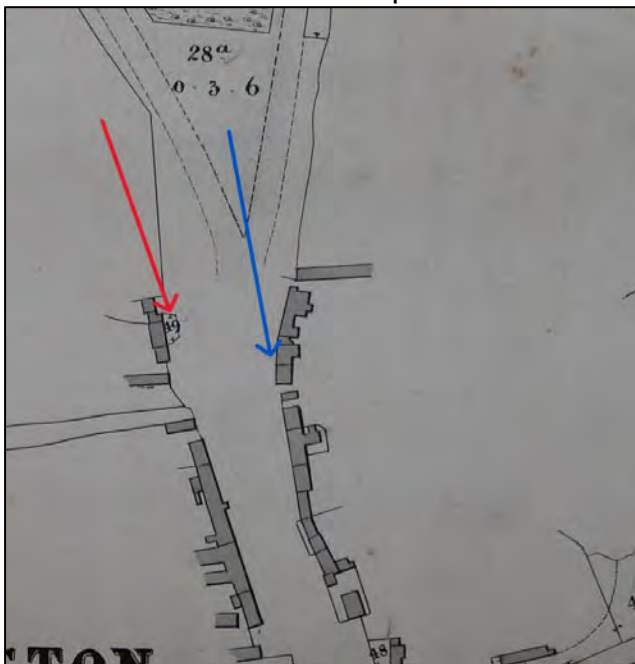
Parcel Nos.1 and 2

The land highlighted by the red arrow was not inclosed except for a very small allotment no. 49 (1 perch) made to Robert Cary Elwes. Fences were to be made against Egton Street. However, subsequent mapping does not show the 'enclosed' allotment no.49, and it seems that the fencing was never erected. Parcel No.2 shown by the blue arrow was not inclosed (see Figures 19 and 20).

Figure 19: Register map showing Parcel Nos.1 (red arrow) and 2 (blue arrow). Allotment No. 49 does not appear to have been physically enclosed.



Figure 20: Extract from Plan A Part 1. Red arrow points to allotment No.49 taken in from the waste. Blue arrow points to unenclosed waste.

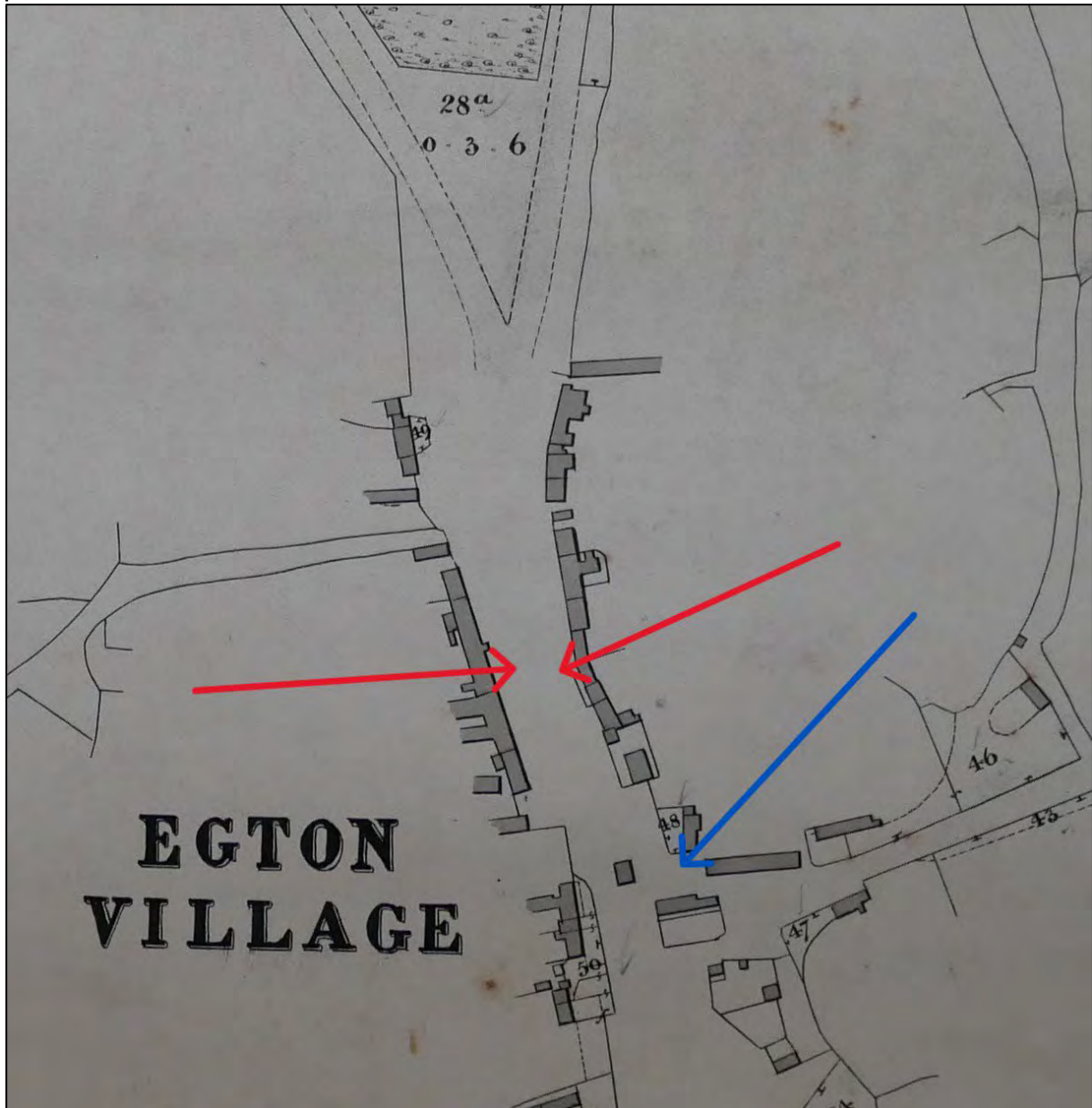


Source: TNA, MR1/807.

Parcel Nos. 3 and 4

None of the land was inclosed (see Figure 21).

Figure 21: Extract from Plan A Part 1. Red arrows point to Parcel No.3. Blue arrow points to Parcel No.4.

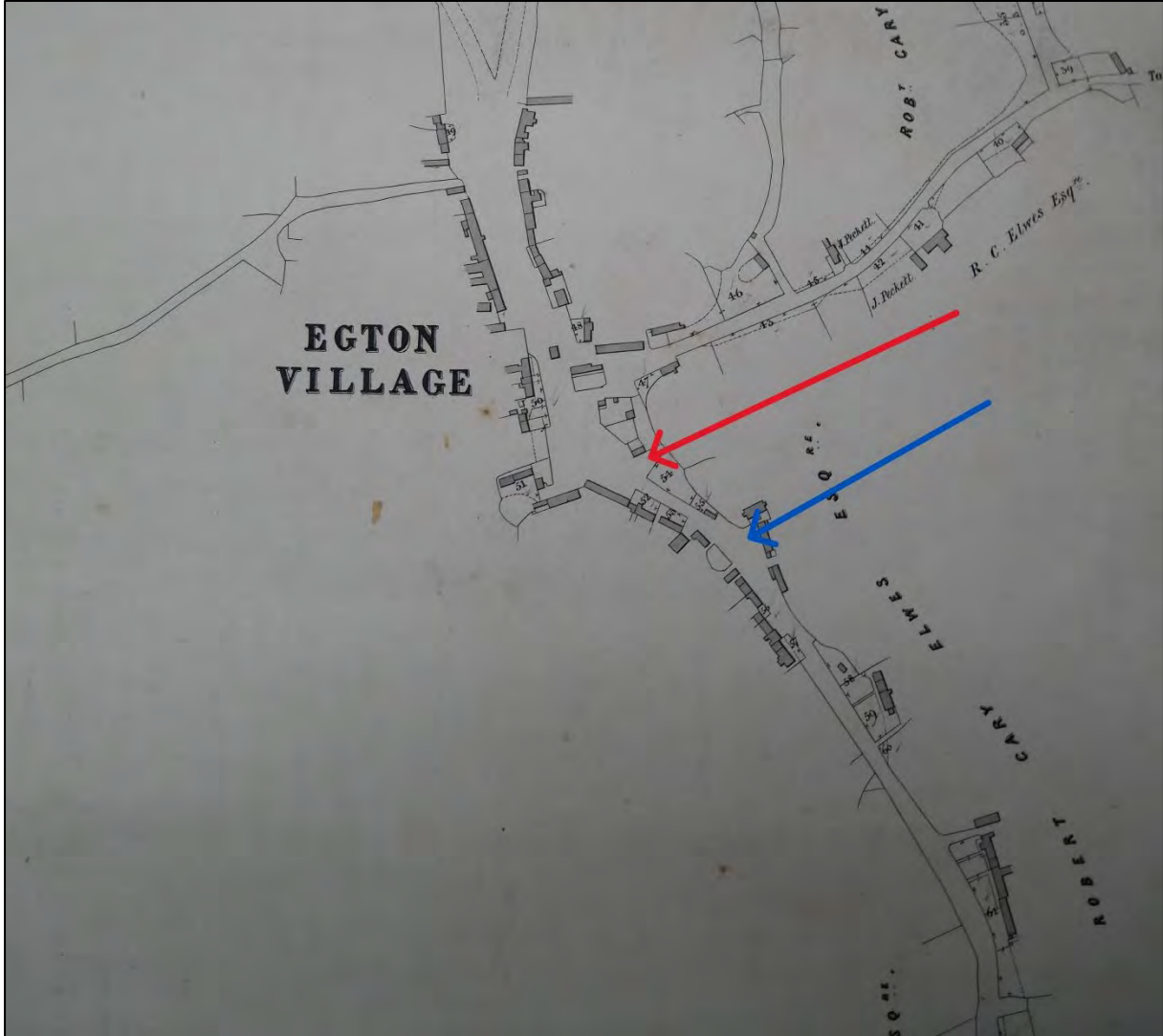


Source: TNA, MR1/807.

Parcel Nos. 5 and 6

The land was not inclosed but only part of Parcel No. 5 is eligible for registration (see Figure 22).

Figure 22: Extract from Plan A Part 1. Red arrows points to Parcel No.5 and blue arrow points to Parcel No. 6.

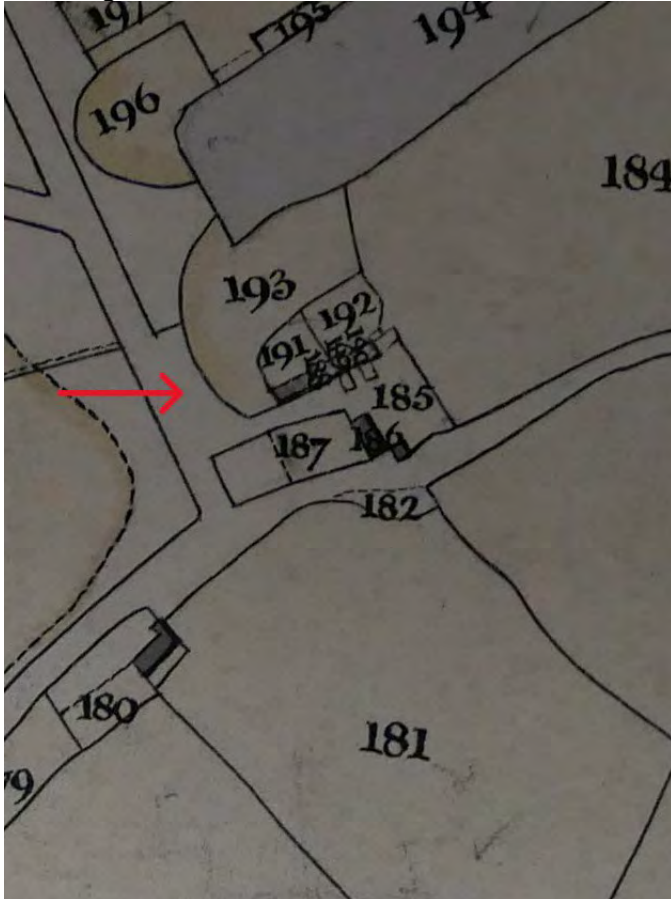


Source: TNA, MR1/807.

Parcel No. 7

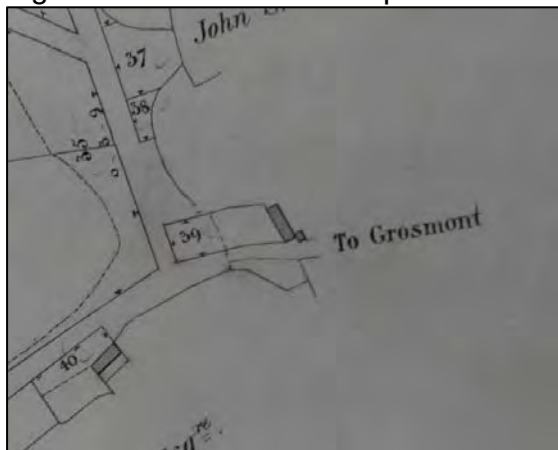
In 1854, this parcel was surrounded by ancient enclosures, to which were added allotments. The society believes that the land which is rectangular in shape and which abuts the highway on the west and which was not inclosed is eligible for registration (see Figures 23 and 24).

Figure 23: Extract from Plan B. Red arrow points to the rectangular-shaped land abutting old enclosure No.193.



Source: TNA, MR1/807.

Figure 24: Extract from Map A Part 1 showing allotments.



Source: TNA, MR1/807.

Parcel No. 8

This parcel of land is situated to the west of the village of Egton and was not inclosed in 1854 (see Figures 25 and 26).

Figure 25: Extract from Plan B. Red arrow points to unenclosed land before the inclosure of 1854.



Source: TNA, MR1/807.

Figure 26: Extract from Plan A Part 1 showing land after the inclosure of 1854.

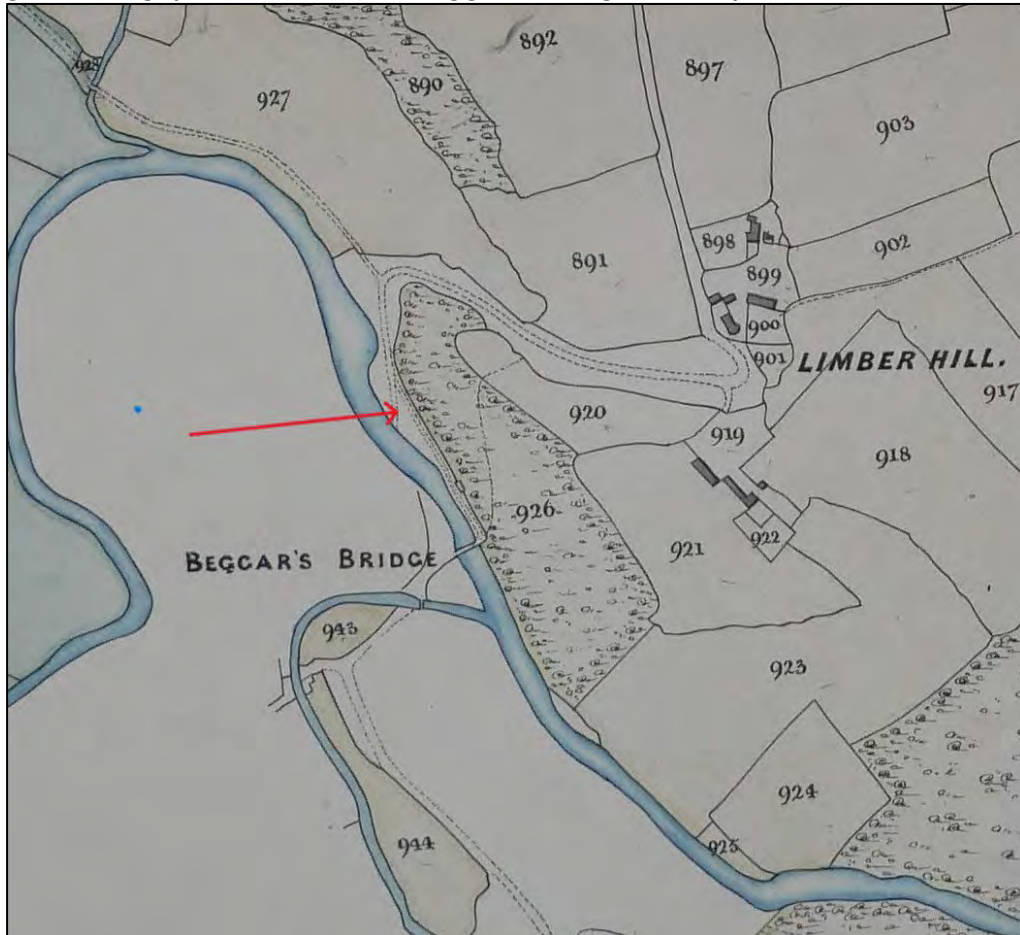


Source: TNA, MR1/807.

Parcel No. 9

The land south of Beggar's Bridge was provisionally registered but is part of an old enclosure and is not eligible for registration (see Figure 27).

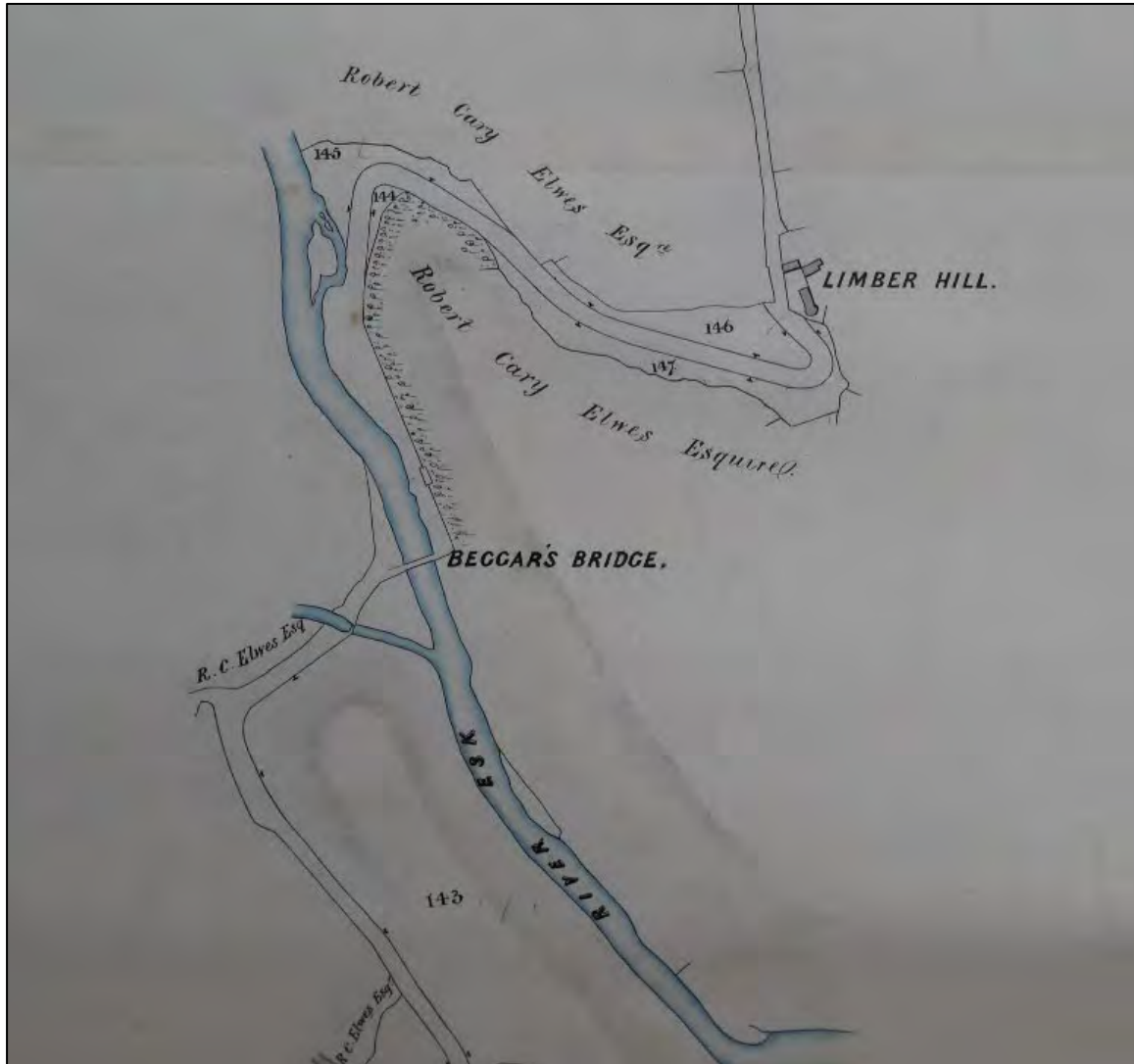
Figure 27: Extract from Plan B. Red Arrow points to land that is eligible (north of Beggar's Bridge). Land south of Beggar's Bridge forms part of an old enclosure (No.926).



Source: TNA, MR1/807.

Following the inclosure of 1854 the land north of Beggar's Bridge was not inclosed (see Figure 28).

Figure 28: Extract from Plan A Part 1 showing neighbouring allotments 143,144,145,146 and 147.



Source: TNA, MR1/807.

Summary

The application land is manorial in origin and comprises remnants of waste. It is open, uncultivated and unoccupied and meets the criteria for registration as common land.

Appendix 1 Photographs

Parcel No.1

Photograph No.1. Looking south.



Photograph No.2. Looking north



Photograph No.3. Looking north.



Parcel No. 2

Photograph No.1. Looking north.



Parcel No. 3

Photograph No.1. Looking north.



Photograph No.2. Looking north. Parcel No. 3 on left side of the photograph. Land in foreground is not application land,



Parcel No.4

Photograph No.1. Looking north.



Parcel No.5

Photograph No.1. Looking east. Part of application land in view in right hand corner.

**Parcel No.6**

Photograph No.1. Looking north.



Photograph No.2. Looking south.



Parcel No.7

Photograph No.1. South part of application land in foreground.



Photograph No.2. (From Google Street View). Looking north, application land on right.



Source: Imagery©2026 Maxar Technologies, Map data © 2026 Google.

Parcel No.8

Photograph No.1. Application land on left.



Photograph No.2. Application land on right.



Parcel No.9

Photograph No.1 Looking north, application land on the left.



Photograph No.2. Looking north, application land on the left.



Appendix 2

Mr Petch observations upon Danby Moors

North Yorkshire Archives

Reference: ZDS.IV.14.6

Transcription of three PDFs of scanned manuscript.

Page 1 of the PDF

The following are Observations made by John Petch on the 3rd Sept[embe]r 1799 the Day on which Rob[er]t Cary Elwes Esq[ui]r perambulated the boundaries of his Manor of Egton

Memorandum on Tuesday the 3rd Sept[embe]r 1799 I John Petch (with Tho[ma]s Petch, Tho[ma]s Frank, Ja[mes] Proud, John Peirson Danby, John Watson Glaisdale, Rob[er]t Frank Glaisdale, Geo[rge] Hoggart Lealholme, John Cook, W[illia]m

Brunton, W[illia]m Lacy & many others) assembled at Lamb Field Boundary about ten o'Clock to meet Egton people who were perambulating their Boundaries, we waited till about one o'Clock before they came – they began their perambulation at or near Growmond Bridge, went up by Goadlan[]¹³ Beck & so up by the North side of Wheeldale Moor, when they came to a Stone a little below Holed Stone and below the Turnpike (nearly East of Holed Stone) which they called Tramill Stone, from thence they rode to Holed Stone, from thence to Shunner How (where they had cheese & Bread & Ale) from thence they turned down to a stone near High Blow wath which they called Goose Nest, they then crossed over at High Blow wath and went from thence by the Road nearly North to Flatt How above Glaisedale head, from thence they went further North by said Road, turning down North East towards Glaisedale head to a large Stone upon the Moor which they called White Mare, and from thence a little lower down the Moor inclining Eastward to another large Stone which they called Staple Stone or Yoak where they left off- this last Stone is a considerable distance from the Inclosure, perhaps 200 yards and no appearance of any Spring

¹³ Word is not clear.

Head or Beck to divide the Boundaries- it is a good way North from Danby Boundary called Yoak (that is, it is a good way North from Danby Boundary called Yoak (that is, it is a good way North of the Freeholds in Glaisdale within Danby Manor) from this last Stone they set off across the Moor North to the Common Lane Head, went down that Lane into Glaisedale side, went down the side & up Geo[rge] Woodwork's Brow and so across the Moor to Lealholme Lane Head & down to Lealholme Bridge from thence over Lealholme Moor by Woodall Wath to Woodall House, from thence they fell into Egton Boundary again upon the Heighths where Egton Freehold comes in some way about a Farm called Willnes's, they then proceeded by Barton Howl and so to Swartha Cross where their Boundary line finished
Mr Leatham (Steward), his son, Mr Marshall Attorney

Page 2 of the PDF

Whitby, with about 50 Horsemen chiefly Egton Tenants, scarce any Freeholders except William Law- Mr Leatham produced an old plan with which he compared the Moors, Boundaries, Bearings etc they marked the Stones as they went on by putting the date of the year 1799 upon them- ~~they~~ none of them had any Book or List of their Boundaries, but Mr Leatham observed that the Old Plan was an exceeding good one and would be of very great use in supporting the Claim of Egton to the disputed Moor with Danby, which they (Egton) rode in- I did not observe the date of the Plan, but it takes Notice of this piece of disputed Moor; and it is there sketched out and described "to be in dispute with Danby" and by the plan it contains I think about 151 Acres
I told W Leatham at parting, that Danby knew of no line of boundary other than that from Yoak to Lambs Fold, and so to Shunner How by the Holed Stone, that Danby had had immemorially the sole and exclusive enjoyment of this Moor in dispute, such as getting Turf,

Peat, Depasturing Sheep, Killing of Game etc etc And that if Mr Elwes (Egton Lord) should hereafter be advised by his Agents to incroach or make use of this disputed Moor, he must take the Consequence for that Lord Downe was determined to support his Claim to the Ancient Boundaries before pointed out - /.

Page 3 of the PDF

Note: Rob[er]t Cary Elwes Esq[ui]r perambulated the boundaries of his Manor of Egton on Tuesday 3rd Sept[embe]r 1799- came to a stone a little below Holed Stone & below the Turnpike (nearly East of Holed Stone w[hic]h they called Tramill Stone f[ro]m thence they

rode to the Holed Stone, f[ro]m thence to Shunner How, f[ro]m thence turned down to a stone near High Blow

Wath called by them Goose Nest & then crossed over at High Blow wath & went from thence by the Road

nearly North to a flat How above Glaisdale head & fur[ther] No[rth] by s[ai]d Road turning down North East tow[ar]d Glaisdale

head to a large Stone on the Moor they call White Mare, thence a little lower down the Moor inclining Eastward

to ano[the]r large Stone wh[ic]h they called Staple Stone or Yoak where they left off, this last stone is abo[u]t 200

yards f[ro]m the Enclosure & no appearance of any Spring Head or Beck to divide bounda[ry] this is a good way

no[rth] from Danby bound[ar]y called Yoak that is north of the Freeholds in Glaisdale in Danby Manor

they marked the stones as they went on with date of 1799 on them, none of them had any Book or list of

Bounds but an old plan takes notice of this disputed Moor, sketched out & described "to be in dispute

with Danby" & containing abo[u]t 151 acres

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

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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 is 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 estate 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

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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 1907 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 therein⁶ 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

(1865) 3 H. & C. 486 at pp.496-497.

Ibid. at p.497.

Ibid. at p.498.

[1956] 1 Ch. 131 at pp.178-179.

[1899] 81 L.T. 174 at p.179.

[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. said⁷:

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

(1899) 81 L.T. 174 at p.182.
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 said¹⁶:

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 recreation¹⁸ 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. said²⁰:

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

Farwell J.'s reasons for rejecting the first ground were²¹:

(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 was²⁵:

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.

Accordingly, the works required ministerial consent. However, s.38(2)(b) of the 2006 Act now expressly classifies the construction of a car park with a sealed surface to be restricted works.

In *Eaton v Kurton*,¹⁷⁶ decided in the Cheltenham County Court, HHJ Rawlings upheld the view of the plaintiff, a commoner, that a hardcore track across the common, intended to provide access to a property, was a “construction of any other work”.¹⁷⁷ The judge said that:

“the construction of that way had impeded or was likely to impede access to the land by the very nature of the way itself. Even more, in my view, it is clear that the presence of traffic upon the way would, in circumstances to be envisaged, impede the passage of cattle or other animals entitled to graze upon the land.”

It is not entirely satisfactory that, in both *Southampton*, and *Eaton*, the courts appeared influenced, not by the construction of the works themselves triggering the requirement for consent, but the prospective parking of cars or passage of vehicles over the works—activities which might occur without any requirement for works whatsoever (and, in *Eaton*, were already occurring prior to the construction of the hardcore track).

In *Hambledon Rural District Council v Hinde*,¹⁷⁸ an action against a local resident was brought by the council which had erected low railings on manorial waste (in the centre of the village) to exclude vehicles, the waste being subject to a scheme under Pt I of the Commons Act 1899. The terms of the scheme did not authorise

¹⁷³ The 1925 Act s.194(1) referred to “The erection of any building or fence, or the construction of any other work, whereby access to land to which this section applies is prevented or impeded, shall not be lawful ...”

¹⁷⁴ (1970) 21 P. & C.R. 281.

¹⁷⁵ At 288.

¹⁷⁶ (1967) XVII/6 C.S.J. 175.

¹⁷⁷ For the purposes of the 1925 Act, s.194(1).

¹⁷⁸ (1968) 19 P. & C.R. 212; 66 L.G.R. 495; 205 E.G. 771.

USE AND DEVELOPMENT OF COMMON LAND

the erection of the railings. The council sought a declaration that the works had been lawfully executed, and an injunction to restrain the defendant from interfering with them. The railings were sufficiently low that it was possible to step over the rails, or detour round them. Russell LJ found that:

“... it is wholly insufficient to require the railings to be regarded in law as an impeding of or interference with that person’s access.”

The court was of the view that the railings were “for the improvement and protection of the common”, but it is not wholly clear that the railings were regarded as *de minimis*, rather than justified because of their contribution to the improvement of the common by excluding vehicles—that is, a small but worthy concession to enjoyment of what had become, in effect, an amenity area. It is suggested that the case is authority for no more than what is already recognised in guidance¹⁷⁹—a trivial interference with access does not need consent.

10-50

In the second edition of this work, it was stated in relation to s.194 of the 1925 Act that no consent was required to works which had no effect on any statutory right of access.¹⁸⁰ In the *Southampton Common* case, *Frost v. Lane*, [1952] 1 All ER 1013, the court

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19 P&CR 212, 66 LGR 495, 205 EG 771

Hambledon Rural District Council v. Hinde.

Surrey County Council v. Hinde

QUEEN'S BENCH DIVISION

19 P&CR 212, 66 LGR 495, 205 EG 771

HEARING-DATES: 12, 13, 16, 17 October 1967, 19 January 1968

19 January 1968

CATCHWORDS:

Commons - Access to - Interference with - Erection of railings to prevent use of common by motor-vehicles for parking and as short cut between adjoining roads - No general right of vehicular access to common - Short detour rendered necessary for pedestrians - Whether railings constituting interference with access - Re-planning of island site in centre of street - "Necessary works" - "Improvement" of common - Whether for authority in whom management of common vested to decide whether works "necessary" for "improvement" of common - Duty to act reasonably and bona fide - Whether alteration of natural features of common or interference with free access to it permissible - Blocking up of vehicular highways - Whether justifiable as "regulating the movement of traffic" - Commons Act 1899 (62 & 63 Vict., c. 30), s. 1 - Law of Property Act 1925 (15 Geo. 5, c. 20), s. 194 - Highways Act 1959 (7 & 8 Eliz. 2, c. 25) s. 65(1)(b).

HEADNOTE:

A local authority, with a view to preventing motor-vehicles from using a strip of common land for parking and as a cut-through between two main roads on either side, erected across the strip a complex of low metal pipe railing which effectively prevented such use while permitting through traffic by pedestrians, albeit with a short detour. In a second case, together with the highway authority, they converted a second piece of common land, an island site in the centre of a village street consisting of three islands separated by short strips of roadway, into a single island, the conversion involving substantial alternation to the general layout of the site, and, in particular, inter alia, the setting out of raised flower beds within twelve-inch-high walls, the removal of grass areas, and the elimination of the roadways, necessitating a detour by vehicles wishing to cross the site of some ninety yards. The defendant objected to the works in both cases as

obstructing access to, encroaching on, and generally injuriously affecting the commons in question. He interfered, or threatened to interfere, with them. The plaintiffs brought actions, the local authority in respect of both sites, the highway authority in respect of the islands site, for, inter alia, declarations that the works had been lawfully executed. Reliance was placed in both cases on the powers, inter alia, to "execute any necessary works . . . for the protection and improvement of the commons," conferred on the local authority by a commons regulation scheme, in particular clause 3, made by them under section 1 of the Commons Act 1899 and confirmed by the Minister of Agriculture and Fisheries in 1951. n1 In {213} connection with the blocking up of the roadways the highway authority also relied on the powers conferred on them by section 65(1)(b) of the Highways Act 1959. n2 The defendant contended that the works were ultra vires those provisions, and that, further, they contravened section 194 of the Law of Property Act 1925. n3 It was admitted that no ministerial consent had been obtained under that section for the works in either case. n1 Commons Act 1899, s. 1: "(1). The council of an urban or rural district may make a scheme for the regulation and management of any common within their district with a view to the expenditure of money on the drainage, levelling, and improvement of the common, and to the making of bye-laws and regulations for the prevention of nuisances and the preservation of order on the common. (2). The scheme may contain any of the statutory provisions for the benefit of the neighbourhood mentioned in section 7 of the Commons Act 1876."

S. 3: "The management of any common regulated by a scheme made by a district council under this Part of this Act shall be vested in the district council."

S. 15: "In this Part of this Act, unless the context otherwise requires, - The expression 'common' shall include any land subject to be inclosed under the Inclosure Acts, 1845 to 1882, and any town or village green; . . . "

The statutory provisions referred to in section 1(2) and the material provisions of the commons regulation scheme made by the plaintiff local authority are referred to in the judgment of Russell L.J.

n2 Highways Act 1959, s. 65(1): "A highway authority may, in relation to a highway maintainable at the public expense by them, being a highway which consists of or comprises a made-up carriageway, construct and maintain works in that carriageway - . . . (b) at cross roads or other junctions, for regulating the movement of traffic."

n3 Law of Property Act 1925, s. 194: "(1) The erection of any building or fence, or the construction of any other work, whereby access to land to which this section applies is prevented or impeded, shall not be lawful unless the consent of the Minister thereto is obtained, and in giving or withholding his consent the Minister shall have regard to the same considerations . . . as are directed by the Commons Act 1876 to be taken into consideration . . . by the Minister before forming an opinion whether an application under the Inclosure Acts 1845 to 1882 shall be acceded to or not . . . (3) This section applies to any land which at the commencement of this Act is subject to rights of common . . . (4) This section does not apply to any building or fence erected or work constructed if specially authorised by Act of Parliament, or in pursuance of an Act of Parliament . . . "

Held, granting the declarations sought, (1) that the detour rendered

necessary for persons on foot by the railings in the first case, which were works for the protection and improvement of the common, was insufficient to require them to be regarded in law as an impeding of or interference with access to the common, there being no general right of vehicular access to any part of it;

(2) that, so far as the second case was concerned, what were "necessary works" and what constituted "improvement" of the common were for the plaintiff local authority to decide, acting reasonably and bona fide, and that it could not be said that it had not so acted; that clause 3 of the scheme of 1951 amply justified the project as a whole, including the removal of the grass areas, the word "otherwise" in that clause indicating that the activities previously mentioned might legitimately alter the natural features of the common or interfere with free access to parts of it; that section 194 of the Act of 1925 was not to be construed as restricting the power of the local authority to lay out the flower beds and low walls; and that, so far as the barring of the passage of vehicles was concerned, it was clear that, had the whole of the island site formed part of the highway, the highway authority would have been entitled, under section 65(1)(b) of the Act of 1959, for the purpose of regulating the movement of traffic, to prevent crossings of the site by the constructing of a single island such as had been constructed, and that the matter was no different because only two parts of the central area had been part of the highway.

Birmingham and Midland Motor Omnibus Co.Ltd. v. Worcestershire County Council [1967] 1 W.L.R. 409; [1967] 1 All E.R. 544, C.A., distinguished.

INTRODUCTION: ACTIONS.

The plaintiffs in these two consolidated actions, in the first case the Hambledon Rural District Council, the local authority, in the second case the Surrey County Council, the highway authority, sought declarations that certain works executed by them on common lands ("Luck's Green" and "the Island site") had been {214} lawfully executed, and injunctions to restrain the defendant, Gerald Vernon **Hinde**, from interfering with them. The facts are stated by Russell L.J.

COUNSEL:

Patrick Freeman for the plaintiffs.

The defendants appeared in person.

JUDGMENT-READ:

Cur. adv. vult.

PANEL: RUSSELL L.J.

JUDGMENTBY-1: Russell L.J.

JUDGMENT-1:

Russell L.J. Mr. **Hinde** lives at Cranleigh, Surrey. He is, or aims to be, something of a crusader in the matters of commons and rights of way. These actions concern two sites, part of the common of Cranleigh, and arise because Mr. **Hinde** has protested against the activities of the Hambledon Rural District Council in connection with one site, Luck's Green, and of the Rural District Council and the Surrey County Council, the highway authority,

in connection with another site, the Island site in the High Street. He contended that those activities were not in accordance with the relevant law. In the case of Luck's Green he not only threatened to interfere with what had been done, but did so. In the other case he has threatened to interfere with what has been done.

I will deal first with the question of Luck's Green, describing it and what has been done thereon and referring to such statutory provisions, etc., as relate to it. I will deal separately with the Island site.

Luck's Green

Cranleigh High Street, going east from the direction of Guildford, forks at the obelisk, the left fork being the Ewhurst Road, the right fork being the Horsham Road. Luck's Green is a broad based triangle of green set back from the left of the Horsham Road after passing the fork and an enclosure with buildings contained in the fork including Yew Tree flats. a strip of open ground on the east of that enclosure joins the Ewhurst Road to the Horsham Road; that strip is part of the common and merges with the triangle of Luck's Green. On the east of the strip is another enclosure including a property called Rosedene; the south boundary of that enclosure forms the north boundary of the Luck's Green triangle, the other two sides of which are a stream and the Horsham Road. The northern part of the strip has been metalled, and is used for some parking purposes, but I am not concerned with it. Luck's Green is physically accessible to vehicles from the Horsham Road, and, indeed, access to Rosedene is from that road up the strip for some little distance. Cranleigh is not free from parking problems, and it was found that visitors were apt to pull off on to the grass, not on to the main part of Luck's Green east of the access road to Rosedene, but into the mouth of the strip by the Yew Tree Flats enclosure at the west end of Luck's Green. There had for many years been some posts designed to prevent vehicles from using the strip as a cut through between the Ewhurst and Horsham Roads, but {215} these suffered casualties, and their inadequacy and the desire to prevent parking and consequent damage to the grass surface persuaded the rural district council to erect a complex of low metal pipe railing in the area on posts. I need not specify the exact layout save to say that it effectively bars vehicular movement between the Ewhurst and Horsham Roads, fences off vehicles from the area to the east of the Yew Tree Flats enclosure where they were wont to park, permits through traffic by pedestrians and perambulators between the two roads, and leaves the vehicular access to Rosedene.

The gist of the dispute about Luck's Green is the question whether the rural district council was entitled in law to erect the barriers which I have described on this common land, and to that question I will confine myself. The evidence embraced complaints by Mr. **Hinde** in respect of other matters, and, though I allowed him a reasonable licence to pursue them, I do not propose to extend that licence to myself. Nor do I propose to follow the details of resolutions and committees and joint committees which were quite properly given in evidence by the rural district council, faced as they were by a litigant in person, which established that, if what they did was permissible, the appropriate internal machinery was followed.

Luck's Green, including the site of the railings now in question, was, with much other land in the district, subject to a scheme made by the rural district council under the Commons Act 1899 and approved by the appropriate Minister in 1951. This took the place of a previous such scheme

made in 1911. The Act of 1899 empowers a rural district council to make a scheme

for the regulation and management of any common within their district with a view to the expenditure of money on the drainage, levelling, and improvement of the common, and to the making of byelaws and regulations for the prevention of nuisances and the preservation of order on the common

"Common" is defined as including "any land subject to be inclosed under the Inclosure Acts 1845 to 1882, and any town or village green." The site does not appear to be within the description town green or village green, as to which I refer to Halsbury's Laws of England, 3rd ed., vol. 5 (1953), p. 406. Accordingly, if, as the rural district council assert, the scheme was validly made, the site must be in character within the Inclosure Act 1845, s. 15. This embraces all lands subject to any rights of common whatsoever, and other lands which cannot be relevant to the present case. It follows from this that the plaintiffs, by relying upon the scheme, assert that the site was subject to rights of common. (This is relevant to a question which was raised as to whether the site was outside the scope of section 194 of the Law of Property Act 1925 as not being subject to rights of common on January 1, 1926, no {216} evidence having been led to establish the existence of any such rights, and it answers the question. How this site and other areas in the district became subject to rights of common I do not and need not know. I dare say that they were manorial waste.)

To return to the Act of 1899. A scheme thereunder may contain any of the statutory provisions for the benefit of the neighbourhood mentioned in section 7 of the Commons Act 1876. The benefit of the neighbourhood involves the considerations of "the health, comfort, and convenience of the inhabitants of any cities, towns, villages, or populous places in or near any parish in which the land" is situated: see the preamble to the Act of 1876. The "statutory provisions" are: (1) That free access is to be secured to any particular points of view, which I take to refer to secured rather than opinions. (2) That particular trees or objects of historical interest are to be preserved. (3) That there are to be reserved privileges of playing games and other recreation on suitable parts; this I abbreviate. (4) That carriage roads, bridle paths and footpaths over such common are to be set out in such directions as may appear most commodious. (5) That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

To round off the statutory provisions which may be relevant I turn to the Law of Property Act 1925. Section 193(1), so far as now relevant, confers on the public rights of access for air and exercise to any land in a rural district which is subject to rights of common, but only if the owner of the soil by deed applies the section to the land; this section does not affect the sites in question in the present case, it not being suggested that any such deed exists. Section 194 is aimed at restricting inclosure of common lands, and applies to any land which was, on January 1, 1926, subject to rights of common, but ceases to apply when the rights of common are extinguished. For the reasons already given, I must assume that the section applies to the sites now in question, and no evidence has been led to suggest that the rights of common, whatever they were, have been extinguished. The section provides that

The erection of any building or fence, or the construction of any other work,

whereby access to land to which this section applies is prevented or impeded, shall not be lawful unless the consent of the Minister thereto is obtained . . .

Furthermore, the Minister, in deciding whether to consent, shall have regard to the consideration of the benefit of the neighbourhood - or so I read the latter part of section 194(1). Subsection (4) excludes any building or fence erected or work constructed if specially authorised by Act of Parliament, or in pursuance of an Act of Parliament or order having the force of an Act.

The parts of the commons regulations scheme of 1951 made by {217} the rural district council which may be relevant are these: Clause 1 provides that the commons shall be regulated by the scheme and vests the management thereof in the rural district council. Clause 3 provides that the rural district council

may execute any necessary works of drainage, raising, levelling or other works for the protection and improvement of the commons and may, for the prevention of accidents, fence any quarry, pit, pond, stream or other like place on the commons, and shall preserve the turf, shrubs, trees, plants and grass thereon, and for this purpose may, for short periods, enclose by fences such portions as may require rest to revive the same, and may plant trees and shrubs for shelter or ornament, and may place seats upon and light the commons and otherwise improve the commons as places for exercise and recreation. Save as hereinafter provided, the council shall do nothing that may otherwise vary or alter the natural features or aspects of the commons or interfere with free access to any part thereof, and shall not erect upon the commons any shelter, pavilion, drinking fountain, convenience or other building without the consent of the person or persons entitled to the soil of the commons and of the Minister of Agriculture and Fisheries (in this scheme referred to as "the Minister"). The Minister, in giving or withholding his consent, shall have regard to the same considerations and shall, if necessary, hold the same enquiries as are directed by the Commons Act 1876 to be taken into consideration and held by the Minister before forming an opinion whether an application under the Inclosure Acts 1845 to 1882 shall be acceded to or not.

Clause 4 says that the council "shall maintain the commons free from all encroachments, and shall not permit any trespass on or partial or other enclosure of any part thereof." Clause 5 says that the inhabitants of the district and neighbourhood

shall have a right of free access to every part of the commons and a privilege of playing games and of enjoying other species of recreation thereon, subject to any byelaws made by the council under this scheme.

Clause 7 reads:

The council shall have power to repair and maintain the existing paths and roads on the commons other than highways repairable by the inhabitants at large, and to set out, construct and maintain or authorise the construction and maintenance of such new paths and roads on the commons as appear to the council to be necessary or expedient, and to take any proceedings necessary for the stopping or diversion of any highway over the commons.

Clause 8 authorises the setting apart by the rural district council on the

commons of sports grounds and provides that they "may allow such grounds to be temporarily enclosed with any open fence, so as to prevent cattle and horses from straying thereon." Clause {218} 9 authorises the temporary setting apart and fencing of vehicle parks with the consent of the appropriate Minister. Clause 10(g) enables byelaws to be made to prevent, inter alia, driving or parking of vehicles on the common. Clause 12 provides that nothing in the scheme shall prejudice or affect any right of the commoners in or over the commons or the lawful use of any highway or thoroughfare on the commons.

Mr. **Hinde**, in relation to the Luck's Green railings, asserts that they are not lawfully erected or maintained by the Rural District Council because they prevent or impede access to part of this common land and, as is admitted, no ministerial consent was obtained: see section 194 of the Law of Property Act 1925. He further says that clause 3 of the scheme of 1951 has equally the effect, in the absence of ministerial consent, of making those railings unlawful both in their origin and in their retention. He says that they interfere with the free access of the public to part of Luck's Green common and that they constitute a fencing off which in terms is permitted only in order to prevent accidents and, for short periods, to enable a worn part to revive.

The rural district council, on the other hand, contend that these railings are works for the protection and improvement of Luck's Green, having regard to their purpose, which I have already mentioned; that they cannot properly be said to impede or interfere with free access to any part of Luck's Green, bearing in mind that there is no general right of vehicular access in the public or the inhabitants of the district; and that they are not fencing in the sense in which that word is used in clause 3 of the scheme.

This, in the end, is a short point, and, in my judgment, the contentions of Mr. **Hinde** are ill founded and those of the rural district council are correct. If, along the lines of these railings, individual uprights had been erected for the purpose of restraining vehicular passage - as to some extent had previously, though unsatisfactorily, been done - it would be quite unrealistic to say that that should be regarded as an impeding or interference requiring the paraphernalia of ministerial consent, though each post would potentially involve a slight detour by an individual bent on air and exercise. In the present case, the detour is somewhat greater (for those not prepared or able to step over the rail), but it is wholly insufficient to require the railings to be regarded in law as an impeding or interference with that person's access.

The Island site

I turn next to the question of the Island site in the High Street. In this connection also I do not propose to detail the machinery of local authority by which the works here were approved or carried out. It is sufficient to say that they may be regarded as the joint project of the rural district council and the county council; that, in so far as any aspect of the works was within the lawful competence of either authority, that aspect of it must be regarded as {219} lawful; but that, in so far as any aspect of the works might have required ministerial approval, it is agreed that no such approval was applied for. I will attempt first to describe the Island site, and then the works in question.

Coming from the west from Guildford into Cranleigh High Street, reaching a

point about level with the War Memorial, there is on the right the entrance to the railway station. If you travel from that point straight ahead, you follow the High Street, leaving on your left the Island site. If you had turned left at the same point, you would have passed between the War Memorial ground and the west end of the Island site, facing the entry to Rowland Road. If, instead of entering that road, you had turned right, you would have driven along the street on the other side of the Island site (now on your right) until, near the Onslow Arms (on your left), the site ended and that street and the High Street merged.

The Island site was, in a sense, divided into three parts. At the west end was the drinking fountain in an oval area some eighty feet by forty feet designed round the fountain, with a certain amount of brickwork paving and grass plots, some trees systematically set out, and so forth. At one time it had been surrounded by railings except at entrance points to the fountain. It was used as a waiting point for bus passengers. The fountain had been erected in 1889 in memory of a Mr. Bradshaw by his widow, approximately on the site of an ancient farm barn demolished in 1887; facts such as these may not be easy to reconcile with the assumption that this is common land, but there it is. After a gap, the middle part of the Island site was an area of roughly triangular shape some forty feet long, its base to the east some twenty feet long; it contained a King Edward VII Coronation oak with a bench round it. After another gap, the third part was also of roughly triangular shape, back-to-back with the second part, some sixty feet long and tapering to the east with a grass surface. This contained the Onslow Arms Inn sign. All three parts were surrounded by raised kerbs. Overall, the Island site was some 240 feet in length. The two gaps between the three parts were wide enough to take vehicular traffic, and undoubtedly such traffic did use those gaps. Indeed, it had been thought desirable to ban passage from south to north through the gaps by No Entry signs. It is true that the make-up of the surface in these gaps was considerably lighter than the make-up of the High Street proper, but that I would attribute to the fact that, obviously, the amount of traffic through the gaps would be very much lighter. I observe that the roadway on the north side of the Island site, though undoubtedly a vehicular highway, is also lighter in make-up than the main High Street, though heavier than the gaps. It was argued for the plaintiffs that those gaps were not vehicular highways, but I consider that the proper conclusion from all the evidence is that they were such, albeit across this piece of

{220} I turn now to the works executed by the plaintiffs. The Island site is now a single area raised by the height of a shallow kerb from the road level on each side and paved with hexagonal tiles. The trees by the fountain and the Coronation oak have been removed. Towards the east end is a triangular raised flower bed contained in low walls some sixty feet long, narrow enough to leave a walking space on the tiled surrounding. The tiled surface continues west and surrounds the fountain, which remains in situ under its four pillars and roof (and, I suppose, the crane of Cranleigh on top). West of the fountain is another and similar raised flower bed occupying the rounded end of the site. The tiled surface extends slightly further west into the roadway than did the original fountain surround. The Onslow Arms sign remains. The shape of the site is now therefore an even, somewhat turncheon-like, shape, the thick end to the west some forty or fifty feet wide, the thin end some twelve feet wide, the overall length some 230 feet. To the evenness of the shape there is one exception. On the south (High Street) side there is a bus pull in, the set-back from the south boundary of the original Island site being some ten feet, the indentation

being from approximately level with the fountain to near where the Coronation oak stood.

As I understand his case, Mr. **Hinde** complains of the following matters in relation to this site: (1) He says that the raised flower beds within the twelve-inch high walls - and, indeed, the flower beds with flowers and rose bushes themselves - prevent or impede or interfere with access to parts of this common land; thus they infringe clause 3 of the scheme and section 194 of the Law of Property Act 1925. (2) He says that the west and east ends of the bus bay, not having been previously part of the "gap" highway, have been incorporated into the highway, which, he says, is an encroachment on to the common and a breach of the scheme, clauses 3 and 4. (3) He contended that the trees removed, or some of them, were scheduled under the scheme, clause 6, to be preserved. This was based on a plain misreading of the schedule, and I say no more about it. (4) He says that the removal of the grass in particular, and the alternations in general, were a breach of clause 3 of the scheme. (5) He says that the two "gap" vehicular highways have been illegally blocked up by means of the level of the kerb now surrounding the whole site.

It is necessary to attend in some detail to the language of clause 3 of the scheme for its proper understanding. First, it empowers the rural district council to execute any necessary works of raising, levelling or other works for the protection and improvement of the common. What is improvement and what is necessary is, I apprehend, for the council to decide acting reasonably and bona fide, and, in my judgment, it cannot be said that the council acted otherwise in the present case, although no doubt there are some who would have preferred this site to have been left in its less {221} sophisticated condition. Those opening words are of very wide import. Secondly, the council shall preserve the turf, shrubs, trees, plants and grass thereon. Thirdly, the council may plant trees and shrubs for shelter and ornament. Fourthly, the council may place seats upon and light the common and otherwise improve the common as a place for exercise and recreation. Fifthly, the council shall do nothing that may "otherwise" vary or alter the natural features or aspects of the common or interfere with free access to any part thereof, save as thereafter provided, etc., etc. Sixthly, the council shall not erect on the common any building without appropriate consents.

It will be observed from the use of the word "otherwise" in "fifthly," above, that it is assumed by clause 3 that activities under the preceding headings may legitimately vary or alter the natural features or aspects of the commons or interfere with free access to parts thereof. So far as Mr.

Hinde's first point is concerned, in my judgment the rural district council had ample power under the Commons Act 1899 and the scheme, clause 3, to lay out the flower beds and low walls which I have mentioned, nor is section 194 of the Law of Property Act 1925, in my view, to be construed as curtailing or restricting that power. On his second point, it is to be borne in mind that, according to the 1951 scheme map, the whole width of the High Street, the Island site and the roadway to the north are included in the common. I cannot see why the setting back of the pre-existing kerbs is something forbidden to the council, and that is in substance what was done at the ends thereof in the course of producing the 'bus bay. On Mr. **Hinde's** fourth point, it seems to me that clause 3 of the scheme amply justifies in law the project as a whole. I come then to his fifth point: that, by making the whole a single kerbed island site, the two vehicular gap highways have been stopped up without lawful authority. I must observe that it would

obviously be preferable in the interest of the public and the neighbourhood that this site should be an island refuge for pedestrians free from the inconvenience, and, indeed, risk, arising from vehicles standing in or driving through the gaps. But if, as I think, these gaps were vehicular highways, the barring of the passage of vehicles must be justified.

It is quite clear that a main purpose in making a single unit of this site was to regulate the flow of traffic in the interests of safety. In horse-drawn days, or motor-car days of little traffic, it was no doubt not inconvenient or dangerous that the gaps should be used to cut through from north to south and vice versa. Later, as I have mentioned, it was considered necessary or desirable to stop that traffic from south to north by No Entry signs. Under the present arrangement, there is no cut-through available, and a No Entry sign forbids traffic to enter from the east the roadway to the north of the island. The effect of the construction is that any {222} vehicle coming from Rowland Road or any of the premises between there and the Onslow Arms and wishing to go down Knowle Lane must go round the island instead of crossing in the accustomed way. Similarly in the opposite direction - apart from the No Entry signs. I am told that the maximum detour involved is about ninety yards. The result of the works is the construction of an oblong roundabout in place of the crossings or junctions which I have mentioned. For the plaintiffs, it is contended that such works are justified under section 65(1)(b) of the Highways Act 1959, which authorises a highway authority to construct works in the carriage-way at cross-roads or other junctions for regulating the movement of traffic. If the whole of the Island site area had formed part of the highway, it is, I think, clear that the highway authority would have been entitled by the construction of an island site to prevent north to south, and vice versa, crossings, though that would have involved the closure of part of the highway to vehicular traffic by making it detour. I do not see that the case is different because only two parts of the central area were part of the highway. My attention was properly directed to *Birmingham and Midland Motor Omnibus Co.Ltd. v. Worcestershire County Council* n4 on the ambit of this section, but whether particular works are within the section must to some extent be a question of degree, and, without going into the details of that case, I do not think that it prevents me from holding that section 65(1)(b) covers the present case. n4 [1967] 1 W.L.R. 409; [1967] 1 All E.R. 544, C.A.

I should add, on this part of the case, that some point was apparently made by Mr. **Hinde** in his defence that the Island site had been extended slightly into the roadway at the west end, though, according to my recollection and notes, he did not pursue this as a separate point. The extent of this extension would not seem to be material on the facts of the present case, and I say no more of it.

In the result, I will make an order entitled in both the actions declaring that works by way of the erection of tubular railings at Luck's Green and in connection with the Island site in the High Street were lawfully executed. As at present advised, I do not think that injunctions are necessary. I think that Mr. **Hinde**, having lost his battle in law, may be relied upon not to act contrary to the decision, but I would, of course, give liberty to apply for an injunction should he in any way seek to interfere with these works.

I regret that this judgment has been so long delayed. A combination of the exigencies of the Court of Appeal with the difficulty inherent when a litigant appears in such a case in person made it unavoidable. I am obliged to those responsible for the preparation and presentation of the plaintiffs' case for

the assistance which they gave to my understanding of the defendant's case, an assistance {223} which he could not really afford me, though he behaved with a seemingly courtesy not always observable in his correspondence with his opponents.

DISPOSITION:

Order accordingly.

SOLICITORS:

Sharpe, Pritchard & Co. for C. H. Millar, Solicitor, Hambledon Rural District Council; Crofts & Ingram and Wyatt & Co. for W. W. Ruff, Clerk to the Surrey County Council.

Source: [Legal](#) > [Legal \(excluding U.S.\)](#) > [United Kingdom](#) > [Case Law](#) > **UK Cases, Combined Courts** ^①

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Register of

COMMON LAND

COMMONS REGISTRATION ACT 1965
NORTH RIDING COUNTY COUNCIL
REGISTRATION AUTHORITY

Date....7.8.JUN.1968

Register unit No. c.1. 216

Edition No.

See Overleaf
for Notes

LAND SECTION—Sheet No. 1.

No. and date of entry	Description of the land, reference to the register map, registration particulars etc.
1. 28th June, 1968	All those pieces of land in the Parish of Egton shown marked green on Sheet 30B of the register map (6" Ordnance Survey Sheet NZ 70 NE) (Provisional Edition) and distinguished by the number of this register unit. Registered pursuant to application no. 1365 made the 16th day of May, 1968, by Egton Parish Council through George William Cockerill of 10 Esk View, Egton, Whitby, its Clerk. Registration Provisional. Registration Cancelled - 30.9.71
2. 28th June, 1968	All that piece of land being an Old Quarry in the Parish of Egton shown marked green on Sheet 31C of the register map (6" Ordnance Survey Sheet NZ 80 SW) (Provisional Edition) and distinguished by the number of this register unit. Registered pursuant to application no. 1365 made the 16th day of May, 1968, by Egton Parish Council through George William Cockerill of 10 Esk View, Egton, Whitby, its Clerk. Registration Provisional. Registration Cancelled - 30.9.71
3. 28th June, 1968	All those pieces of land in the Parish of Egton being waste land as shown marked with a green verge line inside the boundary on Sheet 31A of the register map (6" Ordnance Survey Sheet NZ 80 NW) (Provisional Edition) and distinguished by the number of this register unit. Registered pursuant to application no. 1365 made the 16th day of May, 1968, by Egton Parish Council through George William Cockerill of 10 Esk View, Egton, Whitby, its Clerk. Registration Provisional. Registration Cancelled - 30.9.71
4. 28th June, 1968	All that piece of land known as the Pinfold in the Parish of Egton as shown marked green on Sheet 31A of the register map (6" Ordnance Survey Sheet NZ 80 SW) (Provisional Edition) and distinguished by the number of this register unit. Registered pursuant to application no. 1365 made the 16th day of May, 1968, by Egton Parish Council through George William Cockerill of 10 Esk View, Egton, Whitby, its Clerk. Registration Provisional. Registration Cancelled - 30.9.71

No. and date of note	Notes	No. and date of note	Notes
1 23rd Nov. 70	The objection no. 0280 of Whitby Rural District Council, Council Chambers, "Eskholme", Upgang Lane, Whitby made 25th September, 1970 is noted in respect of the registration at Entry Nos 1 to 4 in this section. Objection upheld - registrations cancelled.		

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 1936, 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

Register unit No. C.L. 216

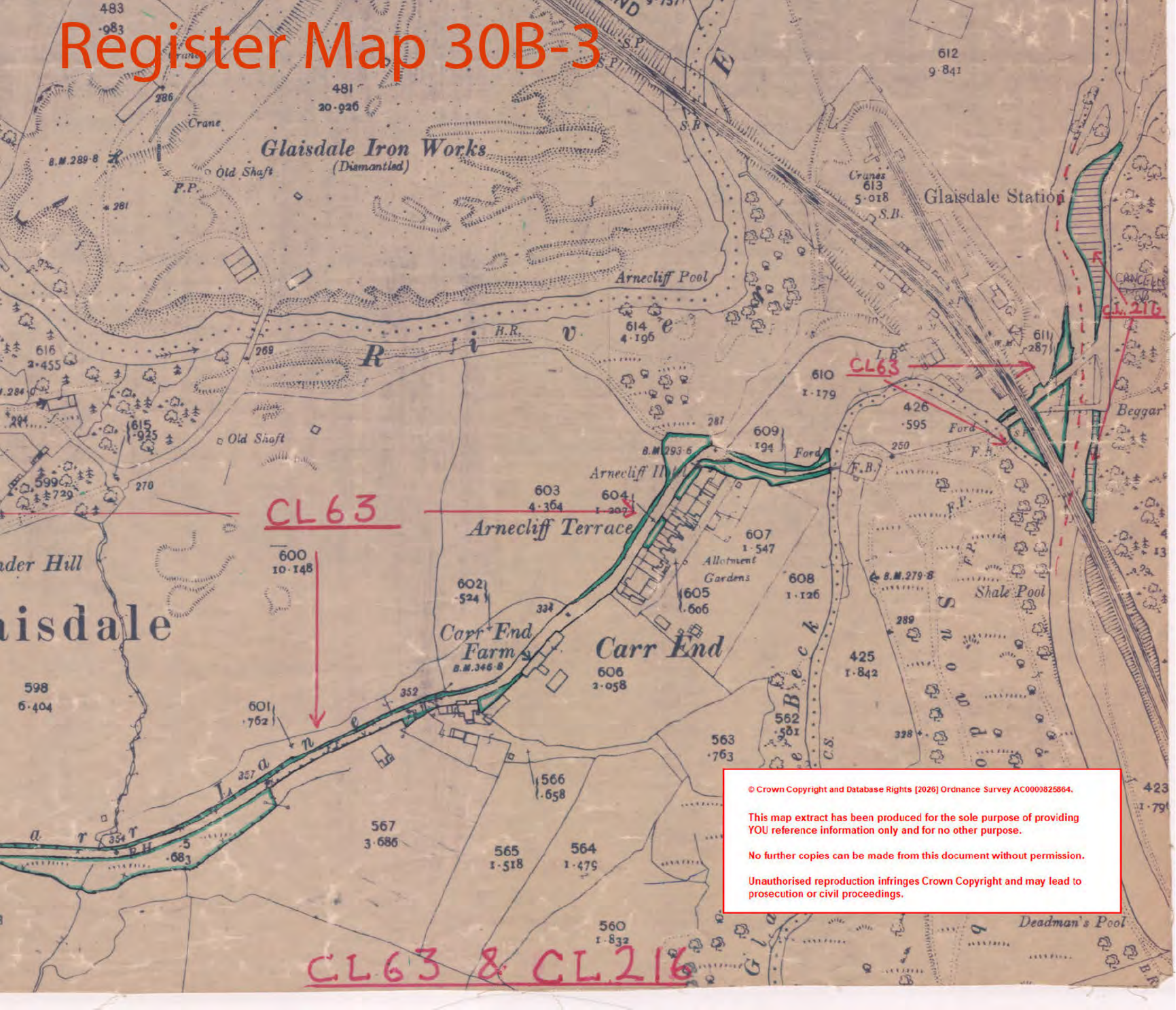
Edition No.

See Overleaf
for Notes

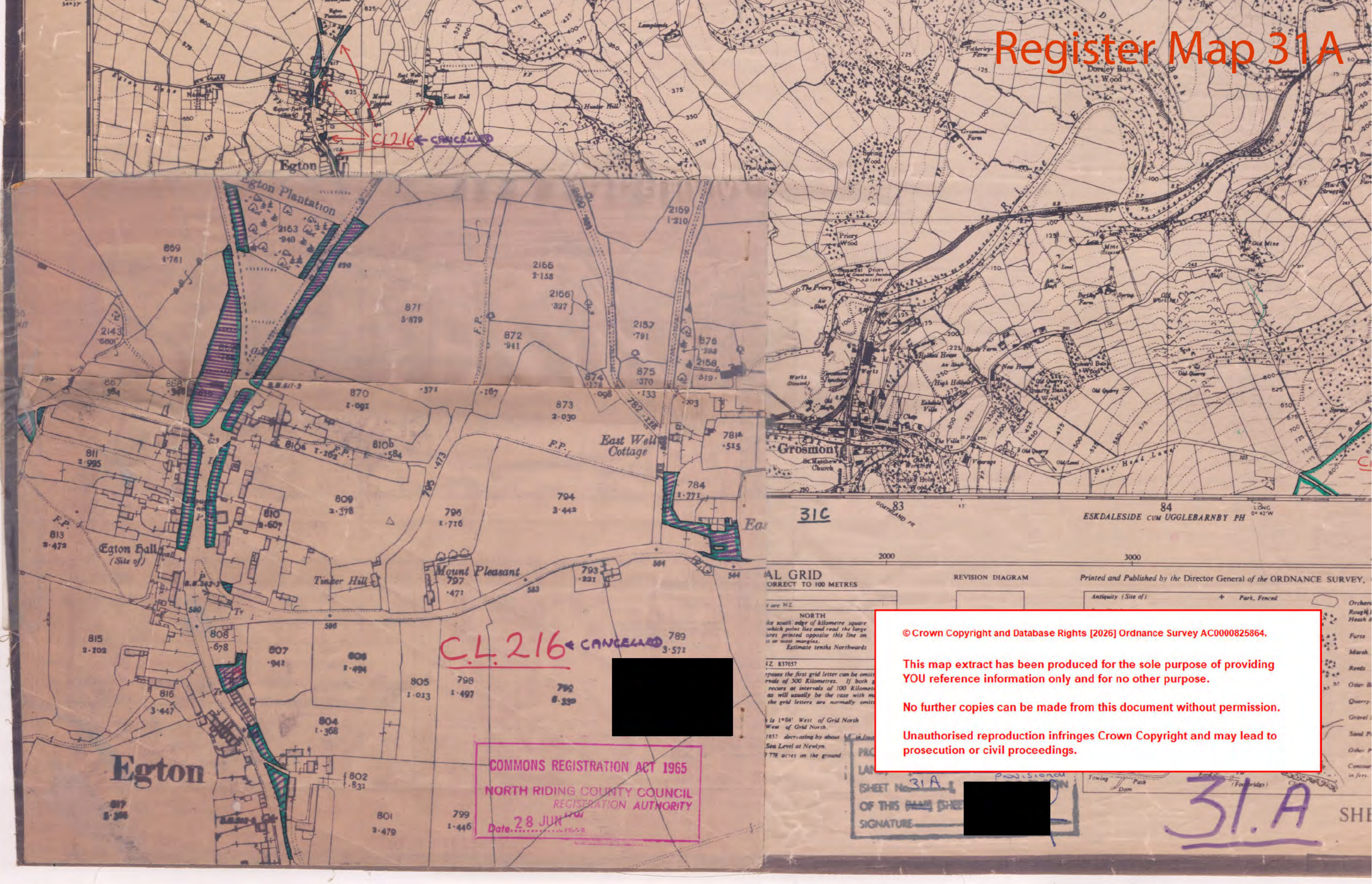
COMMONS REGISTRATION ACT 1955
NORTH RIDING COUNTY COUNCIL
REGISTRATION AUTHORITY
Date...28 JUN 1968

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. 28th June, 1968	1366 16th May, 1968	Egton Parish Council (Registration Provisional)	All the land comprised in entry no. 4 of this register unit and shown marked 'A' on the register map. REGISTRATION CANCELLED - 30.9.71
2 30th Jan. 1970	1873 23rd Dec. 69	Martin John Clavel Foster, The Manor, Egton Bridge, Egton, Whitby. (Registration Provisional)	The whole of the land comprised in this register unit: REGISTRATION CANCELLED - 30.9.71
The registration at Entry No. 2 above is in conflict with the registration at Entry No. 1 above and each of these registrations is accordingly to be treated as an objection to the other to the extent of the conflict.			

Register Map 30B-3



Register Map 31A



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Register Map 31C

CL216

CANCELLED

Hobbs Bridge
Honey Bee Nook
Meth House
Valley Farm
Spring Wood
Dunston Church
Dunston Church Quarry
Hobbs Bridge
Honey Bee Nook
Meth House
Valley Farm
Spring Wood
Dunston Church
Dunston Church Quarry

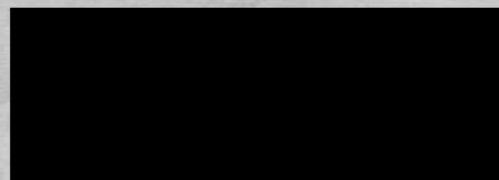
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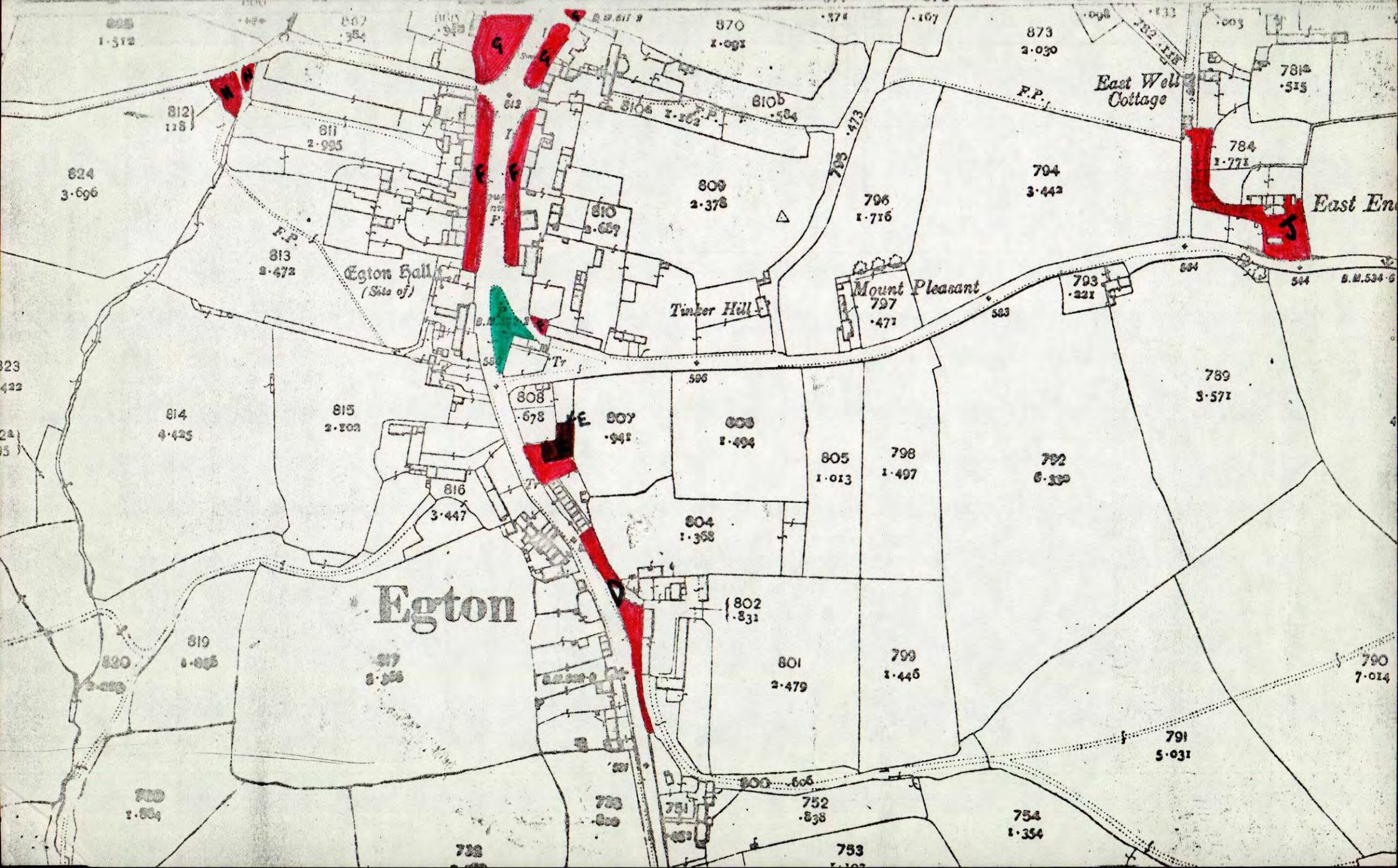
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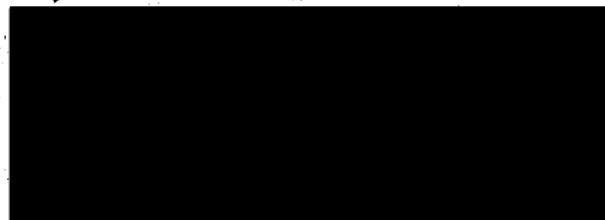


Common land marked
A to K. in red



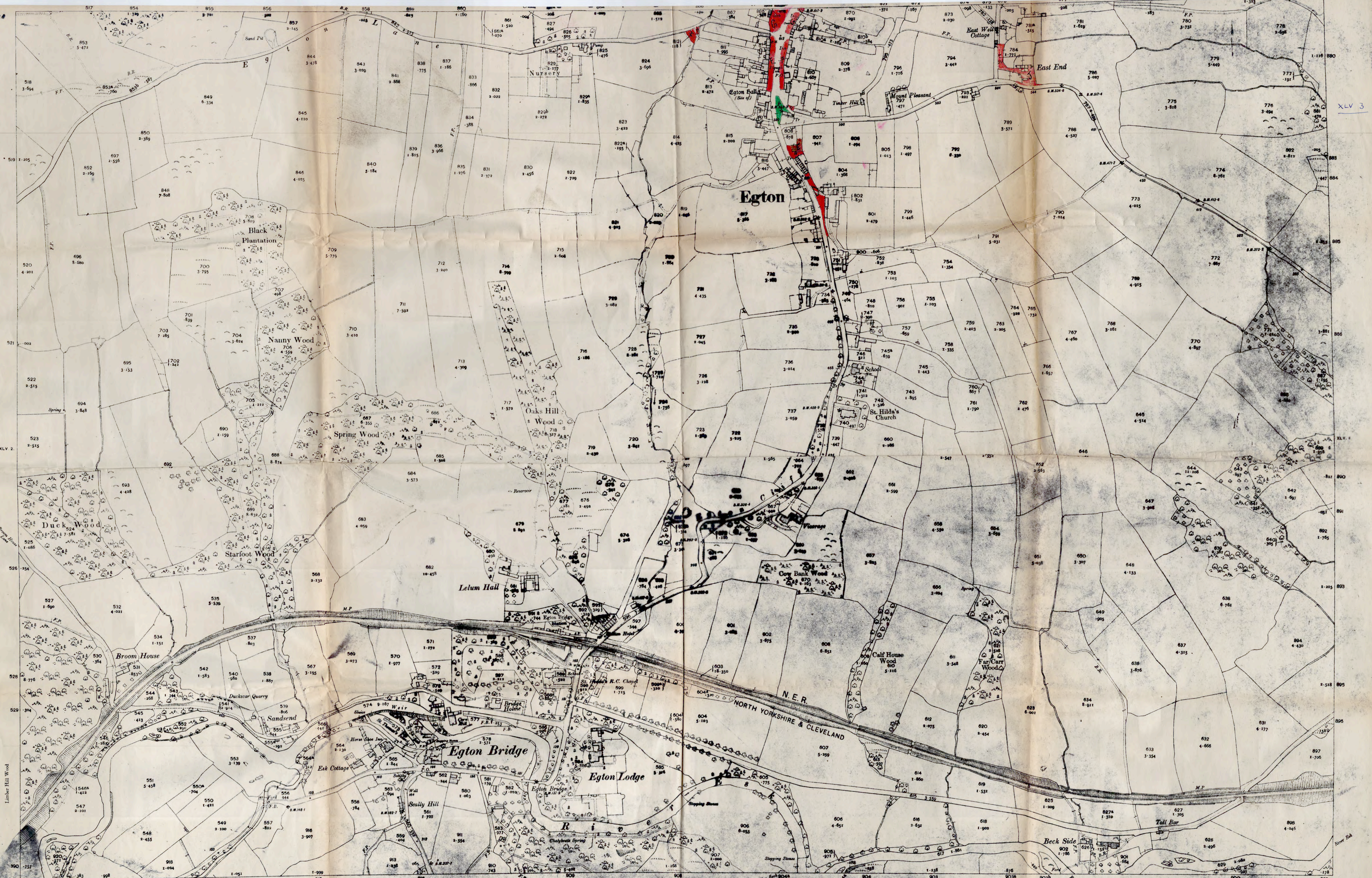


This is Eglon Town Green
marked green

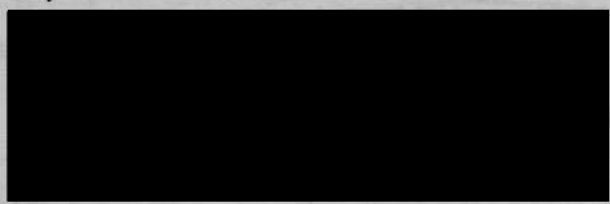


Common Land marked in red
A to K.

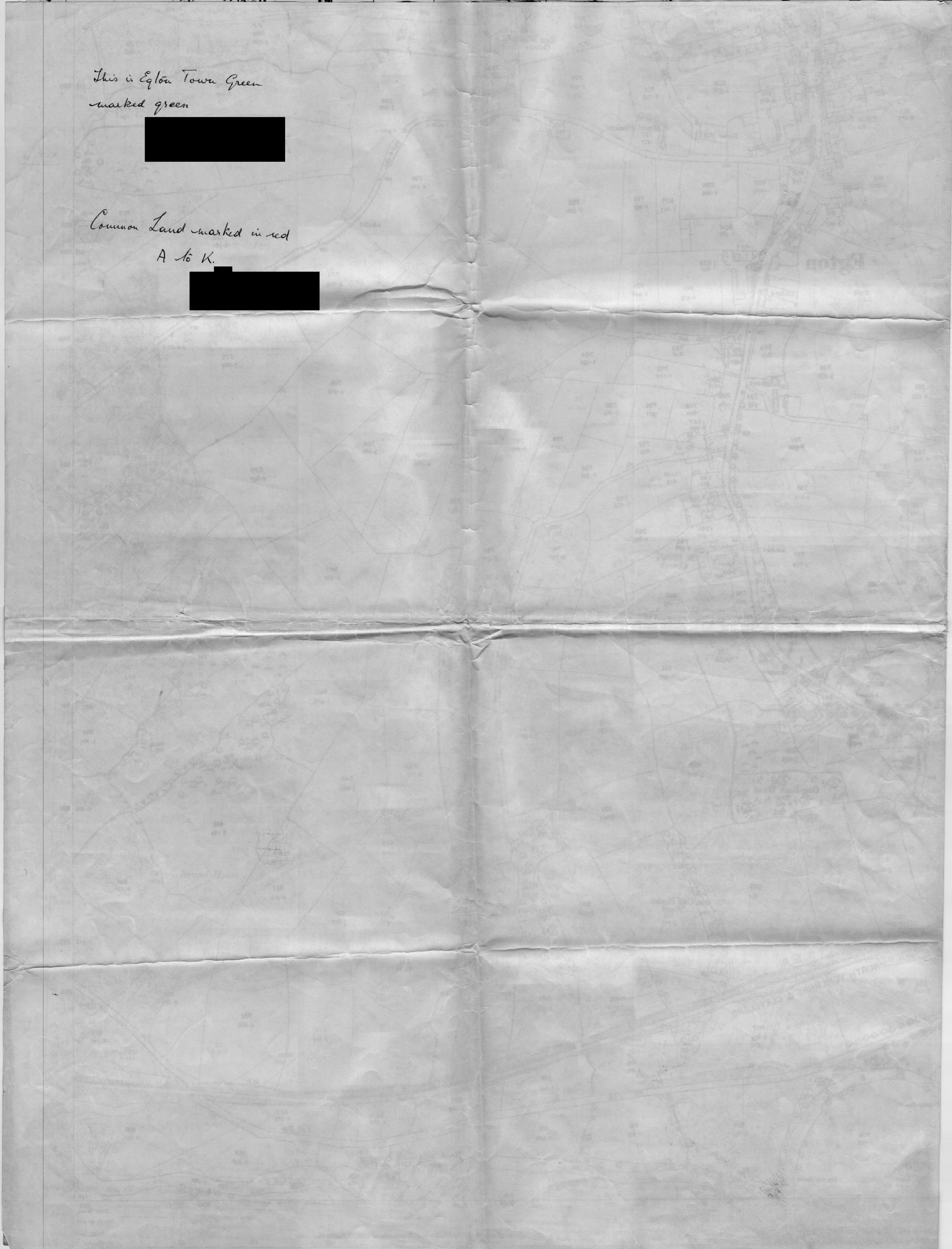




This is Eglon Town Green
marked green

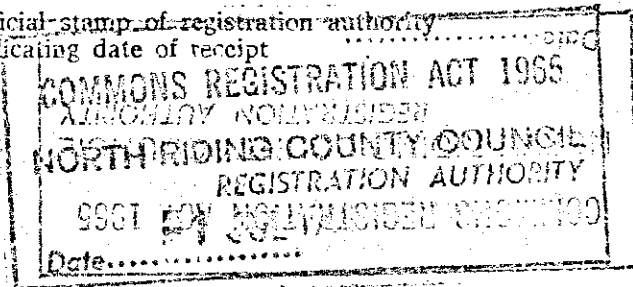


Common Land marked in red
A to K.



This form is for official use only.

Official stamp of registration authority indicating date of receipt



Application No. 1366

Register unit No. 216

COMMONS REGISTRATION ACT 1965

Application for the registration of a claim to ownership of land

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

Insert name of registration authority maintaining the register containing the registration of the land.

To the

NORTH RIDING OF YORKSHIRE COUNTY COUNCIL

Application is hereby made for the registration, in accordance with the particulars set out below, of a claim to the ownership of the under-noted land.

Part 1.

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

(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 Notes 1 and 2 for information as to who may apply.)

EGTON PARISH COUNCIL.

G.W. COCKERILL (CLERK)

10, ESK VIEW,

EGTON,

WHITBY.

Part 2.

Name and address of solicitor, if any.

(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.)

Part 3.

Register containing the registration of the land of which ownership is claimed.

(Insert "Common Land" or "Town or Village Greens." See Notes 3 to 6.)

COMMON LAND

Part 4.

Register unit number.

(See Notes 4 and 8.)

Part 5.

(Answer "Yes" or "No".)

Is ownership claimed of the whole of the land comprised in the above-mentioned register unit?

Part 6.

(See Note 8.)

If the answer to part 5 is "yes", leave this part blank. Otherwise, describe the portion of the land of which ownership is claimed (see Note 8). Where a plan is used the fact should be mentioned here, and the colouring used on the plan stated.

PINFOLD, ETC.

MARKED E, COLOURED RED ON PLAN.

Part 7.

(See Note 11.)

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 11. If (a) applies, quote the number on the acknowledgment from the registration authority.

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

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

[Redacted Signature]

(Blank)

Date May 16, 1968

Statutory Declaration in Support

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.

Insert full name(s).

[I] [We] GEORGE WILLIAM COCKERILL

solemnly and sincerely declare as follows:

Strike out this paragraph if it does not apply.

Insert capacity in which acting.

1. [I am] [We are] the person(s) who [has] [have] signed the foregoing application.

2. 'I am' CLERK to the applicant(s) and am authorised by the applicant(s) 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 to apply for the registration under the Commons Registration Act 1965 of a claim to the ownership of the land described in the application.

Sheet XLV 3

Strike out this paragraph if there is no plan.

Insert "marking" as on plan (see Note 9).

4. 'The plan now produced and shown to me marked "' E colourd Red 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

GEORGE WILLIAM COCKERILL

at Goathland

in the County of Yorkshire

this 25th day of May 1968

Before me

Signature

Address

Manor House

Qualification

Goathland Whetty
J.P. for Whetty Strand

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any plan as an exhibit.

1. Who may apply for registration

An application for the registration of a claim to the ownership of any land registered under the Act may be made by the owner of the land or, where the land belongs to an ecclesiastical benefice of the Church of England which is vacant, by the Church Commissioners.

The owner of any land, for the purposes of the Act, is the owner of the legal estate in fee simple in that land. It follows that, in every case other than the special one of vacant benefice land, the names in part 1 must be those of the persons in whom the legal estate in fee simple is vested. Other persons, for example a lessee, a mortgagee, a person who has only an equitable interest, or charity trustees not having the legal estate in fee simple, are not entitled to apply for the registration of a claim to ownership. Anyone who is not sure whether he is entitled to apply should obtain legal advice.

Where the Church Commissioners apply with respect to land belonging to a vacant benefice, the fact should be stated, and the name of the benefice given, in part 1.

Where the applicants are charity trustees, the fact should be stated, and the name of the charity given, in part 1.

2. Effect of registration at H.M. Land Registry

Where the fee simple of land is registered under the Land Registration Acts 1925 and 1936 registration of claims to the ownership thereof under the Commons Registration Act 1965 is not permitted. The rights of the registered proprietor are not affected by the 1965 Act and his interest is not liable to be divested (see Note 10).

3. The land itself must first be registered

Two separate registers are maintained under the Commons Registration Act 1965 by each registration authority—a Register of Common Land and a Register of Town or Village Greens. Land must appear on one of those registers before a claim to its ownership can be registered, but an owner may apply to have his own land registered as common land or as a town or village green and thereafter (except as mentioned in Note 2) apply to have himself registered as owner. The ownership application must in any case be submitted to the registration authority maintaining the register which contains the registration of the land.

4. 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 the 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 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 a claim to ownership under the Act, but the owner's title will not be prejudiced by non-registration.

5. Conflicting ownership claims

Registration of a claim to ownership which conflicts with another registered ownership claim (in either register: see Note 6) will automatically result in the claims being treated as objections to each other to the extent to which they conflict: hence a person whose ownership claim has been registered has no need to make an objection to a conflicting ownership claim, whether earlier or later in date.

6. Double registration

It may happen during the process of registration that the same land becomes provisionally registered both in the Register of Common Land and in the Register of Town or Village Greens, resulting in each registration being treated as an objection to the other. In such a case the registration of an ownership claim in either register is deemed to be made in both; hence only one ownership claim need be made in respect of the land.

7. Objections to registration of land

A person who registers a claim to ownership does not thereby disable himself from objecting to the registration of the land as common land or as a town or village green, or both. If he does not consider that the land is common or green he should

object to the registration during the appropriate objection period. (As to objections, see the official explanatory booklet "Common Land", available free from local authorities.) Where the land appears in both registers, and the claimant to ownership considers that it should appear in neither, he must make a separate objection in respect of each registration.

8. Scope of application: land descriptions

Except as mentioned in Note 6, an application must relate to land comprised in one register unit and no more. If land in two or more register units is concerned, a separate application form must be used for each. In part 4, the register unit number should be quoted; the applicant should keep a note of this number, which will be used by the registration authority for reference. If the application relates to the whole of the land comprised in the register unit no further description than the register unit number is needed. If not, the land which is the subject of the application must be clearly identified. This can sometimes be done 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 the road from A to B." Where this cannot be done the land must be described by a plan, which 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 9).

9. 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(s) of declarant(s)) made this (date) 19..... before me,

(Signature and qualification)

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

10. Submission of application: effect of failure to register

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. Land registered under the Act, but in respect of which a claim to ownership is not so registered, may in certain circumstances be liable to be divested unless the freehold title is registered under the Land Registration Acts 1925 and 1936.

11. Fees

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 was not registered under the Act until after 30th April 1968.

12. 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. He will also in due course be told of any objections to the registration.

13. 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.

This portion to be detached and sent
to the registration authority.

C.R. Form 26 (OBJECTION FORM)

For official use only

Official stamp of registration authority indicating
date of receipt.

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

To the (name of registration authority)

North Riding County Council.

Objection No. 0279.

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

1. Name and address of person making the objection. Whitby Rural District Council,
Council Chambers, "Eskholme",
Uppang Lane, Whitby, Yorkshire.
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.)
3. Reference (if any) of the objector or his solicitor.
4. Register in which the registration(s) objected to
appear(s). *Common Land/Town or Village Greens
5. Register unit number. C.L. 216
6. Section of register in which registration appears. *Land/Rights/Ownership Section Sheet No. 1
7. Registration entry number(s). 1 to 4
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.)

That part of the land shown edged pink on the enclosed plan
was not Common Land at the date of registration.

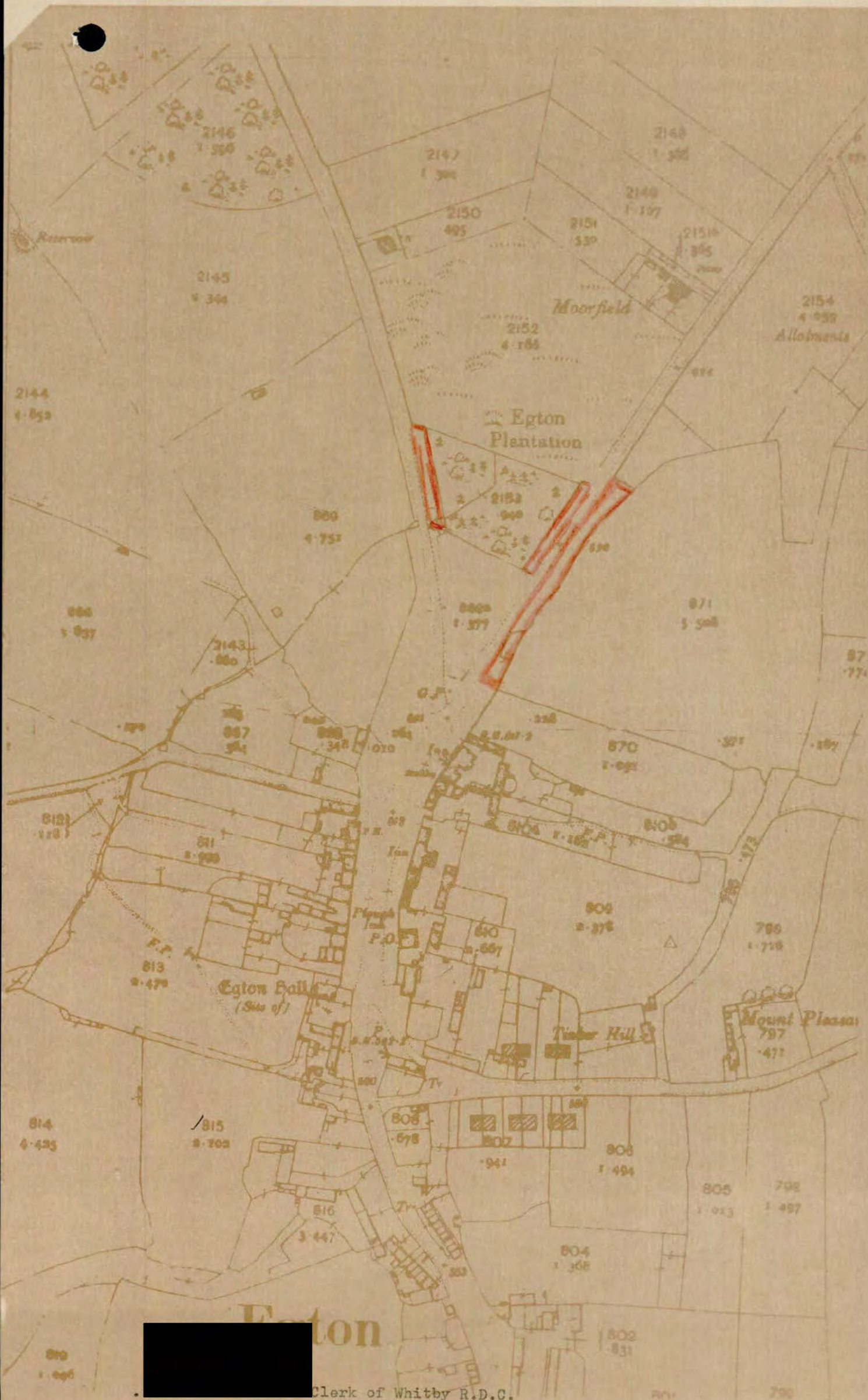
Dated 25th September 1970.

Signature.

Clerk of the Council.

(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.



Clerk of Whitby R.D.C.

25th September, 1970.