

North Yorkshire County Council

Business and Environmental Services

Planning and Regulatory Functions Sub Committee

7 February 2020

**Application to correct the register of common land Commons Act 2006
Part 1- Section 19(2)(b) The Commons Registration (England) Regulations 2014
Schedule 4 Paragraph 11**

Application Reference Number CA10 021

Right Entry 5 attached to High Crossett, Chopgate exercisable over Bilsdale East Moor (CL53)

Report of the Corporate Director - Business and Environmental Services

1.0 Purpose of Report

- 1.1 To report on an application (“the Application”) seeking to correct the register of common land. In particular to remove two fields included on the supplemental map showing the extent of land registered as having 80 sheep gaits attached to it (“the Dominant Tenement”) at right entry 5 of common land unit CL53 Bilsdale East Moor **Appendix 1**.

2.0 Background

- 2.1 Under the provisions of the Commons Act 2006 (“the Act”) the County Council is a Commons Registration Authority (“the CRA”) and so responsible for maintaining the Registers of Common Land and Town and Village Greens for North Yorkshire. Part 1 of the Commons Act 2006 took full effect in North Yorkshire from 15 December 2014 and at the same time it became effective in Cumbria.
- 2.2 **Section 19, paragraph 2(b) of the Act sets out that:-**
- (1) *A commons registration authority may amend its register of common land or town or village greens for any purpose referred to in subsection (2)*
- (2) *Those purposes are;*
- (b) *correcting any other mistake, where the amendment would not affect;*
- (i) *the extent of any land registered as common land or as a town or village green; or*
- (ii) *what can be done by virtue of a right of common;*

Under section 19(4)(b) an application may be made by “any person”

Schedule 4, paragraph 11 of the Commons Registration (England) Regulations 2014 (“the Regulations”) sets out that:-

An application made under section 19(4)(b) of the 2006 Act must include;

- (a) *a statement of the purpose (being one of those described in section 19(2) of the 2006 Act) for which the application is made;*
- (b) *the number of the register unit and, in so far as is relevant to the mistake or other matter in the register in respect of which the application seeks correction, the number of the rights section entry, in the register of common land or town or village greens to which the application relates;*

- (c) *evidence of the mistake or other matter in the register in respect of which the application seeks correction; and*
- (d) *a description of the amendment sought in the register of common land or town or village greens.*

And

Section 19(5) of the Act sets out that:-

- (5) *A mistake in a register may not be corrected under this section if the authority considers that, by reason of reliance reasonably placed on the register by any person or for any other reason, it would in all the circumstances be unfair to do so.*

2.3 A CRA needs to be satisfied on the balance of probabilities that the relevant legal tests have been met for an application to be approved.

3.0 Application

3.1 The Application was submitted by Allan Caine (“the Applicant”). The Application was dated 9 January 2019 and received by the County Council on 14 January 2019. After a subsequent exchange of correspondence between the Applicant and his representatives Sara Allot and latterly Julia Aglionby and the County Council, the Application was accepted as being “duly made” on 2 April 2019.

3.2 A copy of the application including supporting documentation comprises **Appendix 2**.

4.0 Representations

4.1 In accordance with Regulation 21 of the Commons Registration (England) Regulations 2014 (“the Regulations”) the CRA publicised the application by issuing notices on the County Council’s website and also serving notices on relevant parties. The notices were posted on 4 April 2019, in accordance with Regulation 21(5)(a) of the Regulations.

4.2 There was one representation received in response to the notice on 24 May 2019:-

4.3 Mr and Mrs Bridges, who are the owners of the land that the application seeks to have removed from the Dominant Tenement as it is currently registered, object to the application on the grounds that the inclusion of their land was not registered mistakenly as the two fields they now own, were listed as belonging to High Crossett Farm as part of Lot 16 in a Sales Brochure in 1944. Further to this they report that Mr Edward Malcolm Caine (the applicant’s brother), who submitted the application to register the rights under the Commons Registration Act 1965 (“the 1965 Act”), has said that the registration was in accordance with his father’s wishes and not a mistake. Nathan Caine was the father of the Applicant and Edward Caine. At the time of registration Nathan Caine owned High Crossett Farm but Edward Caine was the tenant farmer of the land. Mr and Mrs Bridges also state that to amend the register would be unfair to them as they purchased the land believing there to be grazing rights attached, relying on the information currently held in the register **Appendix 3**. We have since received a letter from Mr Edward Caine confirming his view that a mistake was not made at the time of the initial registration (**Appendix 13**).

4.4 During the notice period, the Applicant, through his representative, supplied additional information in the form of a letter and timeline in support of their application giving their history of the land and common rights. As required by procedures set out in the Regulations this was then shared with Mr and Mrs Bridges for their observations **Appendix 4**.

- 4.5 Mr and Mrs Bridges sent a further representation in response to the additional supporting documentation submitted by the Applicant **Appendix 5**. In comment Mr and Mrs Bridges believe that there would have been ample opportunity during the initial registration period for any errors to be raised as the original application plan was submitted on a shared plan which also included several neighbours land. The original application and plan is held by the CRA and comprises **Appendix 6**. Mr and Mrs Bridges further state that they were aware that there were grazing rights attached to High Crossett Farm but they did not graze such a small amount and therefore did not claim subsidy payments until they had submitted their own apportionment application claiming that 8 rights should be apportioned along with a second apportionment application for 37 grazing rights attached to other land that has since been approved by the CRA and the register amended at Right Entry 7.
- 4.6 The Applicant disagreed with the representations from Mr and Mrs Bridges and stated that despite the information on the Sales Brochure in 1944, by the time the farm was sold in 1948 the two fields now owned by Mr and Mrs Bridges were not part of the farm purchased by Nathan Caine in 1965 (the Applicant's father) but all 80 sheep rights were sold with the farm. They also state that they feel Mr Edward Caine made a mistake in including the two fields as part of the Dominant Tenement as they weren't part of High Crossett Farm in 1948 and that the 80 sheep rights were referenced in Land Registry Title Documents relating to land which did not include those two fields. The Applicant feels that anything that Mr Edward Caine may have said in 1968 is not relevant as by then the 80 sheep rights had been severed from the land now owned by Mr and Mrs Bridges and that Mr and Mrs Bridges should have checked with the Land Registry before purchasing the land as this would have shown all 80 rights attached to High Crossett Farm without the two fields included. The applicant states further that since 1995 when Mr Edward Caine ceased to be tenant of High Crossett Farm, he made no attempt to graze 8 sheep or claim payments for 8 grazing rights from the Rural Payment Agency even though he retained the two fields that were later purchased by Mr and Mrs Bridges. Lastly the Applicant states that it was not possible for the Common Land Register to be corrected for this type of error until the Commons Act 2006 came into force in North Yorkshire in December 2014 **Appendix 7**.
- 4.7 Mr and Mrs Bridges made further comments through their representative stating that regardless of what happened prior to their registration, under the 1965 Act, the 80 sheep rights were registered to High Crossett Farm with the two fields shown as being included in that registration. They also state that even though the Land Registry Title Document mentions the right to graze "80 sheep in perpetuity" failure to have registered them under the 1965 Act would have resulted in the 80 rights ceasing to exist. They restated that Mr Edward Caine had not made a mistake when he registered the rights as he registered the rights as a tenant of High Crossett Farm and under the instruction of the then owner, his Father. Further as the owner did not seek to register the rights, had Mr Edward Caine not made the registration then the rights would not exist today. Mr and Mrs Bridges feel that Mr Edward Caine did not exercise or claim for just 8 sheep rights as it would have been of little benefit to do so. They feel that there would have been plenty of opportunity for objections to have been lodged regarding the register entry both at the time and more recently and that to seek to amend the register now would be unfair to them and would set a precedent for many other applications to be made based on information that predates the 1965 Act **Appendix 8**.
- 4.8 The Applicant responded further stating that no evidence has been submitted showing what had occurred before the sale of High Crossett to Mr Nathan Caine (the Applicant's father) in 1965 and that the sales particulars from 1965 state that 80 sheep rights were included in that sale. The Applicant does not accept that what happened prior to the registration under the 1965 Act is irrelevant. The Applicant

feels that it would have been unlikely that Mr Nathan Caine instructed his son Edward Caine to have registered rights attached to land that he did not own and that Mr Edward Caine made an error in doing so. Further Mr Nathan Caine would not have thought to check his son's application. The Applicant also states that whilst it may not have been practical to graze 8 sheep it would have been of benefit to claim subsidy payments if he thought he was entitled to do so. In addressing the issue of fairness, the Applicant feels that it would be unfair on him to not correct the register as he has been exercising all 80 sheep rights for the last 24 years whereas Mr and Mrs Bridges have not exercised or claimed subsidy payments before 2016 and did not pay any additional sum for the rights when they agreed the sale of the two fields and therefore have not suffered any loss **Appendix 9**.

- 4.9 A further representation was submitted on behalf of Mr and Mrs Bridges in response to the Applicant's comments above. They believe that although at the point of registration under the 1965 Act the rights for 80 sheep became attached to more land than they were originally purchased with in 1965, there has since been no evidence to support that they have been subsequently separated from the land and as such should now be apportioned with any split of that land that the rights were registered to. They feel that the Application seeking to correct a mistake made by the Applicant's brother Mr Edward Caine is groundless for the following reasons:
1. The rights were registered in 1965 by the tenant and not by the owner (as recommended by the guidance at the time), the owner was responsible for checking the registration and that future owners are bound by what was registered.
 2. The Applicant is not familiar with the full history of the farm as he was unaware that the two fields were once part of High Crossett Farm with rights attached as detailed in the 1944 sale brochure.
 3. It would be unfair on Mr and Mrs Bridges to change the register now as they relied on the information in the register to be correct and purchased their land on the basis that they would receive a proportion of the grazing rights and that they would only graze the rights and claim an agricultural subsidy once further rights had been acquired and apportioned, which was successful under their second application to the CRA received on 7 December 2016 and granted on 5 October 2017.
 4. The Applicant should have acted sooner if he thought there was an error in the register, which should have been checked in 1999 when he purchased the farm. Mr and Mrs Bridges accept that 80 grazing rights were acquired by Mr Nathan Caine in 1965 but this was not the case when Mr Allan Caine purchased the farm in 1999 as under Section 32 of the Land Registration Act 2002 an entry in the Land Registry Title is not guaranteed and under Section 33(d) should not have been shown on the Title.
 5. Mr Edward Caine confirmed in a telephone conversation that he had acted under his father's instruction to register the rights as attached to all the land included on the supplemental map for Right Entry 5 in the common land register CL53 (this has since been confirmed in a letter from Mr Edward Caine **Appendix 13**). That the plan submitted to the CRA in 1968 was a joint plan submitted by several neighbours and no objections were raised at the time.

Mr and Mrs Bridges also stated that they were disappointed with the length of time it was taking the CRA to process their apportionment application **Appendix 10**.

- 4.10 Following receipt of Mr Edward Caine's letter (**Appendix 13**) on 13 November 2019, which the CRA requested in order to assess Mr and Mrs Bridges claim that Mr Edward Caine did not believe that his registration was a mistake; comments were invited from all interested parties.
- 4.11 The applicant responded that Mr Edward Caine had no authority to register his landlord's rights over land that his landlord did not own, that the 80 sheep rights have always been included on the Land Registry since 1948 and that Mr Edward Caine did not claim subsidy payments on the 8 rights which they believe he would have done if the rights were retained with his fields. The applicant, Mr Allan Caine, maintained his request to have the dominant tenement amended to remove the two fields currently belonging to Mr and Mrs Bridges **Appendix 14**.
- 4.12 Mr and Mrs Bridges through their representative welcomed Mr Edward Caine's letter but felt that they had already addressed the points raised by the applicant **Appendix 15**.

5.0 Assessment – have the relevant tests been met?

5.1 Section 19(2)(b) of the Act:-

(2) *Those purposes are;*

(b) *correcting any other mistake, where the amendment would not affect—*

(i) *the extent of any land registered as common land or as a town or village green; or*

(ii) *what can be done by virtue of a right of common;*

The application does not seek to affect the extent of the land registered as common land nor is it seeking to affect what can be done by virtue of a right of common. This test is met by the application.

5.2 Schedule 4 paragraph 11 of the Regulations:-

An application made under section 19(4)(b) of the 2006 Act must include:-

(a) *a statement of the purpose (being one of those described in section 19(2) of the 2006 Act) for which the application is made;*

(a) Section 5 of the Application is clear that the purpose of the Application is to seek to correct a mistake in registering two fields as part of the land that the rights were attached to **Appendix 11**.

This test is met by the application.

(b) *the number of the register unit and, in so far as is relevant to the mistake or other matter in the register in respect of which the application seeks correction, the number of the rights section entry, in the register of common land or town or village greens to which the application relates;*

(b) Section 4 of the Application lists CL53 Right Entry 5 as the entry that it seeks to correct **Appendix 11**.

This test is met by the application.

(c) *evidence of the mistake or other matter in the register in respect of which the application seeks correction;*

(c) In Section 5 of the Application, the Applicant states that he is seeking to correct the area that the common rights were registered as being attached to - the dominant tenement, which he believes was wrongly defined.

The Explanatory Notes issued by the Department for Environment Food and Rural Affairs (DEFRA) to accompany the Act along with DEFRA Guidance 2015 identify this type of mistake is an example of the kind that might be corrected under Section 19(2)(b) **Appendix 11**.

The Applicant has submitted the sales description for High Crossett Farm from 1965 which states that “the farm has a perpetual right for a stray on Bilsdale East Moor for 80 sheep, though the occupier has no sheep at the present time” In the list of field numbers OS601 and OS602 are not listed as being included in the sale. This sales information dates three years before the rights were registered in the register of common land. However Mr and Mrs Bridges and their representative report having conversations with Mr Edward Caine, the person who registered the rights with the CRA in 1968, stating that the registration to include the two fields in the dominant tenement was not an error and that he was acting under the instruction of his father Nathan Caine who was then the owner of High Crossett. Mr Edward Caine has since submitted a letter (**Appendix 13**) confirming that he does not believe that he made a mistake at the time of registration.

At the time Mr Edward Caine was the tenant of High Crossett Farm and also rented the two fields from a third party and exercised all 80 sheep rights. Under the 1965 Act it was possible for tenant farmers as well as the owners of land to register common rights with the CRA and the onus was placed on the owner of land at the time to check what had been registered. Any common rights exercised before the 1965 Act not registered by the given deadline would be considered extinguished and therefore cease to be common rights and no longer registerable with the CRA. Mr Edward Caine’s application prevented any common rights being exercised at the time from being lost before the deadline ran out. It is not surprising that as Mr Edward Caine was the tenant of all the property registered as the Dominant Tenement relating to Right Entry 5 and he was exercising all 80 sheep rights at the time, that when registering those rights he did so as one right entry. Mr Edward Caine’s application form was accompanied by a shared plan submitted jointly by several of the local farmers claiming common grazing rights. The plans show the extent of the land that each farmer wanted rights attached to. A notice of their applications would have been advertised and objections invited. Some objections were made and as a result the Land Section and the right entries 1 and 3 to 17 were considered by the Commons Commissioner at a hearing held on 1 December 1975. The Commissioner’s decision concluded that modifications be made to Right Entries 4 and 6 but that all other right entries be confirmed as final and as such the entry at Right Entry 5 was not considered by the Commissioner to have been mistaken (**Appendix 12**). The opportunity was available both generally and at the Commissioner’s hearing for Mr Nathan Caine; the owner of the two fields or any other interested party to object to Mr Edward Caine’s registration. No objections that any aspect of Mr Edward Caine’s registration was mistaken were recorded.

On balance the evidence suggests that at the time of registration there was not a mistake made in defining the dominant tenement in the original application and therefore this test has not been met by the application.

(d) a description of the amendment sought in the register of common land or town or village greens.

- (d) Section 5 of the Application is clear that the amendment sought by the Application is to amend the supplemental map so that the two fields are removed **Appendix 11**.

This test is met by the application.

- 5.3 **Section 19(5) of the Act:-**
(5) *A mistake in a register may not be corrected under this section if the authority considers that, by reason of reliance reasonably placed on the register by any person or for any other reason, it would in all the circumstances be unfair to do so.*

Mr and Mrs Bridges' representative has submitted statements that they did rely on the information held in the Commons Register when they purchased the two fields in 2012 and that they believed under the Act that they would be entitled to a pro rata apportionment of the rights, as they did with a second property and subsequently submitted two apportionment applications for 8 grazing rights and 37 grazing rights to the CRA in 2016 **Appendix 3**.

In your officer's view there is no reason to disbelieve that Mr & Mrs Bridge's placed due reliance on the content of the register and consequently it would be unfair on them to amend the register of common land as proposed by the application.

6.0 Financial Implications

- 6.1 There are no financial implications to the Council that ordinarily arise from its decision on the Application though it may incur costs in defending any legal challenge made to that decision. It is outside the Council's control whether or not any interested part attempts such a challenge.

7.0 Legal Implications

- 7.1 The mechanism for challenge by an aggrieved party to any decision reached by the County Council in this matter would be by Judicial Review.

8.0 Equalities Implications

- 8.1 Consideration has been given to the potential for any adverse equality impacts arising from the recommendation and an Equality Impact Assessment screening form is attached at **Appendix 16**.

9.0 Conclusion

- 9.1 It is your officer's view that on the balance of probabilities, and for the reasons set out in this report, the application fails to demonstrate that a mistake as referred to in section 19(2)(b) of the Act and Schedule 4 paragraph 11 of the Regulations has occurred. Further, in reference to section 19(5) of the Act, even if it were the case that a mistake has occurred that it would be unfair to correct the register of common land in the way proposed by the applicant given the reliance placed on the register by Mr and Mrs Bridges.

11.0 Recommendation

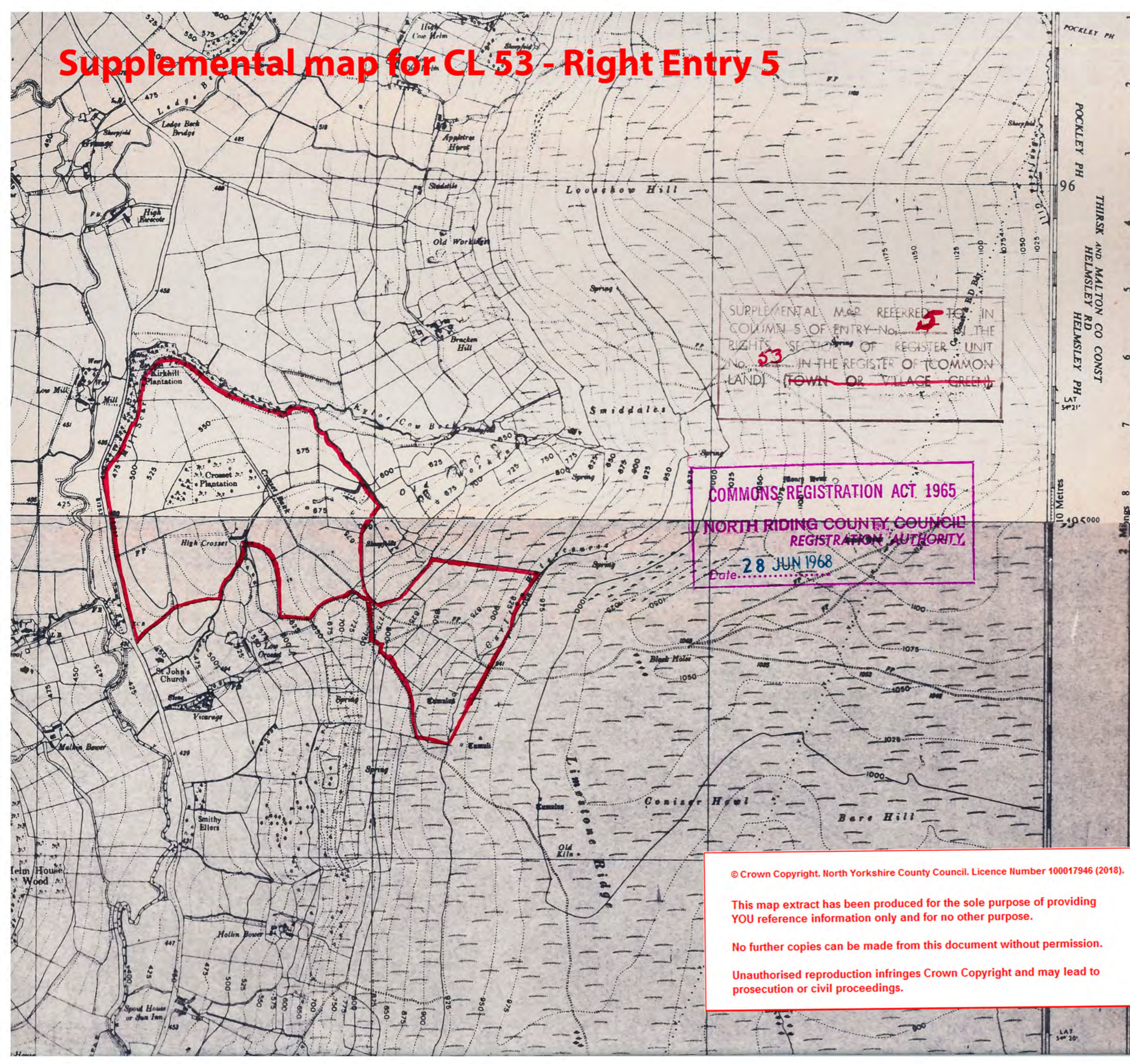
- 11.1 That the application is refused on the grounds set out in this report.

DAVID BOWE
Corporate Director Business & Environmental Services

Author of Report: Jayne Applegarth

Background Documents: Application case file held in County Searches Information

Supplemental map for CL 53 - Right Entry 5



SUPPLEMENTAL MAP REFERRED TO IN COLUMN 5 OF ENTRY No. 53 IN THE RIGHTS SECTION OF REGISTER UNIT No. 53 IN THE REGISTER OF COMMON LAND (TOWN OR VILLAGE GREEN)

COMMONS REGISTRATION ACT 1965
NORTH RIDING COUNTY COUNCIL
REGISTRATION AUTHORITY
Date 28 JUN 1968

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FORM CA10

Commons Act 2006: section 19

Application to correct the register**This section is for office use only**

Official stamp

Application number

<p>COMMONS ACT 2006</p> <p>NORTH YORKSHIRE COUNTY COUNCIL</p> <p>REGISTRATION AUTHORITY</p> <p>DATE 14 JAN 2019</p>

CA10 021

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

- All applicants should complete boxes 1–8.
- Any person can apply under section 19 of the Commons Act 2006.
- You will be required to pay a fee unless your application is to correct a mistake made by the registration authority (section 19(2)(a)) or to remove a duplicate entry (section 19(2)(c)). Ask the registration authority for details. You would have to pay a separate fee should your application be referred to the Planning Inspectorate, unless it is to correct a mistake made by the authority or to remove a duplicate entry.

Note 1

Insert name of commons registration authority.

1. Commons Registration Authority

To the:

Tick one of the following boxes to confirm that you have:

enclosed the appropriate fee for this application:

or

applied for a purpose in section 19(2)(a) or (c), so no fee is 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:

ALLAN W^m CAINE.

Postal address:

WOOLHOUSE CROFT FARM
BILSDALE
HELMSELBY

Postcode Y0625NE

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 11 to the Commons Registration (England) Regulations 2014.

4. Basis of application for registration and qualifying criteria

Specify the register unit number to which this application relates:

Bilsdale Eastmoor CL0053

Specify the rights number to which this application relates (if relevant):

Entry 5 80 sheep

Tick one of the following boxes to indicate the purpose (described in section 19(2)) of your application. Are you applying to:

- Correct a mistake made by the commons registration authority:
- Correct any other eligible mistake:
- Remove a duplicate entry from the register:
- Update the details of any name or address referred to in an entry:
- Record accretion or diluvion:

Note 5

Explain why the register should be amended and how you think it should be amended.

5. Describe the purpose for applying to correct the register and the amendment sought

It has come to my knowledge that a mistake was made by Edward Cairne in 1968 when he wrongly registered 2 fields then owned by Mr G. Waley as part of High Crossett Farm
The amendment sought is for that map to be corrected and the 80 sheep rights to be correctly registered as solely to High Crossett Farm owned by myself

Note 6

List all supporting consents, documents and maps accompanying the application, including evidence of the mistake in the register. 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.

6. Supporting documentation

Copy of map HM land registry title no. NYK 27386 when bought by N. Caine in 1965.
 Copy RPA LACS Common land Forge area alteration 2.9.2004
 Copy RPA map dated 2004 showing same boundaries as in 1965
 Copy of Natural England Map.
 Copy of Farm Sale particulars dated 1965

Note 7

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.

7. Any other information relating to the application

In 1965 High Crossett Farm was purchased by my father, with the perpetual rights to graze 80 sheep on Bilsdale East moor.
 At this time the 2 fields in question were owned by Mr G. Maley at no time were they part of High Crossett. Edward Caine was tenant of High Crossett & also tenant of Mr Waley 2 fields

The 1965 commons registration act required farmers to register their rights This was wrongly done in 1968

by Edward Caine I only became aware of this his mistake in June 2018.
 I became tenant of High Crossett Farm in 1995 and purchased the farm in 1999, I have never farmed the 2 fields in question

In June 2018 I was made aware that Mr & Mrs Bridges had purchased these 2 fields previously owned by Malcolm Caine estate and were challenging me for 10% of my sheep stray

I dispute this & wish to have the 1965 registration map corrected to show the correct position & proving that the Bridges have no claim on my rights

<p>Note 8 <i>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.</i></p>	<p>8. Signature</p> <p>Date: <input data-bbox="539 203 1420 277" type="text" value="9.1.19."/></p> <p>Signatures: <input data-bbox="539 320 1420 568" type="text"/></p>
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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.

A W & S J CAINE
WOOLHOUSE CROFT FARM
BILSDALE
HELMSLEY
YORK
N YORKSHIRE
YO6 5NE

Our Reference: 14-010442/
Your Reference: 48/049/0080

02 SEP 2004

Dear Applicant,

INTEGRATED ADMINISTRATION AND CONTROL SYSTEM (IACS)
COMMON LAND FORAGE AREA ALLOCATION


On your 2004 IACS Area Aid Application Base Form you recorded an entitlement to graze animals on BILSDALE EAST CL0053. All claimed rights have now been determined. Your allocation of forage area has been calculated as follows:

A.	Total area of Common	1852.45 ha
B.	Total grazeable forage area of common	1852.45 ha
C.	Total Livestock Units (LUs) entitled to be grazed on the common	315.00
D.	Total LUs you are claiming entitlement to graze on the common	12.00
E.	Your FORAGE AREA ALLOCATION for the common (i.e. B / C x D)	70.57 ha

This allocation should be added to the forage area claimed on your IACS application, or any amended area following our administrative and field checks.

Please do not hesitate to contact me if you have any queries about this.

Yours faithfully,


Debbie Brown (Northallerton)

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Particulars
of the

Valuable Freehold Farm

known as

HIGH CROSS, BILSDALE.

(amounting to 10 2/3 acres with other outbuildings)

To be Offered For
SALE BY PUBLIC AUCTION

(Unless previously sold by Private Treaty)

at

The TOWN HALL, STOKESLEY.

on

MONDAY, 23rd AUGUST, 1965.

at 3.30 p.m.

Solicitors:

R.T. & R.W. Pearson
and Mackirdy,
Bondgate,
HELMSLEY.

Tel. 207.

HIGH CROSSET.

THE FARM is situate midway between Stokesley and Helmsley and overlooks the hamlet of Tangdale Beck.

THE FARMHOUSE, built of stone with a tiled roof, includes the following accommodation:

GROUND FLOOR.

Lounge (12'9" x 13'3") with modern tiled fireplace.
Living Kitchen (16'3" x 16'6") with kitchen range.
Back Kitchen (11'0" x 10'6") with porcelain sink (c. tap).
Store Room.
2 Pantries.

FIRST FLOOR.

3 Double Bedrooms (16'9" x 11'3")
(14'0" x 10'6")
(12'9" x 10'6")
'L' Shaped Single Bedroom (13'0" x 7'6").
Boxroom.

There is a large attic on the second floor.

RATEABLE VALUE £26

SERVICES - Mains Electricity, Own Water Supply.

THE FARM BUILDINGS are mainly built of stone with tiled roofs, and include 4 Pig Sties, Large Loose Box, Earth Closet, Turf House with corr. iron roof, now used as Implement Shed.

Range of Workshop, Barn with Granary above, Meal House, Large Loose Box, 8 Stall Beast House with Calf Crib, Fodder House, 10 Stall Beast House, Loose Box with Granary above, Store House.

2 Bay Tractor House, Anderson Shelter, 2 Bay Hay Shed.

THE LAND which lies in a ring fence, includes some good arable, as well as some rough grazing on the moor, which is capable of being used for either sheep or cattle. The growing timber is included in the sale. The farm has a perpetual right for a stray on Bilsdale East Moor for 80 Sheep, though the occupier has no sheep at the present time.

The sporting rights which are in the sale include some good shooting.

There is a Right of Way up the farm road for the benefit of the small holding which adjoins.

2.

No dilapidations or deductions of any kind will be allowed, but the vendor is making no claim for tenant right matters, or the root crop which will be left for the benefit of the purchaser.
The purchaser will be given the option of taking over all unconsumed produce at market Value.

The vendor reserves the right to hold an auction sale of the Live and Dead farming stock on the premises prior to completion.

VACANT POSSESSION will be given on 2nd NOVEMBER, 1965.

VIEWING at any reasonable time, except Sundays, on production of the Particulars of Sale.

Schedule

<u>O.S. No.</u>	<u>Description</u>	<u>Acres.</u>	<u>Total.</u>
583	Arable	3.408	
597	Arable	9.068	
600	Arable	6.084	
632	Arable	3.344	
633	Arable	5.331	
636	Arable	3.941	31.176
634	Grass	10.764	
650	Grass	9.082	
593	Grass	3.206	
594	Grass	4.177	
640a	Grass	5.075	
638	Grass	2.761	
637	Grass	10.015	
762	Grass G	4.465	49.545
584	Woodland	3.188	
596	Woodland	7.789	
599	Woodland	6.710	
Pt. 599	Woodland	6.266	
598	Road	4.412	
643	Road	.059	
Pt. 635	House & Buildings	.940	
758	Rough	6.080	
755	Rough	1.194	
757	Rough	1.271	
756	Rough	2.305	
759	Rough	19.420	
	Moorland	15.100	58.942
			139.663

93-507
415

507
415

HIGH CROSSETT FARM

rpa
rural payments agency

Main Holding Number
48/049/0080

Sheet Holding Number : **48/049/0080**

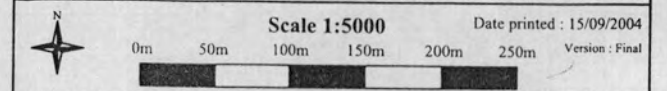
Updated IACS 2002 Information

Plot ID	Map Sheet	Field Nos.	Original Field Size (ha)	New Digital Field Size (ha)	Incorrect Boundary
	OS Map Sheet	NG Field			
	SE5795	6318	13.82		
1	SE5795	6523		4.91	
2	SE5795	4922		7.56	
3	SE5894	2156	18.13	18.22	
4	SE5794	4886		3.78	
	SE5794	4591	1.78		
	SE5794	5081	1.68		
5	SE5794	7097	1.43	1.47	
6	SE5794	8080	3.09	3.09	
7	SE5795	8503	7.26	7.26	
8	SE5795	8524	0.80	0.80	
9	SE5794	3079	3.11	3.10	D
10	SE5794	3397	1.97	2.00	D
11	SE5795	3747	1.38	1.38	
12	SE5795	5935	0.86	0.86	

total 54.43
moorland 70.57

Print Name :

Signed : Date :



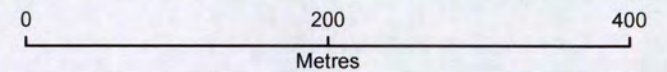
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COUNTRYSIDE STEWARDSHIP MID TIER - OPTIONS MAP

- | Assigned colour | | Applicants colour match |
|-----------------|--|---|
| Options | | Location of other AE scheme options (e.g. Environmental Stewardship) |
| BE | | Management of hedgerows |
| WD | | Woodland edges |
| BE | | Options for protection of in-field trees
*Number within circle represents number of trees in parcel |
| HS | | Maintenance of weatherproof traditional farm buildings |
| HS | | Options to protect historic environment features |
| AB,SW,WT | | Buffer strips
- for arable options (AB)
- for soil and water options (SW)
- for wetland options (WT) |
| AB | | Options for arable land |
| SW | | Options to protect soil and water |
| GS | | Options for grassland |
| UP | | Options for upland rough grazing |
| WD | | Management of successional areas of scrub |
| OP,OR,OT | | Options for organic land |
| FG12 BN | | Capital item |
| WNS | | Field number |
| | | Holding parcels (buff coloured parcels are to be marked up on this map. Any grey parcels are covered on other maps) |

You must write on the map in black the specific codes for options you have selected or require, including any supplements e.g. AB7, BE3, GS2, HS5



Map provided for the sole purpose of supporting CS Scheme Applications and Agreements.

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Application Ref: AG00693709



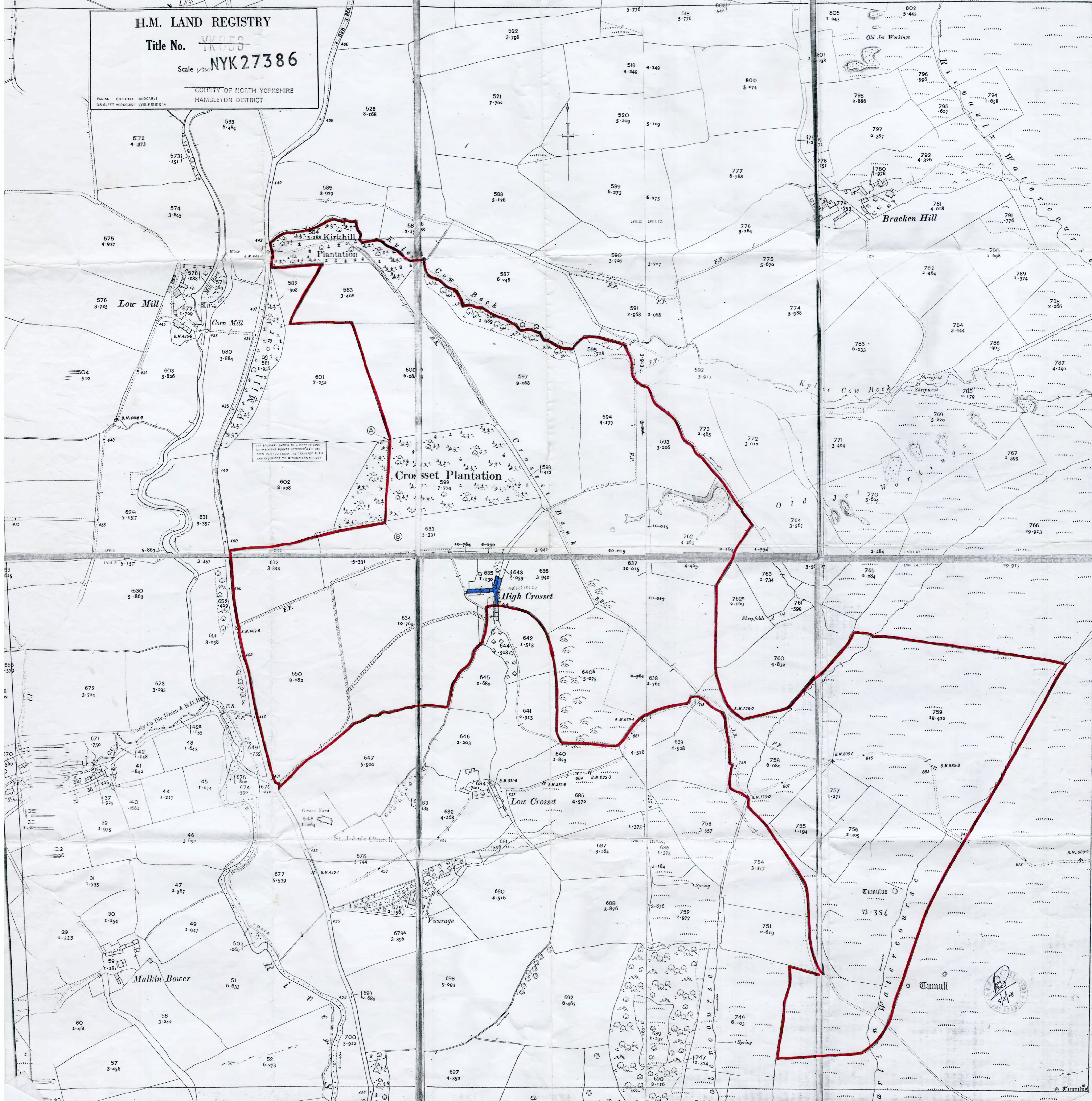
H.M. LAND REGISTRY

Title No. ~~YK 655~~

Scale 1/2500
NYK 27386

COUNTY OF NORTH YORKSHIRE
HAMLETON DISTRICT

PARISH: BILSDALE, MIDCALLE
O.S. SHEET YORKSHIRE LVIII 8 & 14



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

Registration authority

NORTH RIDING COUNTY COUNCIL

Register of Common Land

COMMONS REGISTRATION ACT 1965
 NORTH RIDING COUNTY COUNCIL
 REGISTRATION AUTHORITY
 23 JUN 1968
 Date:

Register unit No. C.I.53

Edition No.

See Overleaf
for Notes

RIGHTS SECTION—Sheet No. 2

1 No. and date of entry	2 No. and date of application	3 Name and address of every applicant for registration, and the capacity in which he applied	4 Particulars of the right of common, and of the land over which it is exercisable	5 Particulars of the land (if any) to which the right is attached
5 28th June, 1968.	733 14th May, 1968.	Edward Malcolm Caine, High Crossett, Chopgate. Tenant.	To graze 80 sheep over the whole of the land comprised in this register unit. (Registration Provisional)	High Crossett, Chopgate as shown hatched yellow ^{edged red} on the supplemental plans bearing the number of this registration. (Ordnance Survey Sheets SE 59 SE and SE 59 NE) (Provisional Editions)
6 28th June, 1968.	732 14th May, 1968.	Margaret Eleanor Ainsley, Sun Inn, Chopgate. (i) Owner (ii) Tenant.	(i) To graze 60 sheep and to cut and take turf over the whole of the land comprised in this register unit. (Registration Provisional) * (ii) To graze 100 sheep and to cut and take turf over the whole of the land comprised in this register unit. *For modification on finality see Entry No. 18 below (Registration Provisional)	(i) Land as shown hatched brown ^{edged red} on the supplemental plan bearing the number of this registration. (Ordnance Survey Sheet SE 59 SE) (Provisional Edition) (ii) Land as shown hatched brown ^{edged green} on the supplemental plans bearing the number of this registration (Ordnance Survey Sheets SE 59 SE and SE 59 NE) (Provisional Editions)
See entry 26				
7 28th June, 1968.	745 14th May, 1968.	Both deceased Lesley Featherstone and John Featherstone, High Ellermire, Chopgate. Joint Owners.	To graze 60 sheep over the whole of the land comprised in this register unit. (Registration Provisional)	High Ellermire, Chopgate as shown hatched green ^{edged red} on the supplemental plan bearing the number of this registration (Ordnance Survey Sheet SE 59 NE) (Provisional Edition)
8 28th June,	746 14th May,	Arthur Ernest Todd and Wilfred Thomas Todd, William Beck Farm,	To graze 200 sheep over the whole of the land comprised in this register unit.	The land as shown hatched green ^{edged red} on the supplemental plan bearing the number of this registration (Ordnance Survey

(see 27
and 28)

Supplemental map for CL 53 - Right Entry 5

SUPPLEMENTAL MAP REFERRED TO IN
COLUMN 5 OF ENTRY No. **53** IN THE
RIGHTS SECTION OF REGISTER UNIT
No. **53** IN THE REGISTER OF COMMON
LAND) (~~TOWN OR VILLAGE GREEN~~)

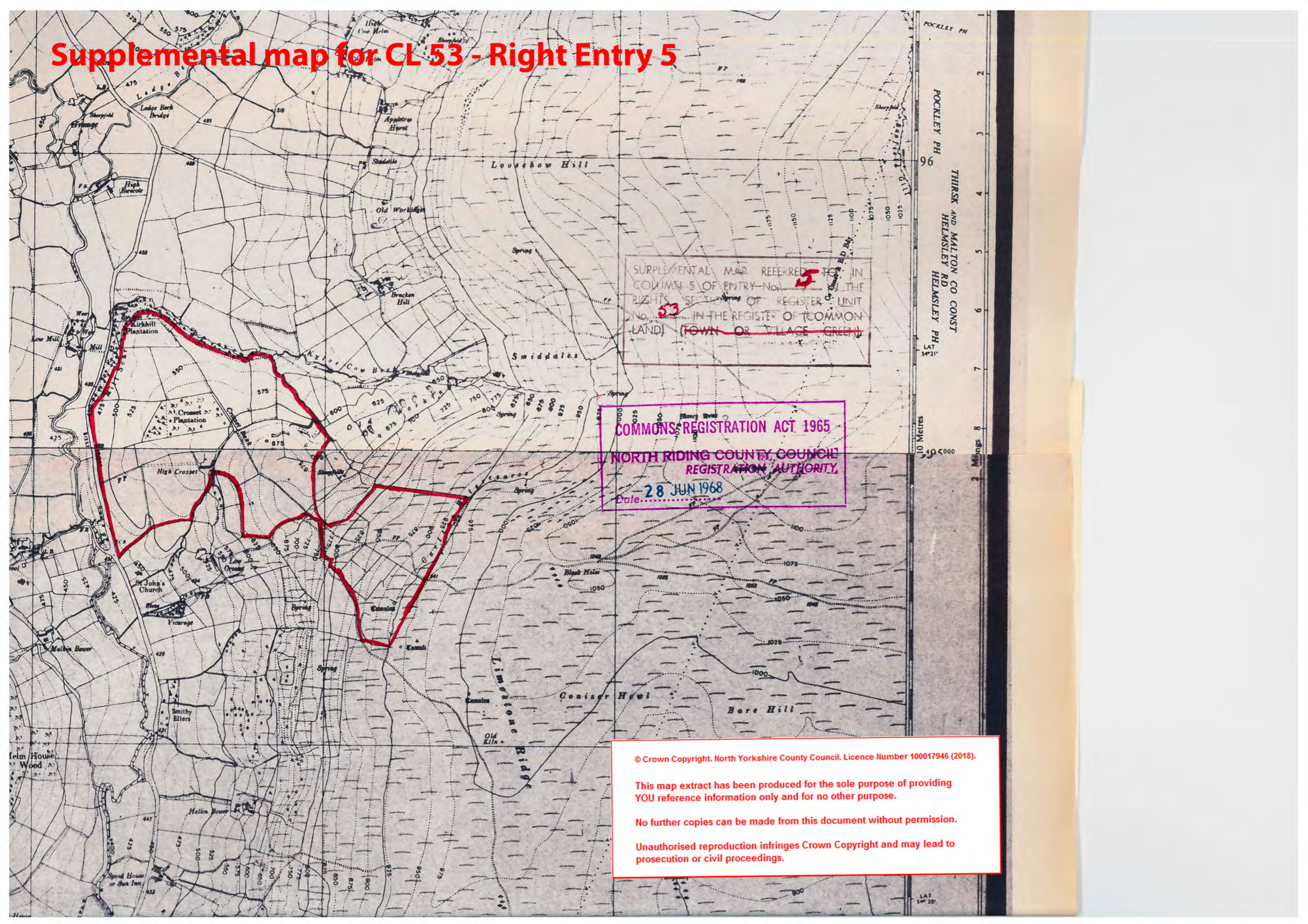
COMMONS REGISTRATION ACT 1965
NORTH RIDING COUNTY COUNCIL
REGISTRATION AUTHORITY
Date 28 JUN 1968

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YOU reference information only and for no other purpose.

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Appendix 3



23rd May 2019

Our Ref: B018003

Your Ref: CA10021/JA/73363

North Yorkshire County Council
Commons Registration
Highways North Yorkshire
County Hall
Northallerton
North Yorkshire
DL7 8AH

commons.registration@northyorks.gov.uk

Sent by Email only

Dear Sir/Madam

Re: Commons Act 2006: CA10 021 Application to Correct the Register – Bilsdale East Moor (CL 53)
Our Client: Mr S D Bridges and Mrs S B Bridges, High Cow Helm, Chop Gate, Middlesbrough, Cleveland, TS9 7LN

Further to the above application made by Mr Allan Caine to correct the Common Register, I've been instructed by our client to register their objection to that application and request that it is dismissed on the following basis:

- 1) The application contains incorrect information – Mr Caine states on numerous occasions that the land owned by our client has never been part of High Crossett Farm, however, the 1944 sale brochure for The Bilsdale Estate states otherwise (copy attached – please see Lot 16 on page 28). You'll notice the schedule lists all the field numbers that comprised the farm and this includes those owned by our client (attached is an annotated copy of Mr Caine's title plan showing how these field numbers relate to the remainder of his farm).
- 2) Our client believes that it would now be unfair to grant the application as they have relied upon the information in the Register to be correct and purchased their land on the basis that they would receive a proportion of the grazing rights attached to it. Our client believes that Mr Caine should have acted sooner if he thought there was an error with the registration and he would have been aware of this at the time he purchased the farm in 1999. If granted, the application would also deprive another two owners like our client that have acquired parts of High Crossett Farm.

Our client believes the application submitted by Mr Edward Malcolm Caine on 14th May 1968 was correctly made by him as Tenant and I have since spoken with Mr Caine who confirmed that he acted under his Father's instructions and registered the rights together with other neighbouring farmers and each were aware of what the other was registering and over what land. There were no queries raised at that time as the rights were registered correctly. Our client has since submitted their own application (CA3 001) to have the grazing rights apportioned and registered in their own name which they understand is now being held in abeyance until this application is determined. However, since the submission of their application on 7th December 2016 our client believes they have waited long enough for the matter to be resolved and now request that it is determined in their favour as soon as possible.

I trust that you'll find this in order, however, if you should require any further information then please let me know.

Yours faithfully

Mr James R Alderson BSc (Hons) MRICS

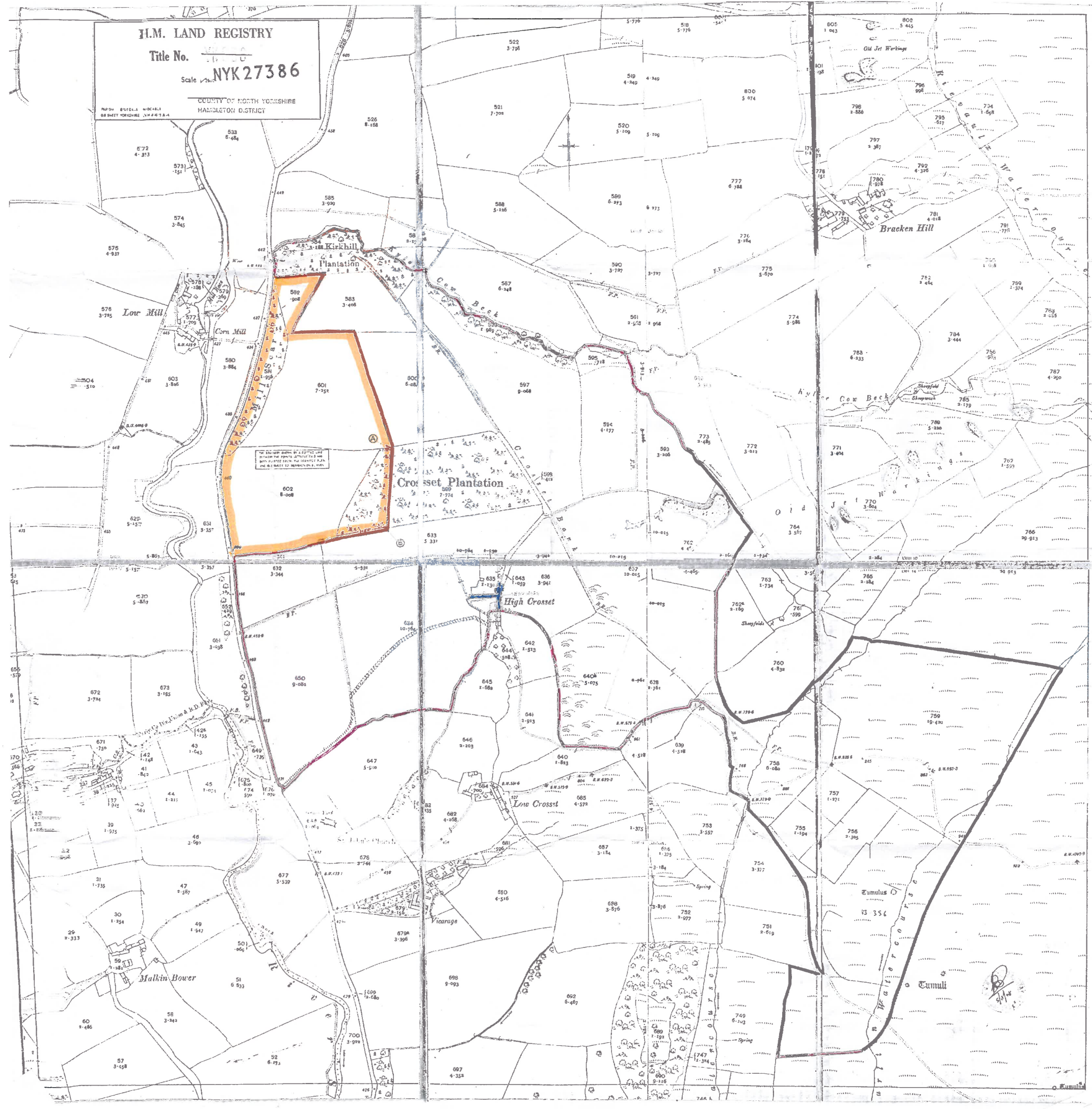
For and on behalf of Hawes Farmers' Auction Mart Company Limited

Enc: Sale Brochure
Title plan

H.M. LAND REGISTRY

Title No. NYK 27386
Scale 1:2500

COUNTY OF NORTH YORKSHIRE
HAMLETON DISTRICT



Mrs. G. M. Farndale 11/6/44



NORTH RIDING OF YORKSHIRE

York 29 miles.

Helmsley 5 miles.
Middlesbrough 14 miles.

Stokesley 5 miles
Darlington 26 miles.

Stockton 15 miles.

A Unique Opportunity to acquire the whole of a YORKSHIRE DALE

The famous Moors, Sporting Estate, and Agricultural Investment
comprising the entire Vale of Bilsdale
and known as

The Bilsdale Estate

Including the Villages of
CHOP GATE, SEAVE GREEN, AND FANGDALE BECK,
105 FARMS AND SMALL HOLDINGS,
MANY COTTAGES, TWO FULLY-LICENSED PUBLIC HOUSES
and the FAMOUS MOORS

with the shooting rights and many miles of fishing in the Seph
In all

12,327 Acres

producing a total actual and estimated income of

£6,108 per annum

Will be offered for Sale by Auction first as a whole and if not so sold then in five main lots designed as
First-Class Sporting Estates, as follows :

- Lot 1. The sporting Moors of Cringle and West Bank and adjoining Farms, in all 2,072 acres, and producing £646 per annum.
- Lot 2. The well-known moors of Cold Moor and Hasty Bank and adjoining Farms, in all 2,509 acres, and producing £1,082 per annum.
- Lot 3. The famous Bumper Moor and Bilsdale West Moor with adjoining Farms and extensive fishing in the Seph. In all 3,808 acres, producing £1,555 per annum.
- Lot 4. The Hagg End Valley and Farms, in all 885 acres, producing £497 per annum.
- Lot 5. A Woodland Lot and Two Farms extending to 262 acres, producing £90 per annum.

and 48 further Lots comprising individual Farms, Small Holdings, and Cottages

By

Messrs. JACKSON STOPS & STAFF

In conjunction with

Messrs. NICHOLAS

At

THE BLACK SWAN HOTEL, HELMSLEY

On Wednesday, the 14th June, 1944
at 2-30 p.m.

Auctioneers : Messrs. JACKSON STOPS & STAFF, 15, Bond Street, Leeds (Tel. 31269), also at London, Northampton, Cirencester, Yeovil, Dublin, etc.

Messrs. NICHOLAS, 1, Station Road, Reading (Tel 4441).

Solicitors : Messrs. TITMUSS, SAINER & WEBB, 3, Fleet Street, London, E.C.4. (Tel. Central 2739).

SPORTING.—There is a considerable frontage of river fishing with this lot in the Seph, and of course it makes a very attractive little shoot. The estimated value of the sporting is £7 10s 0d. per annum, but the apportioned rent for next season, which is let on a war-time basis to Mr. Fenwick (see Stipulation No. 12), is £4 8s. 3d. per annum.

SCHEDULE

Ord. No.	Description	Area	Ord. No.	Description	Area	Remarks
698	Arable	9.093	753	Grass	3.557	Let to John Bardale on a yearly 25th March tenancy at £48 4s. 0d. per annum and a Mole Rate of 4s. 0d. per annum. The shooting over this lot is let at a war-time apportioned rent of £4 8s. 3d. to Mr. Fenwick for next season only (see notes above and Stipulation No. 12).
679a	Arable	3.396	754	Grass	3.377	
Pt. 679	Grass	300	751	Grass	2.619	
680	Arable	4.516	752	Grass	2.977	
678	Arable	3.744	686	Grass	1.375	
647	Grass	5.900	687	Grass	3.184	
646	Grass	2.203	688	Grass	3.876	
640	Grass	1.823	677	Arable	5.539	
648	House and Buildings	.700	681	Grass	.596	
683	Woodland	.335	649	Grass	.735	
682	Grass	4.268	50	Grass	.069	
685	Grass	4.572	Pt. 675	River	.100	
639	Grass	4.528				
					73.382	

LOT 16

Coloured Pink on Plan No. 1

Area 157 acres 2 roods 8 perches

THE IMPORTANT HOLDING

known as

HIGH CROSSET

SITUATION.—On the east side of the valley, opposite Fangdale Beck village.

THE HOUSE.—A stone built House with tiled roof. The accommodation includes SITTING ROOM, KITCHEN, BOX ROOM, DAIRY, SCULLERY, and FOUR BEDROOMS.

THE FARM BUILDINGS.—Stone built and tile, comprising Four Piggeries, Loose Box, Granary, Barn with Loft over, Stable for Three, Implement Shed, Boiler House, Meal House, Cow House for Eight, Hay Shed, Cow House for Twelve, Coal House with Loft, Granary, Shed, and Cart Shed.

THE LAND is arranged very conveniently round the House and Steading. There is a good frontage to the main road, and the whole lies for the most part on a south and westerly slope, although part of the holding turns to the north. There is an out-run to the south-east on to the hill.

SHEEP RIGHT.—This lot is sold subject to the perpetual right for a stray on Bilsdale East Moor for eighty sheep.

TIMBER.—There is a fair amount of commercial timber reserved to the Vendor on this lot, but the Purchaser is given the option to purchase this timber within seven days of the date of sale at £359 12s. 7d. A Schedule of this reserved timber can be seen at the offices of the Solicitors or Auctioneers. This lot is sold subject to the general conditions governing the removal of the timber should the option not be exercised (see Stipulation No. 11).

RIGHT OF WAY.—There is a right of way reserved over this lot for all purposes over the existing track, road, or path, for the benefit of Lot 17.

SPORTING.—The apportioned value of the shooting over this lot is estimated at £15 10s. 0d. per annum in normal times, but the value of the apportionment of Mr. Fenwick's rent for the next season, based on war-time conditions (see Stipulation No. 12), is calculated at £9 17s. 6d. per annum.

SCHEDULE

Ord. No.	Description	Area	Ord. No.	Description	Area	Remarks
650	Grass	9.082	759	Grass	19.420	Let to T. N. Atkinson and W. P. Brown on a yearly 25th March tenancy at a rental of £75 12s. 0d. per annum and a Mole Rate of 6s. per annum. Subject to a stray for eighty sheep upon Bilsdale East Moor. The shooting over this lot is let for next season only at a war-time apportioned rent of £9 17s. 6d. per annum to Mr. Fenwick (see notes above and Stipulation No. 12).
634	Grass	10.764	Pt. 635	House and Buildings	.940	
632	Arable	3.344	643	Grass	.059	
802	Arable	3.008	636	Arable	3.941	
601	Arable	7.252	640a	Grass	5.075	
582	Grass	.908	638	Grass	2.761	
583	Arable	3.408	633	Arable	5.331	
600	Arable	6.084	598	Grass	.412	
597	Arable	9.068	581	Woodland	1.956	
596	Woodland	1.989	584	Woodland	3.188	
595	Rough	.718	599	Woodland	7.774	
594	Grass	4.177	757	Rough	1.271	
593	Grass	3.206	755	Rough	1.194	
762	Grass	4.465	756	Rough	2.305	
637	Grass	10.015		Moorland	13.356	
758	Grass	6.080				
					157.551	In hand.



JULIA AGLIONBY PhD MRICS FAAV
COMMON LAND AND UPLANDS ADVICE

Wallacefield
 Armathwaite,
 Carlisle CA4 9SR

Commons Registration Officer
 North Yorkshire County Council

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

14th April 2019

Dear Sirs,

Bilsdale Common CL53

Application to Correct the Register: CA10/021

Application to Apportion Rights: CA3/001

I write on behalf of my client Mr Allan Caine regarding the above applications. I am aware that CA10/021 has now been made public and views are being sought. My client is pleased Mr and Mrs Bridges application, CA3/001, will not now be determined until his application has been considered.

I attach to this letter a timeline of the history of this land and these rights.

As you are aware applications to register rights in the late 1960s were confirmed unless there were objections to the provisional registrations. No checks were required by the Common Registration Act 1965 to confirm the accuracy of the information on the dominant tenements to which rights were claimed to be attached. Therefore any error made by the tenant in the application to register rights of common in 1968 could easily not have been picked up, as was the case here. The application further more did not specify the field numbers of High Crosset Farm with the entry only making reference to the supplemental map.

High Crosset, the dominant tenement, was registered with the Land Registry in 1942 and again in 1948 where the transfer recorded by the Land Registry noted; "the land in this title was expressed to be transferred together with the perpetual right for a stray on Bilsdale East Moor for 80 sheep". It is therefore very clear that the land to which the rights were attached did not include OS 601 and OS 602. Neither of these fields are listed in the 1965 Auction Particulars on the Land Registry Title Plan.

When Nathan Caine bought the farm in 1965 the transfer may not have not registered at the Land Registry, but when my client, and his late wife, bought

High Crosset in 1999 the land was registered under title number NYK27386, and the house under title number NYK219626. Neither of these titles include fields OS601 & OS602.

My client does not know why Mr Edward Caine included fields OS601 & OS602 in his 1968 application to register common rights. While Edward Caine was not the owner of either the rights of common, or any of the land it was we can see an error easily made as he farmed all the land and probably considered it as a single unit. The net effect though of this error, if not corrected, is to have unlawfully transferred 8 rights of common from one dominant tenement as given title absolute at the Land Registry to fields OS601 & OS602. These two parcels of land have always been owned by different parties. Now this error has come to light we suggest it is incumbent on North Yorkshire County Council to rectify the original mistake at the time of registration.

Mr and Mrs Bridges we also suggest never thought they were buying common rights when they bought these two fields. If they had then, as farmers, they would have claimed the 8 rights for SPS /BPS from 2013 onwards. Furthermore there is no reference to the common rights on their title deeds and if they had thought they had bought the rights they could have made an application to amend the register to apportion the rights on acquisition in 2012. Unlike correcting a register, the apportionment of rights could take place under the previous regulations and did not require the implementation of the Common Act 2006. We instead suggest Mr and Mrs Bridges only made the discovery there seemed to be common rights attached to OS601 & OS602 some years after buying fields.

Conversely Mr Nathan Caine in 1965 paid for the 80 sheep rights as detailed on the particulars of sale and after the High Crosset was possessed by Lloyds Bank Mr Allan Caine then paid for them again in 1999. The full 80 rights are on his title deeds.

It would I suggest be both unfair to Mr Allan Caine, given he expressly bought all 80 common rights, and unlawful, given his title absolute, not to correct this error in the register by amending the supplemental map. The consequence of this would then be to reject Mr and Mrs Bridges application for the apportionment of the rights in their favour.

I look forward to hearing from you,

Yours sincerely,

Julia Aglionby PhD MRICS FAAV

Timeline regarding Common Rights Attached to High Crosset / Entry No 5 CL 53 Bilsdale Common

- 1942 High Crosset is registered with the Land Registry
- 1948 The transfer of High Crosset is recorded at the Land Registry with the rights in perpetuity for grazing 80 sheep on Bilsdale Common. 1948 plan from the Land Registry provided.
- 1965 High Crosset is sold at auction and the particulars record the attached 80 rights of common. The farm was bought by Nathan Caine, father to Edward and Allan Caine. Edward became the tenant of High Crosset.
- 1966 Edward Caine starts renting fields OS 601 and 602 from his neighbour; Mr Warley
- 1968 Edward Caine; brother of the applicant; applies as tenant to register the 80 rights of common. He is both tenant of High Crosset and separately tenant of the two fields 601 and 602. He includes fields OS601 & 602 in his application to register the rights despite them having no sheep rights attached to them.
- 1980s Mr Warley landlord dies and Malcolm Caine, son of Edward buys OS 601 and OS 602 from the executors of Mr Warley.
- 1994 Malcolm Caine dies and fields OS601 and OS602 become part of the Estate of MC Caine deceased and are grazed by Edward Caine.
- 1995 Edward Caine declared bankrupt with Nathan Caine standing surety so Lloyds Bank in effect became owner
- 1995 Edward surrendered the tenancy of High Crosset and Allan became the tenant but Edward remains grazing OS601 and 602 which are part of the estate of his late son Malcolm Caine.
- 1999 Allan Caine and Sheila Caine purchase High Crosset from the Lloyds Bank. The house and farm yard were put on a separate title with the Land Registry to the land. This is because Edward Caine refused to leave the house at High Crosset and the AMC wouldn't grant a mortgage for the house without vacant possession. The farm is valued and purchased with the benefit to graze 80 sheep on Bilsdale Common
- 2000-2017 AW and SJ Caine successfully claim the 80 rights of common attached to High Crosset each year for Agricultural Support under the IACS, SPS and BPS schemes. At no time do the executors of

Malcolm Caine claim the 8 rights they now claim are attached to OS601 & OS602.

- 2011 Edward Caine leaves the house at High Crosset
- 2012 The executors of Malcolm Caine sell fields OS601 and OS602 to Mr and Mrs Bridges but there is no mention of common right.
- 2016 Mrs and Mrs Bridges apply to NYCC have 8 common rights apportioned to fields OS601 and 602. Mr Allan Caine is not notified of the application.
- 2018 Mr Allan Caine discovers the mistake on the Commons Register after the RPA contact him to say Messrs Bridges have claimed the 8 rights 'attached' to fields OS601 and OS602 for BPS.
- 2019 Mr Allan Caine applies to North Yorkshire County Council to correct the register for Bilsdale Common.

From: James Alderson <
Sent: 07 June 2019 10:42
To: commons Registration
Cc:
Subject: RE: Further information regarding application CA10 021
Categories: Jayne Applegarth

Dear Jayne

Thank you for forwarding a copy of Ms Aglionby's letter dated 14th of April 2019 with the accompanying timeline which I've now studied and wish to comment on below.

- 1) Our client believes that as Mr Malcolm Caine registered the rights at the same time as his neighbours and the land to which they were attached was recorded on a single plan along with everyone else's then there was ample opportunity for issues to be raised at the time however none were because the plan correctly identified the extent of High Crosset Farm to which the rights have always been attached. Furthermore it is not the fault of our client that this query has not been raised until now when in fact this could have been easily identified during the conveyancing process and if Mr Allan Caine now feels as though he has been disadvantaged in any way then he will be entitled to take this up with his conveyancers at the time.
- 2)
- 3) Our client was aware prior to their purchase of the land that there were grazing rights attached to High Crosset Farm as evidenced by The Bilsdale Estate sale brochure which we forwarded a copy of previously, however our client only sought to include them on their subsidy claims once they had submitted their application for apportionment which was done at the same time as another application for a similar purpose. Prior to that our client had no desire to exercise only 8 rights over such a large moorland area.
- 4) Our client maintains that no error has been made on the part of Mr Malcolm Caine and therefore there is no mistake to rectify and the apportionment should now be registered as soon as possible.

We look forward to hearing from you in due course.

Regards

Mr James R Alderson BSc (Hons) MRICS

For and on behalf of

Hawes Farmers' Auction Mart Company Limited
Burtersett Road, Hawes, North Yorkshire, DL8 3NP

T: M: E: W: www.hawesmart.co.uk

Form 9.

This section for official use only.

Official stamp of registration authority indicating date of receipt

Application No. 733 ✓

Register Unit No(s)

COMMONS REGISTRATION ACT 1965
 NORTH RIDING COUNTY COUNCIL,
 REGISTRATION AUTHORITY
 11 JUN 1968
 Date.....

COMMONS REGISTRATION ACT 1965

Application for the registration of a right of common

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

Insert name of registration authority (see Note 1).

To the NORTH RIDING OF YORKSHIRE COUNTY COUNCIL

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

Part 1.

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

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

EDWARD MALCOLM CAINE.
 HIGH CROSS RTT.
 Chopgate.

Part 2.

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

Name and address of solicitor, if any.

Part 3.

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

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

TENANT.

Statutory Declaration in Support

(See Note 6)

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

Insert full name(s).

[I] ~~[We]~~ Edward Malcolm Cairie

Strike out this paragraph if it does not apply.
Insert capacity in which acting.

solemnly and sincerely declare as follows:

- 1. [I am] ~~[We are]~~ the person(s) who [has] ~~[have]~~ signed the foregoing application.
- 2. ~~'I am'~~ 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, in the capacity or respective capacities stated in the application, to apply for the registration under the Commons Registration Act 1965 of the right of common described in the application.

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

- 4. ~~'The plan now produced and shown to me marked "' is the plan referred to in part 4 of the application.'~~
- 5. 'The plan now produced and shown to me marked "' A+B "' is the plan referred to in part 6 of the application.

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

Declared by the said Edward Malcolm Cairie

at Choppale
in the County of York
this 14th day of May 1968

Before me.
Signature
Address The Grove, Carlton Stokesley, M'bro'
Qualification Justice of the Peace.

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

Part 4.
(See Notes 3 and 4.)

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

Name by which commonly known *Bilsdale East*

Locality *Bilsdale*

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

Colour on plan²

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

Description of the right of common.

80 sheep Casing.

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

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

Highcrossett.

Chopgate

Coloured ^{round} Brown.

Plan Marked A+B.

hatched yellow

SE SQ SE

SE SQ NE

Part 6. C.M. M

Part 7.
(See Note 8.)

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

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

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

³The 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.

Date *14th May 1968.*

1. Registration authorities

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

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

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

2. Who may apply for registration

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

- (a) by the owner of the right;
- (b) where the right is attached to any land, and is comprised in a tenancy of the land, by the landlord, the tenant, or both of them jointly;
- (c) where the right belongs to an ecclesiastical benefice of the Church of England which is vacant, by the Church Commissioners.

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

- (a) if two separate applications relating to the same right are accepted for registration and differ in any material particular, a conflict arises, and each registration has to be treated as an objection to the other. Such a case would normally have to be referred to a Commons Commissioner for decision;
- (b) if a joint application is submitted, and is accepted for registration, both applicants will be entitled to appear before the Commons Commissioner in support of the registration, should any objection to it be referred to him;
- (c) a person entitled to make an application who is content to leave it to another person (independently so entitled) to make it will, on the other hand, have no right to appear at the hearing of any objection to the registration and may have no claim against that other person if for any reason the right is not registered or the registration does not become final, or becomes final with modification.

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

Where the applicants are charity trustees, the fact should be stated, and the name of the charity given, in part 3.

3. Meaning of "rights of common"

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

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

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

4. Land descriptions

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

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

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

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

5. Inspection and search of registers

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

6. Statutory declaration

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

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

19 before me,

(Signature and qualification)

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

Grazing rights

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

8. Submission of application: fees

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

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

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

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

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

9. Action by registration authority

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

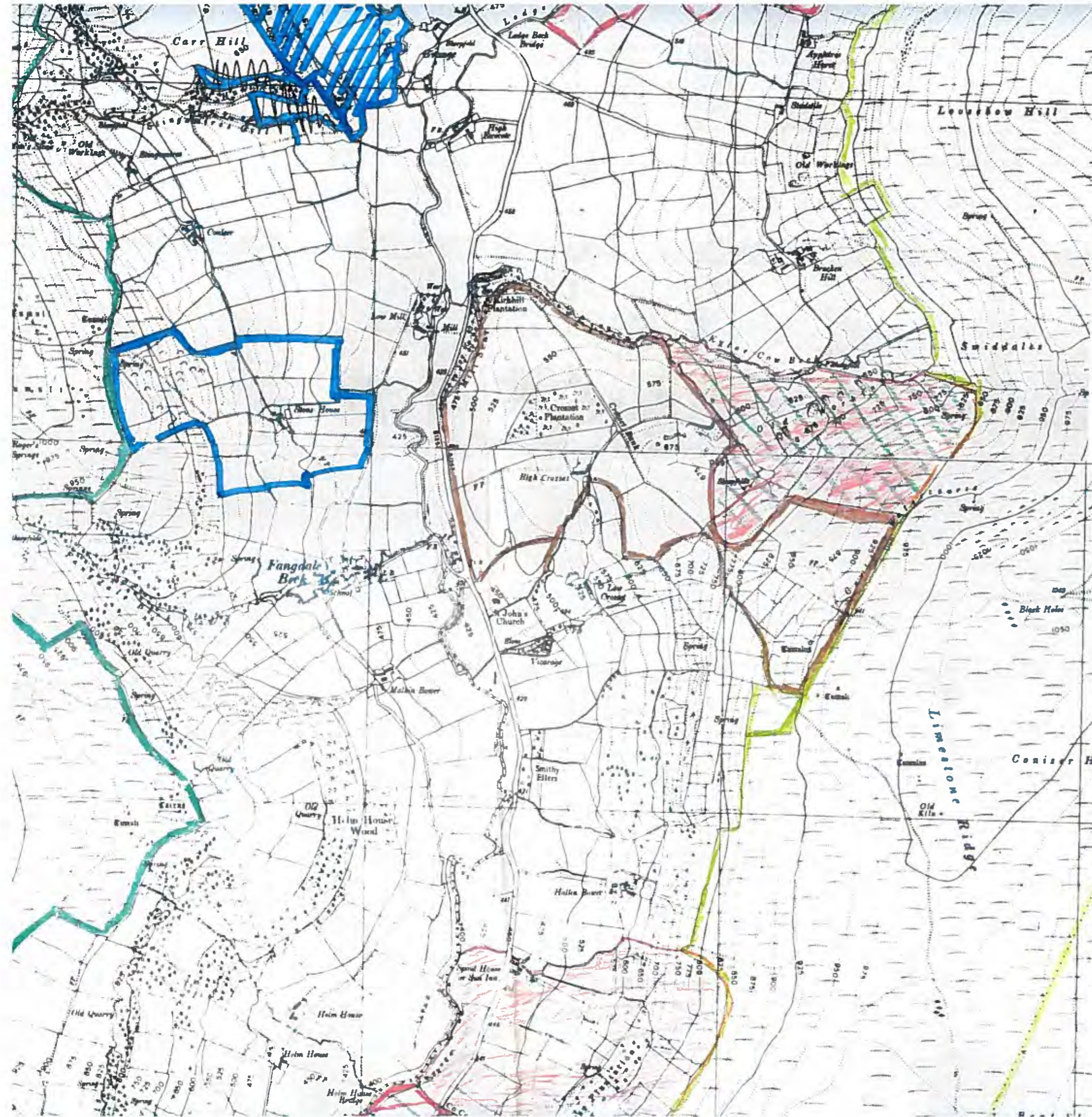
(a) if the land over which the right of common is claimed to be exercisable is not already registered under the Act, it will be provisionally so registered, and the right of common will be provisionally registered as exercisable over it, or

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

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

10. False statements: groundless applications

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



Business Station 217 of 1912
217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240

13

on SHEET SE 59 SE

240 Chains

LONG P 85° W

495000

94

LAT 54° 20'

EAST MOORS

This is the exhibit marked
referred to in the statutory declaration
of
made this 14 day of May 1968
before me,
Justice of the Peace.

GEORGE WILLIAM ALLISON
HARRY FEATHERSTONE / ALAN FEATHERSTONE
RAYMOND GARBUTT
ARTHUR ERNEST TODD / WILFRED THOMAS TODD
JOHN WALTER KIRK
JOHN FEATHERSTONE / LESLEY FEATHERSTONE
MAURICE RICHARDSON / MINNIE RICHARDSON
EDWARD MALCOLM CAINE

From: Julia Aglionby (Work) <[REDACTED]>
Sent: 30 June 2019 19:54
To: commons Registration
Cc: Allan Caine
Subject: Re: Application CA10 021
Attachments: Caine-CRO-NYCC-30-06-19.pdf

Categories: Jayne Applegarth

Dear Jayne,

Application CA10 021: Mr Allan Caine

Please find attached a letter in response to Mr and Mrs Bridges comments on our application via their agent Mr James Alderson. This sets out my client's views on the points raised by Mr Alderson.

We look forward to hearing from you once you have had a chance to consider our response but in the meantime if you require any further particulars please do not hesitate to contact me.

Kind regards,

Julia

Julia Aglionby - PhD MRICS FAAV
Wallacefield
Armathwaite
Carlisle CA4 9SR

Regulated by the RICS

On 26 Jun 2019, at 11:56, commons Registration <commons.Registration@northyorks.gov.uk> wrote:

Good Morning Julia

I think that makes sense and then I can forward any comments all at once. I look forward to receive any comments by Tuesday 2nd July,

Kind Regards

Jayne Applegarth
Commons Registration Officer
commons.registration@northyorks.gov.uk

From: Julia Aglionby (Work)
Sent: 23 June 2019 20:32
To: commons Registration
Cc: Allan Caine
Subject: Re: Application CA10 021

Dear Jayne,

Sorry for not responding to your previous email by 18th June. What with these additional comments I propose responding to both by Tuesday 2nd July.

I hope that is okay.

Kind regards,

Julia

Julia Aglionby - PhD MRICS FAAV
Wallacefield
Armathwaite
Carlisle CA4 9SR

Regulated by the RICS

On 10 Jun 2019, at 15:55, commons Registration <commons.Registration@northyorks.gov.uk> wrote:

Good Afternoon Julia

Please find attached further comments from Mr and Mrs Bridges in response to the letter dated 14th April 2019, sent on behalf of your client's application seeking to correct the common land register reference CA10 021.

Should your client wish to respond further to these comments then I would be grateful to receive such comments by the close of business on Tuesday 2nd July 2019.

Kind Regards

Jayne Applegarth
Commons Registration Officer
commons.registration@northyorks.gov.uk
01609 534753



JULIA AGLIONBY PhD MRICS FAAV
COMMON LAND AND UPLANDS ADVICE

Wallacefield
Armathwaite,
Carlisle CA4 9SR

Commons Registration Officer
North Yorkshire County Council

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

30th June 2019

Dear Sirs,

Bilsdale Common CL53

Application to Correct the Register: CA10/021

Application to Apportion Rights: CA3/001

I write on behalf of my client Mr Allan Caine regarding the above applications and to respond to the further information provided by James Alderson on behalf of his clients, Mr and Mrs Bridges in correspondence dated 24th May and 7th June 2019.

It was interesting to see the particulars and the information showing that in 1944 that OS601 & 602 were included as part of High Crosset Farm. My client though maintains his position that even though this may have been the case when the land was put on the market in 1944 it was not the case by the time the land was sold in 1948. By that stage any rights apportioned to the two fields Mr and Mrs Bridges bought had been severed from those fields and became attached to the remainder of the farm as shown in the 1948 Land Registry plan.

When Nathan Caine bought High Crosset in 1965 he bought the land excluding fields OS 601 & 602 but the whole sheep walk of 80 sheep rights was conveyed to him. Until July 2005, when it became unlawful, it was completely normal for rights of common to be severed and conveyed in non arithmetical proportions when farms were sold in lots.

The 1944 particulars are therefore simply not relevant as they have been superseded by events. I refer you again to the Title Deeds for High Crosset Farm; NYK27386 where in Section A: The Property Register it says the land was transferred in 1948 together with the sheep stray for 80 sheep in perpetuity. We know from Land Registry plan attached to this title that field OS601 & 602 were no longer part of High Crosset Farm. They may have been in 1944 but not by 1948.

James Alderson also comments that because of the neighbours working together then that means Mr Allan Caine has lost his opportunity to correct the error on the register. I would dispute this as Mr Edward Caine clearly registered rights over parcels OS601 & 602 that they had not been attached to from 1948. Mr Edward Caine made an error and it is this error which Mr Allan Caine is now seeking to rectify.

Who said who in 1968 is irrelevant. What is relevant is the facts of law and these are that by 1948 the Sheep Stray of 80 sheep had been severed from fields OS601 & 602.

Mr and Mrs Bridges may have checked the Commons Register before purchasing the fields OS 601 & 602 but relying on the 1944 Sales particulars was perhaps naïve. Given it was clear from the register the full 80 rights were attached to High Crosset Farm and in 1968 fields OS601 and 602 were not owned by the Caines a simple check of the title deeds for High Crosset Farm at a cost of £3 from the Land Registry website would have been prudent. This would have showed that the full 80 rights had since 1948 been attached to the land owned by Mr Allan Caine.

In 1995 the occupation of High Crosset Farm and fields OS601 & 602 was separated as Mr Edward Caine surrendered the tenancy of High Crosset (and Allan Caine took it on) but Edward Caine kept occupation of the fields OS601 & 602. If Mr Edward Caine had thought eight rights were attached to fields OS601 & 602 you would have expected he would have claimed for them on his IACS and BPS forms and/or sought to graze these rights. In the last 20 plus years before selling to Messrs Bridges Mr Edward Caine made no attempt to claim on or graze the eight rights he now asserts are attached to OS 601 & 602.

We acknowledge that the Commons Register has been erroneous since 1968 but there was no mechanism for Mr Allan Caine to rectify the register until the Commons Act 2006 came into force in North Yorkshire.

My client therefore is still seeking to have the register amended to reflect the correct ownership of the rights of common.

I look forward to hearing from you.

Yours faithfully,

Julia Aglionby PhD MRICS FAAV

From: James Alderson <
Sent: 17 July 2019 17:46
To: commons Registration
Subject: RE: Further comments for CA10 021 Bilsdale East Moor CL 53

Hi Jayne

Thanks for your email and in response to Julia Aglionby's letter of 30th June 2019 I wish to comment as follows:

- 1) It was stated that "it was completely normal for rights of common to be severed and conveyed in non-arithmetical proportions" and I agree with that but I would further add that it was also possible for them to become reattached to land if they were so registered, even if they had not originally been associated with that land before. The writer seems to contradict herself when she fails to acknowledge that same could have happened following 1965 sale. Our client therefore maintains that irrespective of what the happened before the registration of those rights they became attached to High Crosset as it was described in the 1944 sale brochure and not in either the 1948 or 1965 sale contracts.
- 2) It was stated the title register for High Crosset (which excludes the two fields in question and other land) mentions a sheep stray for 80 sheep in perpetuity but our client believes this is also not relevant because unless those rights were registered as such in the common register then they ceased to exist as our client has also found out to their own detriment on their own property.
- 3) It was stated that the registration of the rights over High Crosset as it was described in 1944 was an error but from my conversation with Mr Edward Caine (the original applicant) this was not an error but he simply registered the rights as his Father (the owner of High Crosset at the time) had instructed which was over the original farm. However, it must be noted that these rights were registered by Mr Caine as tenant of the land which he farmed and that there was no subsequent registration by the owner so it could be possible that as the owner failed to register those rights which are referred to in the sale contracts of 1948 and 1965 and title register they have been lost or at least partly saved by Mr Caine's application for registration. Our client maintains there was sufficient opportunity at the time and then later on for anybody to be able to raise objections to applications for registration.
- 4) As our client has stated before, there would be little benefit to Mr Edward Caine exercising only 8 rights and that is why they were left alone.
- 5) Finally in our client's opinion, to now dispute the application and demand that the registration is changed is simply unfair to all parties affected and if allowed would open the flood gates to many other applications from parties seeking to alter the land in which rights are now attached based upon a simple assertion.

I look forward to hearing from you about the next step.

With best regards

Mr James R Alderson BSc (Hons) MRICS

For and on behalf of

Hawes Farmers' Auction Mart Company Limited
Burtersett Road, Hawes, North Yorkshire, DL8 3NP

T: M: E: W: www.hawesmart.co.uk



JULIA AGLIONBY PhD MRICS FAAV
COMMON LAND AND UPLANDS ADVICE

Wallacefield
Armathwaite,
Carlisle CA4 9SR

Commons Registration Officer
North Yorkshire County Council

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

19th July 2019

Dear Sirs,

Bilsdale Common CL53

Application to Correct the Register: CA10/021

Application to Apportion Rights: CA3/001

I write on behalf of my client Mr Allan Caine regarding the above applications and to respond to the further information provided by James Alderson on behalf of his clients, Mr and Mrs Bridges in correspondence dated 17th July 2019.

I respond to Mr Alderson's points using his numbers:

- 1) In May and June 2019 Mr Alderson asserted that the 8 sheep rights were still attached to fields OS601&602 using the sales particulars of 1944 as evidence. He now implicitly accepts that they were severed by 1948 as the Land Registry title and map is clear that the sheep walk for 80 sheep was conveyed to the land now owned by my client. It is good we now seem now to agree any rights that may have been attached to fields OS601 & 602 were severed by 1948 and reattached to the balance of High Crosset.

Mr Alderson is now suggesting that these 8 rights could have been severed again and reattached back to fields OS601 & 602 before the sale in 1965 to Mr Nathan Caine. Of course that would have been legally allowable (rights could be severed and reattached until 2005) but there is no evidence to indicate that happened. Mr Alderson has produced no documentary evidence to back his hypothesis, rather the evidence is to the contrary.

We know that in 1965 when Mr Nathan Caine bought High Crosset that the sheep walk for 80 sheep in perpetuity was included in the sale. That is documented in the sales particulars from 1965 (see attached) and the title deeds confirming the sale at the Land Registry indicate there has been no severance of the rights. Prior to 2005 Rights of common had to be expressly

severed for severance to take effect. After Mr Nathan Caine bought the farm in 1965 there were no further sales of the land until 1999 when his son Mr Allan Caine bought the High Crosset. Mr and Mrs Bridges have produced no evidence to back their hypothesis that after 1948 and prior to 1968, when the Commons Registers were created, those 8 rights were re-severed from High Crosset and reattached to fields OS601 & 602.

- 2) My client does not accept this point, he has applied to correct the Common Land Register for Bilsdale CL53 as he says a mistake was made at the time of registration and hence the register is erroneous. The government accept that errors were made on registration which is why the Commons Act 2006, and the regulations arising from that statute, have the provision and the procedures for correcting mistakes made on the Commons Registers.
- 3) Mr Nathan Caine is now deceased so we cannot know what he actually said to Mr Edward Caine but it is most unlikely he would have instructed his son to register rights he had bought over land he did not own and had no interest in. We suggest Mr Nathan Caine trusted his tenant and son, Mr Edward Caine, to register the rights over the land he owned and would not have bothered to inspect the details of the land / supplemental map specified against the registration. A mistake was made and all my client is seeking to do here is to correct that mistake.
- 4) While it may not have been practical to graze 8 sheep there would have been a financial benefit to Mr Edward Caine / executors of Mr Malcolm Caine claiming the 8 rights for IACS, SPS and BPS. If he or his son, Malcolm, (now deceased) genuinely thought they owned / had the use of the 8 rights they would have claimed those rights to increase their payments from IACS, SPS and BPS.
- 5) While we have sought to make a case on the basis of the legal position the argument of unfairness of allowing the apportionment can also be claimed by my client and with greater reason. Mr Allan Caine was the tenant of High Crosset from 1995 after his brother had to surrender the farm on being declared bankrupt. Mr Allan Caine bought the farm from his father, Nathan Caine in 1999 with the absolute title granted for the 80 sheep rights. He has exercised all 80 rights without break for 24 years and evidence of use has been submitted.

The position for Mr and Mrs Bridges is very different. They bought fields OS601 & 602 via a private sale in August 2012 but did not for over 4 years until December 2016 seek an apportionment. It is somewhat curious if they thought they had bought these rights in 2012 they did not seek the apportionment immediately as updating the register on splitting of a dominant tenement was also allowable under the previous regulations. It suggests the rights of common were not of importance as they did not seek to exercise them, or claim SPS from 2012, which you would have thought they would if they had explicitly purchased them.

In any event Mr and Mrs Bridges 2016 application resulted in the mistake from 1968 coming to light. Due to mistake by the Commons Registration Officer Mr Caine was not notified of the application. Once Mr Allan Caine realised the application had been made he immediately contacted North Yorkshire County Council. At that point the mistake on the Register came to light and he initiated the process of seeking a correction of the Register.

There has been no evidence provided that Mr and Mrs Bridges expected there to be rights of common attached to these fields when they agreed the sale or that they paid any additional sum for them and hence that they have suffered any loss. Should this application to correct the register not be granted my client will suffer a greater loss, he has absolute title of the rights and proof of exercising the rights. Neither Mr Edward Caine / executors of Mr Malcolm Caine or Mr and Mrs Bridges had or have either.

My client therefore is still seeking to have the register amended to reflect the correct ownership of the rights of common. If you require any further information please do not hesitate to contact me but I am now on leave until 13th August 2019.

I look forward to hearing from you and drawing this matter to a close.

Yours faithfully,

Julia Aglionby PhD ~~MBICS~~ FAAV

From: James Alderson <[REDACTED]>
Sent: 13 August 2019 17:55
To: commons Registration
Subject: RE: Further comments on application CA10 021

Hi Jayne

Further to your email below I wish to comment as follows:

Whilst also addressing some of Ms Aglionby's assertions in her most recent letter of 19th July 2019, I wish to summarise our client's position as I'm conscious this matter has been going on for some time now and unless Ms Aglionby has anything new to add then I propose we allow you to draft your committee report to enable the matter to be determined as soon as possible.

- 1) Ms Aglionby has deliberately misconstrued my points which are that our client remains of the view as first put in my letter of 7th November 2017 in support of their application for apportionment (CA3 001) that it seems as though from the point of registration in the common register the rights for 80 sheep became attached to more land than they were originally purchased with in 1965 and without any evidence to suggest that they have been subsequently separated from that land then they should now be apportioned with any split of that land to which they were registered.
- 2) Our client believes the application submitted by Mr Allan Caine (CA10 021) seeking to correct a mistake made by his brother when defining the dominant tenement in 1968 is groundless for the following reasons:
 - a) The rights were solely registered by the Tenant and not by the Owner or Jointly by them both as recommended by the guidance notes on the original application form so future owners are now bound by that registration, however as the opportunity for objections has long since passed the original registration should remain unchanged. Any errors with the registration were the responsibility of the Owner and not the Tenant for: a) not checking the application; or b) not making an application themselves.
 - b) Mr Caine has proved that he is not familiar with the history of the farm as on numerous occasions he has stated that the land now owned by our client has never been part of the farm nor had it any rights ever attached to it, which clearly wasn't the case as evidenced by the 1944 sale brochure we provided previously.
 - c) It would now be unfair to dispute the application and demand that the registration is changed as this would disadvantage other owners who have since acquired parts of the farm and its attached rights. Our client especially, relied upon the information within the common register to be correct and purchased their land on the basis they would receive a proportion of the grazing rights attached to it according to the 1944 sale brochure. Although this point has been disputed by Ms Aglionby, our client has explained clearly that they nor Mr Edward Caine would have any desire to graze only 8 sheep on the common and our client only began to make an agricultural subsidy claim for these rights once they had acquired further rights and applied to have them apportioned, the other rights of which have now been successfully registered under application CA3 002.

- d) Mr Allan Caine should have acted sooner if he thought there was an error with the registration as he should have been made aware of this at the time he purchased the farm in 1999. If he now feels as though he has been disadvantaged in any way then he will be entitled to take this up with his conveyancers at the time. Our client accepts that the late Mr Nathan Caine acquired all 80 rights with his purchase of the farm in 1965 but does not accept that Mr Allan Caine and Mrs Sheila Caine acquired all 80 rights with their purchase of the farm in 1999 and a commons search at the time would have revealed that irrespective of what their title register stated as its commonly known that the entry of a title register notice does not guarantee that the interest that it protects is valid or even exists (section 32 of the Land Registration Act 2002) and unless those rights were registered as such in the common register then they ceased to exist. Furthermore such a notice relating to common rights should not appear in the title register in the first place according to section 33(d) of the Land Registration Act 2002).
- e) During a telephone conversation with Mr Edward Caine, he confirmed that he had acted under his Father's instructions to register the rights over the original farm as it is currently shown on the entry supplemental plan. There was ample opportunity for anyone interested in the common to raise objections at the time and later on which did happen with some applications. At the time of application a plan was prepared showing all the land to which rights were attached and the information used to prepare that plan was supplied by the applicant and other right holding neighbours and there were no queries raised even at that point when it would have been public knowledge that the farm was indeed in separate ownership.

Our client is disappointed by the speed in which the registration authority has sort to process their application CA3 001 which was received by the registration authority on 14th December 2016 and accepted as being duly made on 6th January 2017 but formal notice was not published until 17th May 2018. On 16th May 2017 our client was sent a draft copy of the proposed replacement entries following apportionment but then on 14th July 2017 our client was asked to provide proof that they actually acquired the rights with the land. Our client responded on 7th November 2017 and in a response to that on 10th November 2017 the registration authority stated that they would contact Mr and Mrs Caine to establish what rights they had retained, our client replied on 13th November 2017 confirming that contact with them may indeed help resolve the matter. Yet our client received no further communication until they received confirmation of the public notice on 17th May 2018 not knowing if Mr and Mrs Caine had been contacted or not which our client now assumes didn't happen owing to the fact that Mr Caine confirmed that he only became aware of the application in June 2018.

Finally in my view to allow this application would open the flood gates to many other applications from parties seeking to alter the land to which rights have become attached based upon a simple assertion.

I look forward to hearing from you in due course.

With best regards

Mr James R Alderson BSc (Hons) MRICS

For and on behalf of

Hawes Farmers' Auction Mart Company Limited
Burtsett Road, Hawes, North Yorkshire, DL8 3NP

T: [REDACTED], M: [REDACTED] E: [REDACTED] W: www.hawesmart.co.uk

From: commons Registration [mailto:commons.Registration@northyorks.gov.uk]

Sent: Monday, 22 July 2019 11:54

Note 4

For further details of the requirements of an application refer to Schedule 4, paragraph 11 to the Commons Registration (England) Regulations 2014.

4. Basis of application for registration and qualifying criteria

Specify the register unit number to which this application relates:

Bilsdale Eastmoor CL 0053

Specify the rights number to which this application relates (if relevant):

Entry 5 80 sheep

Tick one of the following boxes to indicate the purpose (described in section 19(2)) of your application. Are you applying to:

Correct a mistake made by the commons registration authority:

Correct any other eligible mistake:

Remove a duplicate entry from the register:

Update the details of any name or address referred to in an entry:

Record accretion or diluvion:

Note 5

Explain why the register should be amended and how you think it should be amended.

5. Describe the purpose for applying to correct the register and the amendment sought

It has come to my knowledge that a mistake was made by Edward Cairne in 1968 when he wrongly registered 2 fields then owned by Mr G. Waley as part of High Crossett Farm
The amendment sought is for that map to be corrected and the 80 sheep rights to be correctly registered as solely to High Crossett Farm owned by myself

Taken from the Explanatory Notes for Commons Act 2006

Correction

108. [Section 19](#) enables commons registration authorities to correct certain errors in the commons registers. *Subsection (4)* provides that a correction may be made on the authority's own initiative or on an application by any person. *Subsection (2)* sets out the purposes for which a correction may be made. These comprise:

- In paragraph (b), any other mistake, whether made by the authority or another person, provided that the amendment would not affect the extent of land registered as common land or as a town or village green, nor the quantification of any right of common. For example, a mistake may have been made by an applicant for registration of a right of common attached to land by which the dominant tenement was wrongly defined. The authority would be able to correct such a mistake.

Taken from DEFRA Guidance to Commons Registration Authorities Published 2015

Pioneer and 2014 authorities

Pioneer and 2014 authorities can make all of the following corrections:

- if the registration authority made a mistake when it made or amended an entry in the register - for example, if a registration authority recorded the boundary of a common in a way that didn't match the way it was shown in the application - read [Section 19\(2\)\(a\)](#). But if the authority recorded all the information in an application then it doesn't qualify as a local authority's mistake
- to correct other mistakes provided they don't affect the extent of land registered or what can be done by virtue of a right of common - for example, if the applicant wrongly defined the boundary of the land to which a right of common is attached, or stated that the right was only usable over part of the common when it was actually usable over the whole common - read [Section 19\(2\)\(b\)](#)

COMMONS REGISTRATION ACT 1965

41

Reference No. 268/D/3-11
(inclusive)Notice of Final
Disposal of
Disputed
RegistrationIN THE MATTER OF Bilsdale East Moor, Bilsdale, MidcableHambleton District

To the North Yorkshire County Council

I HEREBY GIVE YOU NOTICE in pursuance of Section 6(2) of the Commons
Registration Act 1965 that on the 19th day of

February 1976 the registration at Entry No. 1

in the Land Section of Register Unit No. CL.53

in the Register of Common Land maintained by you became
final and Entries Nos 1 and 3 to 17 in the Rights Section became final
Entry No.4 modified so as to be limited to 260 sheep in lieu of 280
sheep and Entry No.6 being modified so as to exclude the rights
claimed under said Entry (ii) as tenant.Given under my hand and seal this
of February, 1976.

Commons Commission

Transcript of the Commons Commissioners Decision – Ref: 268/D/3 to 11 inclusive

Decision

The dispute relates to the registration at Entry No. 1 in the Land Section and Entry Nos. 1 and 3 to 17 inclusive in the Rights Section of Register Unit No.CL53 in the Register of Common Land maintained by the former North Riding of Yorkshire County Council and are occasioned by Objections Nos. 0142, 0143, 0146 to 0149 inclusive and 0155 all made by the Rt. Hon. R. F. Wood P.C., M.P., C. C. Egerton and M. B. Todhunter and all noted in the Register on 14th September 1970 except Objection No. 0155 which was noted in the Register on 17th July 1972.

I held a hearing for the purpose of inquiring into the dispute at Northallerton on 9th October 1975.

The Objectors, the Nawton Tower Estate appeared by their agent Mr. M. J. Laws and had by correspondence which was before me reached agreement with the applicants for rights under Entries Nos. 4 and 6 that these Entries should be modified as hereinafter stated – who were content that subject to these modifications I should confirm the Entry at No. 1 in the Land Section and all the subsisting Entries in the Rights Section.

For this reason I confirm the Entry at No. 1 in the Land Section and the Entries at Nos. 1 and 3 to 17 in the Rights Section but Entry No. 4 shall be modified so as to be limited to 260 sheep in lieu of 280 sheep and Entry No.6 shall be modified so as to exclude the Rights claimed under sub Entry (11) as tenant.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 1st day of December 1975.

C. A. Settle

Commons Commissioner



COMMONS REGISTRATION ACT 1965

Reference No. 260/7/3 to 11
inclusive

In the Matter of Hilsdale East Moor,
Hilsdale, Wetherby, West Yorkshire District

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section and Entry Nos. 1 and 3 to 17 inclusive in the Rights Section of Register Unit No.01.03 in the Register of Common Land maintained by the former North Riding of Yorkshire County Council and are occasioned by Objections Nos. 0142, 0143, 0146 to 0149 inclusive and 0155 all made by The Rt. Hon. R. D. Wood P.C., M.P., C.C. Egerton and M. J. T. Todhunter and all noted in the Register on 14th September 1970 except Objection No.0155 which was noted in the Register on 17th July 1972.

I held a hearing for the purpose of inquiring into the dispute at Northallerton on 10th October 1975.

The objectors, the Newton Tower Estate appeared by their agent Mr. H. J. Laws and had by way of defence which was before me reached agreement with the applicants for rights under Entries Nos. 4 and 6 that these Entries should be modified as hereinafter stated - and were content that subject to these modifications I should confirm the Entry at No.1 in the Land Section and all the subsisting Entries in the Rights Section.

For this reason I confirm the entry at No.1 in the Land Section and the Entries at Nos. 1 and 3 to 17 in the Rights Section but entry No.4 shall be modified so as to be limited to 260 sheep in lieu of 280 sheep and Entry No.6 shall be modified so as to exclude the rights claimed under sub Entry (11) as tenant.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 1st day of December 1975

Commons Commissioner

5th November 2019

F.A.O: Jayne Applegarth
Commons Registration Officer
North Yorkshire County Council
County Hall
Northallerton
North Yorkshire
DL7 8AD

Dear Ms Applegarth

Re: Application CA10 021 - Bilsdale East Moor CL53

Further to a telephone conversation with James Alderson of Hawes Auction Mart, whereby Mr Alderson asked if I would be prepared to write in relation to the above application lodged by my brother Allan Caine. I wish to confirm that I made the application to register the rights for High Crossett on 14th May 1968 which are now recorded at entry No. 5 within the Common Register. Before I made the application, I sought advice from a solicitor on what to do and I made the application upon that advice and what I understood to be the correct procedure at the time. I therefore dispute my brother's claim that the common rights should not be attached to the land which is now owned by Mr & Mrs Bridges. I intended to register the rights over the land that I was farming which comprised High Crossett and I would not like to see the registration changed.

I hope this will allow you to deal with the applications accordingly, however if you should wish to contact me further then I am happy to assist where I can.

Yours sincerely

Edward Malcom Caine



JULIA AGLIONBY PhD MRICS FAAV
COMMON LAND AND UPLANDS ADVICE

Wallacefield
 Armathwaite,
 Carlisle CA4 9SR

Commons Registration Officer
 North Yorkshire County Council

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

15th November 2019

Dear Sirs,

Bilsdale Common CL53

Application to Correct the Register: CA10/021

Application to Apportion Rights: CA3/001

I write on behalf of my client Mr Allan Caine regarding the above applications and to respond to the letter by Mr Edward Caine dated 5th November 2019. I have taken instructions from my client. The points I make here are in addition to the points raised in my previous correspondence which I will not repeat.

Mr Edward Caine may have intended to register the 80 common rights across the whole area he farmed but that doesn't make it an mistaken action which resulted in an erroneous registration. Edward Caine was the tenant and had no authority to spread his landlord's rights across land his landlord didn't own.

The 80 common rights were according to all Land Registry deeds and plans only attached to the land in the ownership of Mr Nathan Caine; subsequently my client's land. There is no documentary evidence except, the Commons Register, that any rights are attached to fields OS601 & 602. The Land Registry records make that clear from the transfer documents in 1948. The further transfers of High Crosset in 1965 and 1999 show no reservation of any rights of commons.

If Mr Edward Caine considered the 8 rights were attached to fields OS601 & 602 then when he retained those fields, after losing the tenancy of High Crosset in 1995, he would have continued to claim payments on them but he did not. His version of events in this letter is not substantiated by his actions over the twenty years until the sale of the land to Messrs Bridges.

My client maintains his request to have the register amended to reflect the correct ownership of the rights of common. When this matter comes before committee Mr Allan Caine has asked to give oral evidence through myself as his representative.

Yours faithfully,

A large black rectangular redaction box covers the signature and name of the sender. A small portion of a signature is visible at the bottom center of the redacted area.

From: James Alderson <[REDACTED]>
Sent: 18 November 2019 17:54
To: commons Registration
Subject: RE: Application CA10 021 - Bilsdale East Moor

Categories: Jayne Applegarth

Hi Jayne

Thanks for your email below and in response to Ms Aglionby's recent letter, I believe that I've already sufficiently addressed her points of concern in my email of 13th August 2019 so I don't feel the need to elaborate on them further. With regards to Mr Edward Caine's letter, I welcome his involvement and the fact that he has been prepared to give us the benefit of his knowledge and input on the matter.

I look forward to hearing from you further in due course.

With best regards

Mr James R Alderson BSc (Hons) MRICS

For and on behalf of
Hawes Farmers' Auction Mart Company Limited, Burtsett Road, Hawes, North Yorkshire, DL8 3NP
T: 01969 667207, M: [REDACTED] E: [REDACTED] W: www.hawesmart.co.uk

From: commons Registration <commons.Registration@northyorks.gov.uk>
Sent: 15 November 2019 16:34
To: James Alderson [REDACTED] <[REDACTED]>
Subject: Application CA10 021 - Bilsdale East Moor

Good Afternoon James

Please find attached for your client's information data protected copies of a letter we received from Mr Edward Caine and the applicant's response to it. Should your client wish to make any comment on either correspondence I would be grateful to receive such by the close of business on 29 November 2019. The letter and correspondence will be added to my committee report before I send it for review by my colleagues in Legal Services and then arrange a date for the committee to meet. Once I have this date I will let you know.

Kind Regards

Jayne Applegarth
Commons Registration Officer
commons.registration@northyorks.gov.uk
01609 534753

Access your county council services online 24 hours a day, 7 days a week at
www.northyorks.gov.uk.

WARNING

Any opinions or statements expressed in this e-mail are those of the individual and not necessarily those of North Yorkshire County Council.

Initial equality impact assessment screening form			
This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.			
Directorate	BES		
Service area	H&T		
Proposal being screened	To refuse application CA10 021 which is seeking to amend the area defined in supplemental map 5 in the common land register.		
Officer(s) carrying out screening	Jayne Applegarth		
What are you proposing to do?	Refuse the application		
Why are you proposing this? What are the desired outcomes?	It is a statutory duty of the County Council as Registration Authority under the Commons Act 2006 to consider the application submitted. On consideration not all the legal tests have been met therefore the application should not be granted.		
Does the proposal involve a significant commitment or removal of resources? Please give details.	The County Council as Registration Authority has a statutory duty to maintain the common land register		
Impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics			
As part of this assessment, please consider the following questions:			
<ul style="list-style-type: none"> To what extent is this service used by particular groups of people with protected characteristics? Does the proposal relate to functions that previous consultation has identified as important? Do different groups have different needs or experiences in the area the proposal relates to? 			
If for any characteristic it is considered that there is likely to be an adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your Equality rep for advice if you are in any doubt.			
Protected characteristic	Potential for adverse impact		Don't know/No info available
	Yes	No	
Age		✓	
Disability		✓	
Sex		✓	
Race		✓	
Sexual orientation		✓	
Gender reassignment		✓	
Religion or belief		✓	
Pregnancy or maternity		✓	
Marriage or civil partnership		✓	
NYCC additional characteristics			
People in rural areas		✓	
People on a low income		✓	
Carer (unpaid family or friend)		✓	
Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.	No		
Will the proposal have a significant effect on how other organisations operate? (e.g.	No		

<p>partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.</p>				
<p>Decision (Please tick one option)</p>	<p>EIA not relevant or proportionate:</p>	<p><input checked="" type="checkbox"/></p>	<p>Continue to full EIA:</p>	
<p>Reason for decision</p>	<p>The application has not met all the criteria contained in the Commons Act 2006 and the Commons Registration (England) Regulations 2014.</p>			
<p>Signed (Assistant Director or equivalent)</p>	<p>Barrie Mason</p>			
<p>Date</p>	<p>January 2020</p>			