

North Yorkshire County Council

Business and Environmental Services

Planning and Regulatory Functions Sub Committee

13 October 2021

**Application to amend the register to record an historic event
Commons Act 2006
Part 1 – Schedule 3
The Commons Registration (England) Regulations 2014
Schedule 4 Paragraph 19**

Application Reference Number CA14 046

Right entry 12 exercisable over Swineside Moor (CL 37)

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 amend the register of Common Land to reflect the severance of rights registered from the land to which they are currently recorded as being attached and identified on the related supplemental map edged but not coloured red Appendix 1.
- 1.2 Severance occurred historically where rights previously recorded as attached to an area of land were split from that land by means of a suitable legal instrument (e.g. a conveyance) and/or treated independently of that land and as a separate asset.

2.0 Background

2.1 Under the provisions of the Commons Act 2006 (“the Act”) the County Council is a Commons Regulation Authority (“CRA”) and so responsible for maintaining the Registers of Common Land and Town and Village Greens for North Yorkshire.

2.2 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 through the Commons Registration (England) Regulations 2014.

2.3 Schedule 3, paragraph 2(2)(b) and 2(3)(c) of the Act in part set out that: -

- (2) The following are qualifying events for the purposes of this Schedule—*
(b) any relevant disposition in relation to a right of common registered under the 1965 Act, or any extinguishment of such a right, where occurring at any time—
(i) after the date of the registration of the right under that Act; and
(ii) before the commencement of this paragraph;
- (3) In sub-paragraph (2)(b) “relevant disposition” means—*
(c) in the case of a right of common attached to land, the apportionment or severance of the right

And

Schedule 4 paragraph 19 of the Commons Registration (England) Regulations 2014 (“The Regulations”) sets out that:

- 19.—** (1) *An application to amend a register in consequence of the severance of a right of common from land to which it was attached, which is a qualifying event by virtue of paragraph 2(2)(b) of Schedule 3 to the 2006 Act, may only be made by—*
- (a) the person to whom the right of common was transferred upon being severed;*
 - (b) the owner of the right of common at the date of the application; or*
 - (c) the owner of land to which the right of common is registered as being attached.*
- (2) *The application must include—*
- (a) evidence of the applicant’s capacity to make the application (as described in sub-paragraph (1));*
 - (b) the numbers of—*
 - (i) the register unit; and*
 - (ii) the entry in the rights section of that register unit, which are to be amended; and*
 - (c) a description of the land to which the right of common was attached, and evidence of the ownership of that land at the time of the severance of the right of common.*
- (3) *The application must include or be accompanied by—*
- (a) the written instrument (if any) which the applicant claims has effected the severance of the right of common; and*
 - (b) if there is no such instrument, or if that instrument does not express an unambiguous common intention by the parties to it that the right of common should be severed—*
 - (i) other documentary evidence, contemporaneous to the time at which the applicant claims that the right of common was severed, of a common intention by the transferor and transferee of the right of common that it was to be severed; or*
 - (ii) evidence that the right of common has subsequently been treated as severed.*

2.4 A CRA needs to be satisfied on the balance of probabilities that a severance occurred where an application claims that to be the case.

3.0 Application

3.1 The application was submitted by Mr Christopher John Marshall and Mrs Josephine Jill Marshall (“the Applicants”), through their solicitor John Critchley Hall of Hall and Birtles Limited. The Application was dated the 13 October 2018 and received by the County Council on 19 October 2018. The Application was accepted as being duly made on 19 February 2019.

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

3.3 Application Land and Rights Timeline:
(according to documentation held by the CRA and submitted by the applicants)

14 September 1967: John Atkinson applied to register 188 gaits exercisable over Swineside Moor attached to Great Swineside Farm. This was provisionally entered into the register as right entry number 1. See register pages at the end of Appendix 2.

1 October 1970: Being undisputed the rights were automatically declared final without being reviewed by the Commons Commissioner. See Entry 6 of the register pages at the end of Appendix 2.

20 June 1973: John Atkinson conveys part of Great Swineside Farm to Krishna Properties Limited. This is not recorded in the register.

24 June 1977: Barclays Bank Limited (who provided the mortgage for Krishna Properties Limited) sold part of Great Swineside Farm land (approximately 44%) and 125 grazing rights (approximately 66%) to Mr and Mrs C.J. Marshall (the Applicants). A disproportionate apportionment of rights to the proportion of land sold. This is not recorded in the register Appendix 7.

19 August 1977: T.W. Dent submits an application seeking to amend right entry 1. He has purchased 17 grazing rights but no land Appendix 7. Right entry 1 is replaced by right entries 8 and 9 Appendix 2.

24 October 1978: John Atkinson conveyed 41 gaits to T.W. Dent and partners with no land. This is not recorded in the register Appendix 7.

20 December 2016: Mr and Mrs Marshall submit an application to declare an entitlement to exercise grazing rights for 125 gaits. This is accepted and the register is amended showing the 125 gaits as attached to part of the land that the rights were attached to. Right entry 8 is replaced by right entries 12 and 13.

26 April 2018: Alan G. Dent and Audrey M Bainbridge submit a historic event application to record the transfer of 41 gaits held in gross by T.W. Dent to them on 3 May 1990. This is accepted and the register amended on 11 July 2018. Right entry 12 is replaced by right entries 16 and 17.

27 July 2018: The Commons Registration Officer writes to Mr and Mrs Marshall, in accordance with The Regulations, informing them that their declaration is cancelled due to the information received when Alan Dent and Audrey Bainbridge's application was submitted.

13 October 2018: Mr and Mrs Marshall submit this application seeking to record a historic severance.

4.0 Representations

- 4.1 In accordance with Regulation 21 of the Regulations, the CRA publicised the application by issuing a notice on the County Council's website and by serving notices on all relevant parties. The notices were posted on 20 February 2019, in accordance with Regulation 21(5)(a) of the Regulations.
- 4.2 There was one representation received in response to the notice from The Open Spaces Society who objected to the application Appendix 3.
- 4.3 The Open Spaces Society objected on the grounds that insufficient evidence was submitted with the application to show that the rights have been severed.
- 4.4 In response to the Open Spaces Society's objection the Applicants' solicitor provided further explanation regarding the transfer of the rights and their subsequent treatment. They state that the conveyance between Barclays Bank Limited and Mr and Mrs C J Marshall on 24 June 1977 transferred 125 sheep gaits separate to the land. They further argue that if the 1978 Conveyance between Mr John Atkinson (the registered right holder for Right Entry 1) and T.W. Dent & Partners that was

submitted to the CRA under a separate application to record a historic severance was deemed to have severed part of the original right entry 1 from the land, then the 1977 Conveyance involving the Applicants, also part of original Right Entry 1, would also have constituted a historic severance Appendix 4.

4.5 The Open Spaces Society continued with their objections arguing that the Applicants had provided very little evidence of severance or that if severance had occurred then the application should be to record a historic transfer of a right held in gross Appendix 5.

4.6 The Applicant did not wish to respond further Appendix 6.

5.0 Assessment – have the relevant tests been met?

5.1 Officers comments on each of the statutory provisions are set out below -

5.2 Schedule 3 paragraph 2(2)(b) of the Act:

(2)The following are qualifying events for the purposes of this Schedule—

(b) any relevant disposition in relation to a right of common registered under the 1965 Act, or any extinguishment of such a right, where occurring at any time—

*(i) after the date of the registration of the right under that Act;
and*

(ii) before the commencement of this paragraph;

Section 7 of the Application refers to a transfer between Barclays Bank Limited and Mr and Mrs C J Marshall on 24 June 1977. This Conveyance transferred 125 sheep gaits in addition to land that formed part of the dominant tenement for Right Entry 1. The amount of land conveyed in this transfer would have equated to approximately 84 sheep gaits if a pro-rata proportion of the grazing rights concerned had been transferred with the land that was the subject of this sale. Where registered rights are divided proportionate to the land sold it is known as “apportionment”. This transfer was not recorded in the Commons Register at the time and there was no obligation for it to be registered with the CRA at the time.

The register does however record that the land and rights attached to Right Entry 1 was subject to a further disposal in 1977 when 17 sheep gaits were sold with none of the land. These transfers in 1977 comprise dispositions of the rights concerned and took place after the rights were the subject of final registration on 24 February 1971 and prior to the commencement of paragraph 2(2)(b) of Schedule 3 to the Act which occurred on 15 December 2014 and so constitute a qualifying event (see para 2.2 above)

Therefore, this test has been met by the application.

5.3 Schedule 3 paragraph 2(3) of the Act:

(3)In sub-paragraph (2)(b) “relevant disposition” means—

.....

(c) in the case of a right of common attached to land, the apportionment or severance of the right

In the leading case of *Bettinson v Langton(2001)* the House of Lords determined that the very process of creating a register of common rights under the Commons

Registration Act 1965 turned such rights into an entity in their own right capable of being dealt with as an asset separately (severed from) from the land to which they were recorded in a register as being attached. They were severable.

The conclusion is, in my opinion, inescapable that subsection (3) transformed the right, on registration, from being a right limited by levancy and couchancy to being a right for a fixed number of animals.

It is the general law, established by the authorities to which I have referred, that when applied to... registered grazing rights..., impels the conclusion that the rights are severable”

(extract from Lord Fosco’s leading judgment)

The Commons Act 2006 subsequently introduced provisions to outlaw severance of common rights but only in respect of any disposition/event taking place after 28 June 2005. The dispositions relevant to the Application which is the subject of this report took place in 1977.

In the lead up to the Act becoming legislation DEFRA issued an explanatory note to members of parliament in January 2006 (Appendix 9) which confirmed at para 54 the significance of the Bettison v Langton decision –

In Bettison v. Langton, the judicial committee of the House of Lords determined that a consequence of the quantification of grazing rights as required by section 15 of the 1965 Act was to enable a commoner to dispose of rights of common independently from the land to which they were traditionally attached (or, alternatively, to sell the land and retain the rights). This is known as 'severance'. Rights which have been severed become 'rights held in gross' and may be freely bought and sold as an incorporeal asset.

Further, para 58 of the same explanatory note explained that “*non pro-rata apportionment is a form of severance*”. Effectively where rights were recorded in the register as attached to an area of land and that land and the rights were subsequently dealt with via a disposal in disproportionate shares then the rights were effectively severed from the land.

The case law provides clarity on the matter of historic severance. The effect of registering quantified rights under the 1965 Commons Registration Act meant that those rights were then capable of being severed.

Para 5 of Schedule 3 to the Commons Act 2006 provided that there may be regulations introduced covering “what is or is not to be regarded as a severance of a right of common”. This manifested itself in Regulation 41(3) of the Regulations which states :-

41(3) A right of common attached to land is not to be treated as having been severed from that land in consequence of a qualifying event, unless the determining authority is satisfied that the severance was lawful and –
(a) there is documentary evidence showing that the parties to the transaction or disposition which is a qualifying event intended the transaction or disposition to have the effect of severing the right of common;
or
(b) there is evidence that the right of common has been treated since the qualifying event as having been severed.

“Gadsden & Cousins on Common and Greens”, the leading publication on commons legislation advises that for a CRA to be satisfied a historic severance has occurred it should have cogent evidence that one or other of the tests set out in Reg 41(3)(a) or 41(3)(b) has been met.

Consequently where an application includes (in accordance with para 19(3) of Schedule 4 of the Regulations) either cogent documentary evidence showing an intention to sever rights or having been “*treated*” as severed following a qualifying event then it is justified in amending its register to account for that.

The timeline of transactions set out in para 3.3 above provides documentary evidence of the intention of parties to sever the 188 rights originally registered as attached to land and evidence of how those rights were subsequently treated.

Gadsden does suggest that caution should be exercised by a CRA when considering an application to record an alleged historic severance where an application is “*disputed by a person having an interest in the land*”. There is no such dispute in this case – the only objection having been raised by the Open Spaces Society which has pointed out it has no interest in the land.

The conveyances submitted by the applicant and previous applicants regarding Right Entry 1 show that this original right entry registered by John Atkinson was disposed of into separate lots. These conveyances were not silent with regard to grazing rights and the land conveyed was not proportional to the amount of rights transferred. Following the guidance contained in the explanatory note referred to above those disproportionate transactions amounted to a severance of the rights concerned Appendix 7. The conveyances submitted constitute qualifying events comprising relevant dispositions evidencing the severance of common rights. There is also evidence that the rights have been treated as severed.

Consequently, this test is met by the application.

5.4 Schedule 4 paragraph 19 of the Regulations: -.

19(1)a and 19(2)a: Proof of capacity to apply

At Section 4 of the application form the Applicants state that they are entitled to apply to record a historic event as they are the owners of the rights exercisable over Swineside Moor (CL 37). This is evidenced by the Conveyance from 1977 between Barclays Bank Limited and Mr and Mrs C J Marshall (Appendix 2).

Officers are satisfied that the Applicants have demonstrated their capacity to apply to amend the register.

19(3)(i)&(ii): if an application relies on a written instrument where the intention to sever may not have been expressly mentioned other accompanying documentary evidence from the time can be relevant to demonstrating the intention between the parties concerned or evidence that the right of common has subsequently been treated as severed.

In any event officers are satisfied that the common rights concerned have been treated separately from the land to which they were recorded as being attached when first registered. That said documentation shows that the original right holder divided his rights and land and sold them as separate lots. The disproportionate splits of the land and rights transferred and in some instances with land and rights being sold completely separately from each other all evidences that severance has occurred Appendix 7.

This test is met by the application.

- 5.5 Objection from The Open Spaces Society:
The Open Spaces Society initially objected to the application on the basis that the only evidence submitted in support of the application is the conveyance from June 1977 and that this document was not enough to evidence severance. Whilst continuing to question whether the evidence demonstrates a severance of rights took place it did subsequently recognise the complex history of events since first registration of the rights concerned.
- 5.6 Officers are satisfied that from the content of the application together with accompanying information already held by the authority, that the conveyance in June 1977 was one in a series of conveyances starting in 1973 through to October 1978 where the original registered right holder John Atkinson disposed of his land and grazing rights separately. These documents and the way in which the rights concerned were subsequently treated are clear evidence of severance of the rights from the land to which they were originally recorded as being attached.
- 5.7 The Open Spaces Society also refer to Section 9 of the Act which prohibits severance. However, the relevant conveyances occurred between 1973 and 1977. The prohibition of severance under section 9 came into effect only on 28 June 2005. Therefore the provisions contained in Section 9 do not affect the said conveyances.

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 party 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 8.

9.0 Climate Change Implications

- 9.1 As the Application seeks to change the status of the grazing rights and not the merits or otherwise of making the change; a full climate change impact assessment is not required.

10.0 Conclusion

- 10.1 It is your officer's view that on the balance of probabilities, and for the reasons set out in this report, the legal tests as set out in Schedule 3, paragraph 2(b) of the Act and Schedule 4, paragraph 19 of The Regulations are met by the Application and that consequently the Application should be approved.

11.0 Recommendation

- 11.1 That subject to any comments Members may have, the following be proposed to the Chief Executive Officer for consideration under his emergency delegated powers:-
- i. the application is approved on the grounds set out in this report.

KARL BATTERSBY
Corporate Director - Business and Environmental Services

Author of Report: Jayne Applegarth

Background Documents: Application case file held in Commons Registration, Network Information and Compliance – Business and Environmental Services

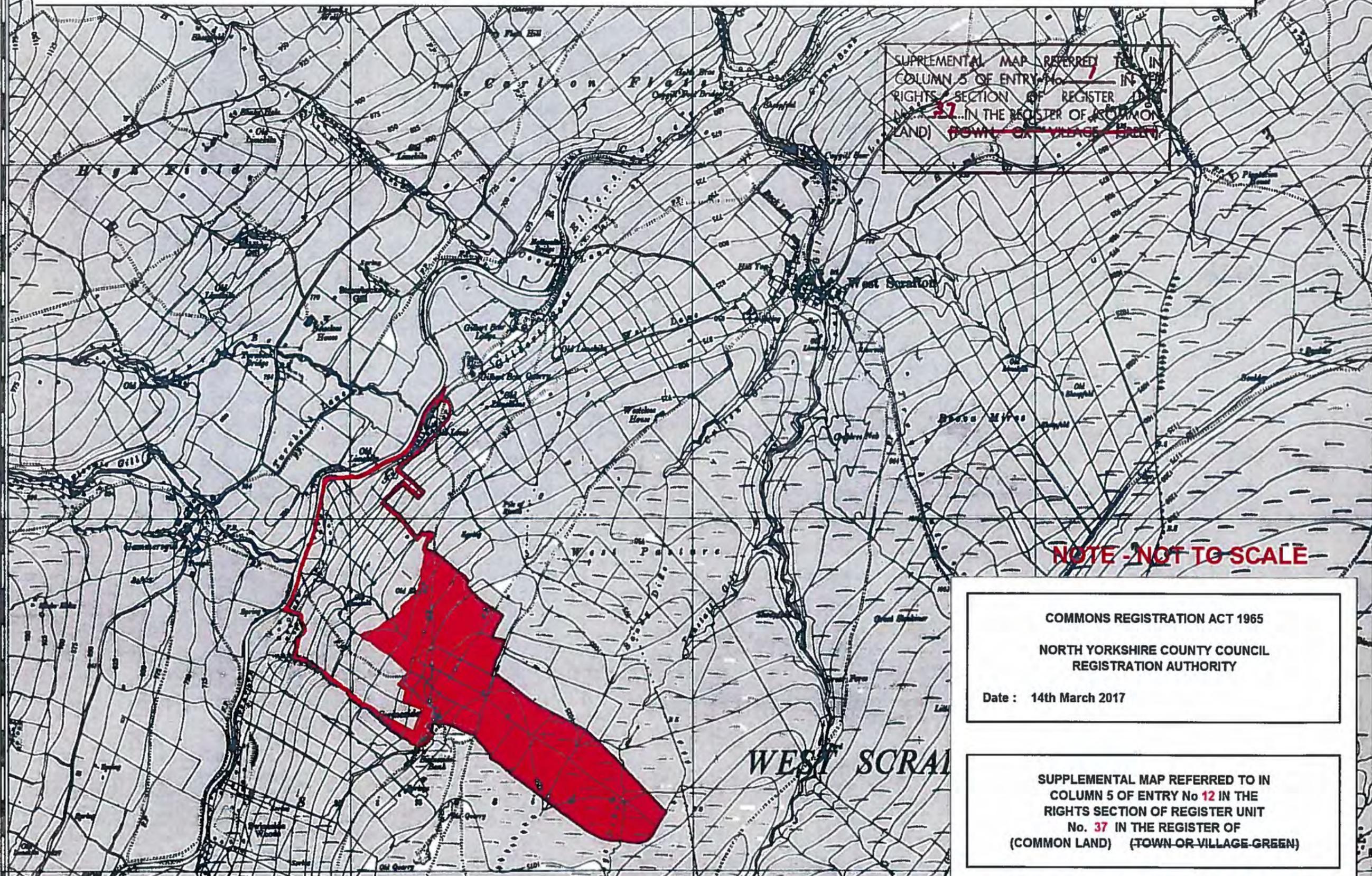
SUPPLEMENTAL MAP : CL 37 - 12

SUPPLEMENTAL MAP REFERRED TO IN COLUMN 5 OF ENTRY No. 12 IN THE RIGHTS SECTION OF REGISTER UNIT No. 37 IN THE REGISTER OF COMMON LAND) ~~(TOWN OR VILLAGE GREEN)~~

NOTE - NOT TO SCALE

COMMONS REGISTRATION ACT 1965
NORTH YORKSHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
Date : 14th March 2017

SUPPLEMENTAL MAP REFERRED TO IN COLUMN 5 OF ENTRY No 12 IN THE RIGHTS SECTION OF REGISTER UNIT No. 37 IN THE REGISTER OF (COMMON LAND) (TOWN OR VILLAGE GREEN)



The Office, Golden Lion Yard,
Leyburn, North Yorkshire, DL8 5AS
T: 01969 625 526
F: 01969 625 255
E: leyburn@hallandbirtles.co.uk
www.hallandbirtles.co.uk
DX 61331 Leyburn

Hall & Birtles
-SOLICITORS-



Mrs Jayne Applegarth
Commons Registration at North
Yorkshire County Council
County Hall
NORTHALLERTON DL7 8AH

Our Ref JCH:13648/3
Your Ref CA15 011 / JA / 72446
Date 18 October 2018

Dear Mrs Applegarth

**Commons Act 2006
Swineside Moor CL 37**

I refer to your letter of 27th July 2018 to my clients Mr C J and Mrs J J Marshall , copy enclosed.

I enclose Mr and Mrs Marshall's completed application on Form CA14.

I should be grateful if you would please say if anything further is required.

Yours sincerely

John Critchley Hall
Hall & Birtles Solicitors

Directors: Alastair C. Birtles BA Hons | Stuart J. Hall LL.B | Deborah C. Parish LL.B

Consultants: John C. Hall LL.B | Michael S. Birtles LL.B*



Commons Act 2006: Schedule 3

Application to amend the register to record an historic event

This section is for office use only

Official stamp

COMMONS ACT 2006
NORTH YORKSHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
DATE.....19 OCT 2018

Application number

CA 14 046

 Register unit number
 allocated at registration
 (for new common land
 only)

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

- Applicants should complete boxes 1–7 and 9–12, unless the application is to register an apportionment in which case box 8 should be completed and box 7 omitted.
- There is generally a restriction on the persons who can apply under Schedule 3 to the Commons Act 2006.
- An application under Schedule 3 must relate to an historic event which occurred after 2 January 1970 but before the day on which Schedule 3 commenced in your area (ask the registration authority) but which has not been recorded in the register of common land or town or village greens.
- You will be required to pay a fee for your application unless it is submitted during the transitional application period. Ask the registration authority for details. You would have to pay a separate fee should your application be referred to the Planning Inspectorate after the transitional application period has elapsed.

Note 1

Insert name
of commons
registration
authority.

Ask the registration
authority when
the transitional
application period
ends.

1. Commons Registration Authority

To the:

NORTH YORKSHIRE COUNTY COUNCIL COMMONS REGISTRATION HIGHWAYS NORTH YORKSHIRE COUNTY HALL NORTHALLEN TOWN NORTH YORKSHIRE DL7 8AH
--

Tick the box to confirm that you have:

enclosed the appropriate fee for this application:
 have applied during the transitional application period, so no fee has been
 enclosed:

Note 2

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

Note 3

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

2. Name and address of the applicant

Name:

MR. CHRISTOPHER JOHN MARSHALL
MRS. JOSEPHINE JILL MARSHALL

Postal address:

BRIDGEWATER 419 MILL ROAD
OHOKO KAIAROI R.D. 2. NEW ZEALAND

Postcode 7692

Telephone number:

Fax number:

E-mail address:

3. Name and address of representative, if any

Name:

JOHN CRITCHLEY HALL

Firm:

HALL & BIRTLES LIMITED

Postal address:

THE OFFICE GOLDEN LION YARD
LEYBURN BATH YORKSHIRE

Postcode DLP
5AS

Telephone number:

01969. 625526

Fax number:

01969. 625255

E-mail address:

Note 4

For further details of the requirements of an application, including the persons who are entitled to apply in respect of each provision, refer to paragraphs 15, 16, 17, 18, 19, 20 or 21 of Schedule 4 to the Commons Registration (England) Regulations 2014.

4. Basis of application for registration and qualifying criteria

Describe the capacity in which you are entitled to apply — see note 4 (e.g. as person entitled to exercise right of common which has been varied):

OWNERS

Tick the box below which best describes why you are applying under Schedule 3:

- creation of a right of common:
- surrender or extinguishment of a right of common:
- variation of a right of common:
- apportionment of a right of common:
- severance of a right of common:
- transfer of a right of common in gross:
- statutory disposition affecting the commons registers:

In which month and year did the event above take place?

JUNE 1977

Register unit number (not required for creation of right of common):

CL 37

Rights entry number (not required for creation of a right of common nor for statutory dispositions which do not affect rights of common):

12.

Note 5

This box is to identify the common over which the right previously created has become exercisable. It should be completed only if your application is to register a right of common or vary a right because it has become exercisable over new land. The accompanying Ordnance map must be at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland, and show the land by means of distinctive colouring within an accurately identified boundary.

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

Name by which the land is usually known:

SWINESIDE MOOR

Location:

CARLTON HIGHDALE

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

Note 6

This box should be completed only where the historic event relates to a right which is attached to land. This would include: creation of a right (unless the right of common is held in gross); surrender of a right; variation of a right; and severance of a right, in which case you must supply an Ordnance map of the dominant tenement to which the right is attached. The map must be at a scale of at least 1:10,560 and show the land by means of distinctive colouring within an accurately identified boundary. This requirement also applies to apportionments but the map must show the whole of the dominant tenement before the apportionment and the part of the land to which the right was attached following the apportionment. Give a grid reference or other identifying detail to enable the land to be located. If available please also give the Land Registry title number.

6. Description of the land to which the right is attached, if relevant

Name by which the land is usually known:

LAND AT GREAT SWINESIDE

Location:

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

Note 7

Describe the amendment to be made to the register.

7. Description of the historic event to be registered (except apportionment)

PURCHASE on 24 JUNE 1977

Tick this box if your application relates to a right of common held in gross:



Note 8

If you are applying to register an apportionment you must submit a separate 'primary' application along with this application. A primary application can be made where only part of the apportioned right attached to land has been surrendered, extinguished, varied, severed from the land to which it was attached, or is the subject of a statutory disposition.

8. Details of the apportionment

Specify the name and address of the owner of the land to which is attached the part of the right of common which is the subject of the primary application:

Specify the rateable apportionment of the right (i.e. the quantity of the right which attaches the relevant land following the apportionment):

If the right is to be apportioned otherwise than rateably, explain the basis for that claim and state which evidence you have provided which corroborates that claim:

Note 9

List all supporting documents (deeds or other legal documents) and maps accompanying the application, or primary application if relevant. This includes evidence of your capacity to apply and copies of any relevant instrument giving effect to the event to be registered. There may be further evidential requirements: see the Guidance. 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.

Note 10

A test of fairness does not apply during the transitional period (ask the registration authority whether it currently applies). If you apply after that period you must explain why, taking into account the effect of your application and any persons affected by it, it would be fair for the registration authority to amend the register.

9. Supporting documentation

COPY OF THE GAVENANCE DATED 24 JUNE 1977
AND MADE BETWEEN 1. BARCLAYS BANK LIMITED AND
2. CHRISTOPHER JOHN MARSHALL AND JOSEPHINE JILL
MARSHALL

COPY OF THE SUPPLEMENTAL MAP FOR RIGHT
ENTRY 12.

10. Fairness test

<p>Note 11 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.</p>	<p>11. Any other information relating to the application</p> <div style="border: 1px solid black; height: 150px; width: 100%;"></div>
<p>Note 12 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.</p>	<p>12. Signature</p> <p>Date: 13 OF OCTOBER 2018</p> <p>Signatures: x </p> <p style="margin-left: 200px;">x</p>

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.

DATED 24th June 1977

BARCLAYS BANK LIMITED

to

MR. AND MRS. C. J. MARSHALL

trading under the style or firm,
name of AGRIMAR

C O N V E Y A N C E

relating to freehold property situate
and known as Great and Little Swineside
Farms West Scafton Leyburn in the
County of North Yorkshire

Booth & Co.,
LEEDS LS1 1HQ.

THIS CONVEYANCE is made the 24th day of June One thousand nine hundred and seventy seven BETWEEN BARCLAYS BANK LIMITED whose registered office is situate at 54 Lombard Street in the City of London (hereinafter called "the Bank") of the one part and CHRISTOPHER JOHN MARSHALL of Wayside Barmston Driffield in the County of Humberside and JOSEPHINE JILL MARSHALL his wife of the same address carrying on in Partnership together under the style or firm name of Agrimar (hereinafter called "the Partners")

of the other part

WHEREAS:

(1) By a Legal Charge (hereinafter called "the Legal Charge") dated the Twentieth day of June One thousand nine hundred and seventy three and made between Krishna Properties Limited of the one part and the Bank of the other part the said Krishna Properties Limited being then seised inter alia of the property hereinafter described for an estate in fee simple in possession free from incumbrances charged the same by way of Legal Mortgage to the Bank to secure the payment to the Bank of all moneys and liabilities for the time being owing or incurred with interest as therein provided

(2) The Bank has agreed with the Partners for the sale to them of the property hereinafter described for an estate in fee simple in possession free from incumbrances at the price of Twenty one thousand seven hundred pounds

(3) The said Purchase is made by the Partners on account and for the purpose of their said Partnership trade or business and they are desirous that the said property shall be conveyed to them in manner hereinafter appearing

NOW THIS DEED WITNESSETH as follows:-

1. IN consideration of the sum of Twenty one thousand seven hundred pounds paid by the Partners out of moneys forming part of their Partnership assets to the Bank (the receipt whereof the Bank hereby acknowledges) the Bank as Mortgagee in exercise of the power of sale conferred on it by statute and of all other powers enabling it hereby conveys unto the Partners ALL THAT farm situate at Swineside in the Parish of West Scafton near Leyburn in the County of North Yorkshire and known as Little Swineside Farm containing by recent estimation forty nine point six nine six acres or thereabouts TOGETHER WITH the farm buildings and a



derelict and adjoining cottage ALL of which are delineated for identification purposes only on the plan annexed hereto and thereon edged brown and are described in the First Schedule hereto AND ALSO ALL THOSE One hundred and twenty five sheep gaits and grazing herbage and pasturage belonging or appertaining thereto on or over the moor or common called Swineside Moor TO HOLD the said property unto the Partners in fee simple upon the trusts applicable thereto as part of the assets of the Part-

nership discharged from all right of redemption and from all claims under the Legal Charge subject nevertheless to and with the benefit of the rights for the supply of water and of right of way exception and reservation contained mentioned or referred to in a Conveyance dated the Twentieth day of June One thousand nine hundred and seventy three and made between John Atkinson of the one part and the said Krishna Properties Limited of the other part so far as the same are still subsisting and capable of taking effect and relate to or affect the property hereby conveyed

2. (i) IT is hereby agreed that it shall be lawful for the Partners or after either one of them shall have ceased to be a Partner in the said firm for the surviving or continuing Partner at any time or times to appoint a new Trustee or new Trustees of this deed and in particular to appoint such new Trustee or new Trustees in the place of any Trustee who shall not at the time of such appointment be a Partner in the said firm as if he were dead

(ii) A statement in a Deed purporting to appoint a new Trustee or new Trustees of this Deed in the place of any Trustee hereof who is not then a Partner in the said firm to the effect that the Trustee who is being replaced has ceased to be a Partner in the said firm shall be conclusive evidence thereof in favour of any person dealing with the Trustees for the time being of this Deed

3. IT is further agreed that the Partners or other the Trustees for the time being of this Deed shall have full power until the expiration of a period of eighty years from the date hereof (which period shall be the perpetuity period applicable hereto) to mortgage charge lease or otherwise dispose of all or any part of the said property with all the powers in that behalf of an absolute owner

4. THE Partners and their successors in title covenant with the

Bank as follows:-

(a) To maintain good and stockproof walls or fences along the boundaries of the property hereby conveyed marked with an inward 'T' on the plan annexed hereto within the boundaries of the property hereby conveyed and

(b) To erect and maintain a good stockproof fence along the boundaries of the property hereby conveyed which are marked by a red 'T' on the said plan annexed hereto

5. THE Bank as Vendor hereby assigns unto the Partners and its successors in title the benefit of a covenant obtained from the Purchaser of the property edged green on the said plan to erect and maintain a good stockproof fence where marked within by a red 'T' on the said plan

6. THE Bank hereby acknowledges the right of the Partners to the production of the documents specified in the Second Schedule hereto the possession of which is retained by the Bank and to delivery of copies thereof

7. IT is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds Twenty five thousand pounds

IN WITNESS whereof the Bank has hereunto affixed its Common Seal and the Purchasers have hereunto set their hands and seals the day and year first hereinbefore written

THE FIRST SCHEDULE before referred to

PART OS 388	3.227 Acres (est)	Meadow
OS 412	4.927 Acres	Meadow
OS 414	7.896 Acres	Part Meadow/Pasture
OS 413	2.474 Acres	Pasture
OS 443	5.525 Acres	Meadow
OS 439	3.413 Acres	Pasture
PART OS 440	3.190 Acres	Part Meadow/Pasture
OS 442	1.475 Acres	Meadow
OS 441	1.700 Acres	Pasture
OS 443	2.427 Acres	Tunstall Scar Plantation
OS 449	4.148 Acres	Pasture
PART OS 448	1.000 Acres (est)	Pasture
OS 387	.100 Acres (est)	Pasture
OS 482	.500 Acres (est)	River Bed
OS 450	1.126 Acres	Pasture
OS 451	1.230 Acres	Pasture
OS 452	2.148 Acres	Pasture
OS 438	.500 Acres	Pasture
OS 437	1.490 Acres	Pasture
OS 437a	.604 Acres	Scrub
PART OS 390	.596 Acres (est)	2 Garths Farm Buildings and Derelict Cottages
Total	49.696	
Acreage		

THE SECOND SCHEDULE before referred to

20th June 1973

The said CONVEYANCE of this date made John Atkinson of the one part and Krishna Properties Limited of the other part

20th June 1973

The said LEGAL CHARGE of this date mad Krishna Properties Limited of the one the Bank of the other part

(THE COMMON SEAL of BARCLAYS
(BANK LIMITED was hereunto
(
(affixed in the presence of:-

.....
General Managers Assistant

..... Assistant Secretary
Authorized Sealing Officer G.43467

Authorized Sealing Officers

(SIGNED SEALED AND DELIVERED by
(the said CHRISTOPHER JOHN
(
(MARSHALL in the presence of:-

(secretary)

Hill Farm Cottages,
Swine, Hill.

(SIGNED SEALED AND DELIVERED by
(the said JOSEPHINE JILL
(
(MARSHALL in the presence of:-

(Secretary)

Hill Farm Cottages,
Swine, Hill.

Register of Common Land

COMMONS REGISTRATION ACT 1965
NORTH RIDING COUNTY COUNCIL
REGISTRATION AUTHORITY
Date **10 JAN 1968**

Register unit No. CL 37.

Edition No.

See Overleaf
for Notes

LAND SECTION—Sheet No. 1.

No. and date of entry	Description of the land, reference to the register map, registration particulars etc.
<p>1. 10th Jan. 1968.</p> <div data-bbox="138 662 409 805" style="border: 1px solid black; padding: 5px;"> <p>(See entry No. <u>2</u> below)</p> </div>	<p>A portion of land known as Swineside Moor in the Parish of Carlton Highdale and marked with a green verge line inside the boundary on sheet 50D of the register map (6" Ordnance Survey Sheet SE 08 SE) and distinguished by the number on this register unit. Registered pursuant to application No.79 made 14th September, 1967 by John Atkinson, Great Swineside, West Scrafton, Leyburn. (Registration Provisional)</p>
<p>2 17th Feb. 1971</p>	<p>The registration at Entry No. 1 above being undisputed, became final on the 1st October, 1970.</p>

Register of COMMON LAND

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

Register Unit No. C.L. 27
 Edition No.

See Overleaf
for Notes

RIGHTS SECTION—Sheet No. 1

1 No. and date of entry	2 No. and date of application	3 Name and address of every applicant for registration, and the capacity in which he applied	4 Particulars of the right of common, and of the land over which it is exercisable	5 Particulars of the land (if any) to which the right is attached
1 28th June, 68 (See Entry No. 6 below)	80 14th Sept. 68 (See Entry Nos. 8 & 9 below)	John Atkinson, Great Swineside, West Scafton, Leyburn. Owner	a) To graze sheep, cattle & horses to a limit of 188 gaits, one gait gives the right to graze one sheep or 1 cow or 1/6th horse b) of shooting, over the whole of the land comprised in this register unit. (Registration Provisional)	Great Swineside, West Scafton shown edged green ^{red} on the supplemental plan bearing the number of this registration. (See Entry No. 8 below)
2 28th June, 68 (See Entry No. 6 below)	430 June, 1968	John Henry McDonald, 6 Cyprus Avenue, Thackley, Bradford. Owner. NOT KNOWN AT THIS ADDRESS	To graze 17 ewes & followers over the whole of the land comprised in this register unit. (Registration Provisional)	Quarry Lodge Farm, shown edged yellow ^{red} on the supplemental plan bearing the number of this registration.
3 28th June, 68 (See Entry No. 6 below)	1453 29th Mar. 68	Simon Robert Harrison, Lane House Farm, West Scafton. Owner. Now: S. B. and C. Harrison, Hill Top Farm, West Scafton, Leyburn, North Yorkshire DL8 4RU (refer to letter CL37/CNS/71727)	To graze 50 sheep & followers over the whole of the land comprised in this register unit. (Registration Provisional)	Hill Top Lane House Farm, shown edged orange ^{red} on the supplemental plan bearing the number of this registration.
4 28th June, 68 (See Entry No. 6 below)	1374 22nd June, 68	John Faulder Lister, Bilton in Ainsty, York. Owner.	To graze 12 sheep over the whole of the land comprised in this register unit. (Registration Provisional)	Riverside Farm shown edged purple on the supplemental plan bearing the number of this register unit.
Registration Amendment: Entry No. 4 above is replaced by entry No. 10 below				
5 28th June, 68 (See Entry No. 6 below)	319 29th Mar. 68	Thomas Wilson Dent, Town Head Farm, West Scafton, Leyburn. Owner.	To graze 30 sheep & followers over the whole of the land comprised in this register unit. (Registration Provisional)	Town Head Farm, West Scafton shown edged red on the supplemental plan bearing the number of this registration.
Entry No. 5 above is replaced by Entry No. 15 below				
6 17th Feb. 1971	The registrations at Entries Nos. 1 to 5 above being undisputed, became final on the 1st October, 1970.			
7 24th November 1977	Registration amendment - Entry No. 1 above is replaced by Entry Nos. 8 & 9 below			
8 24th November 1977	NY 52 19/8/77	John Atkinson, Great Swineside, West Scafton.	(a) to graze sheep, cattle & horses to a limit of 171 sheepgaits, 1 gait gives the right to graze 1 sheep or 1/4 cow or 1/6th horse (b) of shooting, over the whole of the land comprised in this register unit.	Great Swineside, West Scafton shown edged red ^{red} on the supplemental map bearing the NUMBER of this registration.
ENTRY NO 8 IS REPLACED BY ENTRIES NOS. 12 AND 13 BELOW				
9 24th November 1977	NY 52 19/8/77	Thomas Wilson Dent, Town Head Farm, West Scafton.	to graze sheep, cattle & horses to a limit of 17 sheepgaits, one gait gives the right to graze 1 sheep, 1/4 cow or 1/6th horse, over the whole of the land comprised in this register unit (Registration amendment)	Held in gross.
Entry No. 9 above is replaced by Entry No. 14 below				

C.R.

Form 3 COMMONS REGISTRATION ACT 1965

NOTE

This section contains the Registration of every Right of Common registered under the Act as exercisable over the whole or any part of the land described in the land section of this Register Unit

Registration Authority
NORTH YORKSHIRE COUNTY COUNCIL

REGISTER OF COMMON LAND

Register Unit No CL 37
Edition No 2

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
Registration Amendment: Entry No. 10 below replaces Entry No. 4 above.				
10 9 February 2006	CNS 135 7 December 2005	Barbara Wilmot Lister Rivermead Gammersgill Leyburn North Yorkshire	To graze 12 sheep over the whole of the land comprised in this register.	The rights are held in gross.
Registration Amendment: Entry No. 10 above is replaced Entry No.11 below.				
Registration Amendment: Entry No. 11 below replaces Entry No. 10 above.				
11 22 March 2016	CA6 001 10 November 2015	Jennifer Ellen Lister Arden Grange Walnut tree Springfield Avenue Gammersgill Harrogate North Yorkshire HG1 2HR Leyburn North Yorkshire DL8 4TP.	To graze 12 sheep over the whole of the land comprised in this Register	The rights are held in gross.

REGISTER OF COMMON LAND

RIGHTS SECTION – Sheet No 3

COMMONS ACT 2006
NORTH YORKSHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
DATE 15 MAR 2018

Register Unit No CL 37
Edition No 2

See Overleaf for notes

1. No and date of entry	2. No., date and cause of application	3. Name and address of every applicant for registration or amendment, and the capacity in which they 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 if attached or details of the owner of any right held in gross.	6. Declaration of entitlement to right and details of the right claimed
12. 05 April 2017 (see entry 8) (see entry 13)	NY.52 19/8/77	John Atkinson, Great Swineside, West Scafton. Owner	The right- a) to graze sheep, cattle & horses to a limit of 171 sheepgaits, 1 gait gives the right to graze 1 sheep or ¼ cow or 1/6 horse. b) of shooting, over the whole of the land comprised in this register unit.	The land at Great Swineside, West Scafton as shown coloured red on the supplemental map bearing the number of this registration.	
<i>Register Amendment: Right Entry No. 12 above has been replaced by Right Entries 16 and 17 below</i>					
13. 05 April 2017 (see entry 8) (see entry 12)	CA15 011 20 December 2016 regulation 43 of the Commons Registration (England) Regulations 2014	Registration amendment: a declaration of partial entitlement to exercise the right of common registered at entry no 12 above has been made. Mr Christopher John Marshall and Mrs Josephine Jill Marshall, Bridgewater, 419 Mill Road, Ohoko Kainpoi R.D.2, New Zealand. Declarants.	The right- a) to graze sheep, cattle & horses to a limit of 171 sheepgaits, 1 gait gives the right to graze 1 sheep or ¼ cow or 1/6 horse. b) of shooting, over the whole of the land comprised in this register unit.	The land formerly forming part of Great Swineside, West Scafton as shown edged red on the supplemental map bearing the number of this registration.	The applicant claims the right to graze 125 sheepgaits over the whole of the land comprised in this register unit.
14. 15 March 2018 (see entry 9)	CA6 011 20 June 2017 Section 12 of Commons Act 2006	Alan Geoffrey Dent and Audrey Margaret Bainbridge, Town Head Farm, West Scafton Leyburn, North Yorkshire DL8 4RU. Transferees.	To graze sheep, cattle & horses to a limit of 17 sheepgaits, one gait gives the right to graze 1 sheep, ¼ cow or 1/6 horse, over the whole of the land comprised in this register unit.	Right of common held in gross. Owners: Alan Geoffrey Dent and Audrey Margaret Bainbridge, Town Head Farm, West Scafton Leyburn, North Yorkshire DL8 4RU.	

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 YORKSHIRE COUNTY COUNCIL

REGISTER OF COMMON LAND

RIGHTS SECTION – Sheet No 4

COMMONS ACT 2006
NORTH YORKSHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
DATE 11 JUL 2018

Register Unit No CL 37
Edition No 2

See Overleaf for notes

1. No and date of entry	2. No., date and cause of application	3. Name and address of every applicant for registration or amendment, and the capacity in which they 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 or details of the owner of any right held in gross.	6. Declaration of entitlement to right and details of the right claimed
15. 15 th March 2018 (see entry 5)	CA15 097 21 st September 2017 regulation 43 of the Commons Registration (England) Regulations 2014	Alan Geoffrey Dent and Audrey Margaret Bainbridge, Town Head Farm, West Scafton Leyburn, North Yorkshire DL8 4RU. Declarants.	To graze 30 sheep followers, over the whole of the land comprised in this register unit.	Town Head Farm, West Scafton shown edged red on the supplemental plan bearing the number of this registration.	The applicants claim the right to graze 30 sheep followers, over the whole of the land comprised in this register unit.
16. 11 th July 2018 (see entry 12)	CA14 031 26 th April 2018 Paragraph 19 of Schedule 3 to the Commons Act 2006	Alan Geoffrey Dent and Audrey Margaret Bainbridge, Town Head Farm, West Scafton Leyburn, North Yorkshire DL8 4RU. Owners.	The right- a) to graze sheep, cattle & horses to a limit of 41 sheepgaits, 1 gait gives the right to graze 1 sheep or ¼ cow or 1/6 horse. b) of shooting, over the whole of the land comprised in this register unit.	The right of common at entry no. 12 above was severed from the land to which it was previously attached and became a right of common in gross. Owners: Alan Geoffrey Dent and Audrey Margaret Bainbridge, Town Head Farm, West Scafton Leyburn, North Yorkshire DL8 4RU.	
17. 11 th July 2018 (see entry 12 and entry 16)	N/A	John Atkinson, Great Swineside, West Scafton. Owner	The right- a) to graze sheep, cattle & horses to a limit of 130 sheepgaits, 1 gait gives the right to graze 1 sheep or ¼ cow or 1/6 horse.	The right of common at entry no. 12 above was severed from the land to which it was previously attached and became a right of common in gross. Owner: John Atkinson, Great Swineside, West Scafton. Owner	

C.R.

Form 4 COMMONS REGISTRATION ACT 1965

REGISTER OF COMMON LAND

OWNERSHIP SECTION – Sheet No 1

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

Registration Authority
NORTH YORKSHIRE COUNTY COUNCIL

Register Unit No CL 37
Edition No 1

See Overleaf
for Notes

1. No and date of entry	2. No and date of application	3 Name and address of person registered as owner	4 Particulars of the land to which the registration applies
1 14 August 1977	N/A		The above registration was made in pursuance of Section 9 of the Commons Registration Act 1965 in accordance with a Direction made by G D Squibb, Chief Commons Commissioner, dated 9 August 1977. Ref: 268/U/117.

From: Hugh Craddock <[REDACTED]>
Sent: 14 March 2019 14:14
To: commons Registration
Subject: RE: CA14 046 - SWINESIDE MOOR (CL37) - RIGHT ENTRY 12

Categories: Jayne Applegarth

Hi Tracey

Thank you for notice of application CA14/046. The society objects to the application being granted. We have no legal interest in the land to which the application relates.

The application states no basis on which it might be shown that there has been a severance of the rights. The only relevant information disclosed by the application is that part of the land to which rights of common were attached, together with the rights, were transferred in 1977. Neither the application form, nor any supporting document, makes any statement about severance having taken place, or why it might be concluded that there was a severance. The copy of the conveyance map, at page 17 of the scanned application pack, is of such poor quality that I cannot relate it in any way to the supplemental map (perhaps that is the point?).

The application is at the end of a series of applications to record historical severance of deteriorating quality, where the applicant appears to think that it is sufficient to enclose a copy of a conveyance and receive an amendment to the register to show severance, by return. Yet this application, like several others, has been made by a firm of solicitors on behalf of the client. Surely we are entitled to some explanation of why severance is thought to have occurred? A narrative of the events, and some legible evidence, would be quite helpful.

On this basis, the application is incapable of being granted.

regards

Hugh

*Hugh Craddock
Case Officer
Open Spaces Society
25a Bell Street
Henley-on-Thames
RG9 2BA*

*Email: [REDACTED]
www.oss.org.uk
Tel: 01491 573535*

*Please note that I work Mondays, Wednesdays and Thursdays
(Registered in England and Wales, limited company number 7846516
Registered charity number 1144840)*

**Please [support our campaign](#) now to stop
the wrongful deregistration of common land.**



From: John Hall <
Sent: 26 March 2019 16:10
To: commons Registration
Subject: CA14-046-Swineside Moor CL37

Categories: Jayne Applegarth

Thank you for providing to me a copy of the objection from Open Spaces Society / Hugh Craddock. The objection suggests that the Society does not appreciate the efforts made by the commons registration authority and the applicants to keep the registers up-to-date.

The 1977 Conveyance to Mr and Mrs Marshall conveyed to them one hundred and twenty five sheep gaits and grazing herbage and pasturage belonging or appertaining thereto on or over the moor or common called Swineside Moor. At that time the registers recorded that the rights registered to John Atkinson attached to land at Great Swineside but subsequent events, namely an application to sever the rights made by Alan Dent and Audrey Dent in 1978, the year following the conveyance of the rights to Mr and Mrs Marshall, have resulted in the rights to John Atkinson being held in gross. As all the rights are now held in gross then the 1977 Conveyance must be an historic severance .

I hope that this helps.

Thanks, John Hall

John C. Hall
Hall & Birtles Solicitors

The Office,		01969 625 526
Golden Lion Yard		01969 625 255
Leyburn		61331 Leyburn
North Yorkshire		
DL8 5AS		www.hallandbirtles.co.uk

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From: Hugh Craddock <
Sent: 10 April 2019 15:54
To: commons Registration
Subject: RE: Applicant comments for application CA14 046

Categories: Simon Evans, Jayne Applegarth

Hi Jayne

Thank you for the brief note from Hall & Birtles.

I do not understand it: do you? I take the second paragraph to imply that the rights in question were severed in 1978. I am not quite sure how this is said to have secured the severance of the rights which were conveyed in 1977 — one year *earlier* — to the Marshalls (by the 1977 conveyance from Barclays Bank), but even if it did, either those rights are now registered as severed: in which case, the application should be for a historical transfer of rights in gross, or they are not, in which case, we need evidence of how the rights came to be severed in 1978 (and how this affected the rights conveyed in 1977). That said, it might be helpful if you could kindly provide us with a copy of right entry CL37–12, so that we can see where we are starting from?

Otherwise, the only evidence currently supporting the application is the 1977 conveyance. I have now been able to identify the conveyed land in relation to the supplemental map. It relates to about half (the northwestern half) of the dominant tenement associated with right CL37–12. On this evidence, all that has occurred is that an apportionment is called for in relation to the 1977 conveyance.

Finally, in reference to the first paragraph of the note, we here do appreciate the efforts made by the authority in keeping the registers up to date. We do not appreciate the efforts of legally qualified practitioners who purport to assist their clients to update the registers, by preparing applications which provide no evidence of the matter which the application seeks to achieve. Just to reiterate: registration of historic severance is no minor matter, but an exception to the general prohibition on severance effected by s.9 of the 2006 Act. If an application is to be granted, it must be granted on full and convincing evidence that severance has indeed taken place. That evidence is not (yet) available here.

regards

Hugh

*Hugh Craddock
Case Officer
Open Spaces Society
25a Bell Street
Henley-on-Thames
RG9 2BA
Email:
www.oss.org.uk*

*Tel:
Please note that I work Mondays, Wednesdays and Thursdays
(Registered in England and Wales, limited company number 7846516
Registered charity number 1144840)*

Please [support our campaign](#) now to stop

From: John Hall <[REDACTED]>
Sent: 18 April 2019 14:40
To: commons Registration
Subject: CA14 046

Thank you for your email 16th April 2019 @ 15:54.

I note the further comments of Mr Hugh Craddock (10 April 2019 @ 15:54). I do not consider that I need to respond further.

Thanks, John Hall

John C. Hall
Hall & Birtles Solicitors

The Office,	 01969 625 526
Golden Lion Yard	 01969 625 255
Leyburn	 61331 Leyburn
North Yorkshire	 [REDACTED]
DL8 5AS	 www.hallandbirtles.co.uk

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026286

Favoured with Instructions from Barclays Bank Ltd.

COVERDALE, NORTH YORKSHIRE

A Valuable HILL FARM comprising Farm House, Farm Buildings with Derelict Cottages, 78.341 Acres Land, (or thereabouts) and 142 Sheep Gaits on Swineside Moor, in a Ring Fence and bordered on the west side by the River Cover, situate in the heart of the dale, known as :-

GREAT AND LITTLE SWINESIDE FARMS, WEST SCRAFTON, LEYBURN

To be Sold by Auction in 3 Lots, unless previously sold by private treaty, and subject to conditions to be then read, in Siddalls Cafe, Leyburn, on,

Friday, 20th May, 1977
at 3.00 p.m.

VIEWING: By appointment with the Auctioneers.

SOLICITORS: Messrs. Durrant Piesse, 73 Cneapside, London. EC2V 6ER.

JOINT AUCTIONEERS

Wharton Carpenter Ltd.
131 High Street,
Norton
Stockton-on-Tees
Cleveland. TS20 1AA.

Tel: Stockton (0642) 555905

John E. Tennant, ARICS; MRAC.
26 Market Place,
Leyburn
North Yorkshire.

Tel: Leyburn (09692) 3451 or 2511

copy etc
5/8/76

DATED 24th June 1977

BARCLAYS BANK LIMITED

to

MR. AND MRS. C. J. MARSHALL

trading under the style or firm,
name of AGRIMAR

C O N V E Y A N C E

relating to freehold property situate
and known as Great and Little Swineside
Farms West Scafton Leyburn in the
County of North Yorkshire

Booth & Co.,
LEEDS LS1 1HQ.

THIS CONVEYANCE is made the 24th day of June One thousand nine hundred and seventy seven BETWEEN BARCLAYS BANK LIMITED whose registered office is situate at 54 Lombard Street in the City of London (hereinafter called "the Bank") of the one part and CHRISTOPHER JOHN MARSHALL of Wayside Barmston Driffield in the County of Humberside and JOSEPHINE JILL MARSHALL his wife of the same address carrying on in Partnership together under the style or firm name of Agrimar (hereinafter called "the Partners")

of the other part

WHEREAS:

(1) By a Legal Charge (hereinafter called "the Legal Charge") dated the Twentieth day of June One thousand nine hundred and seventy three and made between Krishna Properties Limited of the one part and the Bank of the other part the said Krishna Properties Limited being then seised inter alia of the property hereinafter described for an estate in fee simple in possession free from incumbrances charged the same by way of Legal Mortgage to the Bank to secure the payment to the Bank of all moneys and liabilities for the time being owing or incurred with interest as therein provided

(2) The Bank has agreed with the Partners for the sale to them of the property hereinafter described for an estate in fee simple in possession free from incumbrances at the price of Twenty one thousand seven hundred pounds

(3) The said Purchase is made by the Partners on account and for the purpose of their said Partnership trade or business and they are desirous that the said property shall be conveyed to them in manner hereinafter appearing

NOW THIS DEED WITNESSETH as follows:-

1. IN consideration of the sum of Twenty one thousand seven hundred pounds paid by the Partners out of moneys forming part of their Partnership assets to the Bank (the receipt whereof the Bank hereby acknowledges) the Bank as Mortgagee in exercise of the power of sale conferred on it by statute and of all other powers enabling it hereby conveys unto the Partners ALL THAT farm situate at Swineside in the Parish of West Scafton near Leyburn in the County of North Yorkshire and known as Little Swineside Farm containing by recent estimation forty nine point six nine six acres or thereabouts TOGETHER WITH the farm buildings and a



derelict and adjoining cottage ALL of which are delineated for identification purposes only on the plan annexed hereto and thereon edged brown and are described in the First Schedule hereto AND ALSO ALL THOSE One hundred and twenty five sheep gaits and grazing herbage and pasturage belonging or appertaining thereto on or over the moor or common called Swineside Moor TO HOLD the said property unto the Partners in fee simple upon the trusts applicable thereto as part of the assets of the Part-

nership discharged from all right of redemption and from all claims under the Legal Charge subject nevertheless to and with the benefit of the rights for the supply of water and of right of way exception and reservation contained mentioned or referred to in a Conveyance dated the Twentieth day of June One thousand nine hundred and seventy three and made between John Atkinson of the one part and the said Krishna Properties Limited of the other part so far as the same are still subsisting and capable of taking effect and relate to or affect the property hereby conveyed

2. (i) IT is hereby agreed that it shall be lawful for the Partners or after either one of them shall have ceased to be a Partner in the said firm for the surviving or continuing Partner at any time or times to appoint a new Trustee or new Trustees of this deed and in particular to appoint such new Trustee or new Trustees in the place of any Trustee who shall not at the time of such appointment be a Partner in the said firm as if he were dead

(ii) A statement in a Deed purporting to appoint a new Trustee or new Trustees of this Deed in the place of any Trustee hereof who is not then a Partner in the said firm to the effect that the Trustee who is being replaced has ceased to be a Partner in the said firm shall be conclusive evidence thereof in favour of any person dealing with the Trustees for the time being of this Deed

3. IT is further agreed that the Partners or other the Trustees for the time being of this Deed shall have full power until the expiration of a period of eighty years from the date hereof (which period shall be the perpetuity period applicable hereto) to mortgage charge lease or otherwise dispose of all or any part of the said property with all the powers in that behalf of an absolute owner

4. THE Partners and their successors in title covenant with the

Bank as follows:-

(a) To maintain good and stockproof walls or fences along the boundaries of the property hereby conveyed marked with an inward 'T' on the plan annexed hereto within the boundaries of the property hereby conveyed and

(b) To erect and maintain a good stockproof fence along the boundaries of the property hereby conveyed which are marked by a red 'T' on the said plan annexed hereto

5. THE Bank as Vendor hereby assigns unto the Partners and its successors in title the benefit of a covenant obtained from the Purchaser of the property edged green on the said plan to erect and maintain a good stockproof fence where marked within by a red 'T' on the said plan

6. THE Bank hereby acknowledges the right of the Partners to the production of the documents specified in the Second Schedule hereto the possession of which is retained by the Bank and to delivery of copies thereof

7. IT is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds Twenty five thousand pounds

IN WITNESS whereof the Bank has hereunto affixed its Common Seal and the Purchasers have hereunto set their hands and seals the day and year first hereinbefore written

THE FIRST SCHEDULE before referred to

PART OS 388	3.227 Acres (est)	Meadow
OS 412	4.927 Acres	Meadow
OS 414	7.896 Acres	Part Meadow/Pasture
OS 413	2.474 Acres	Pasture
OS 443	5.525 Acres	Meadow
OS 439	3.413 Acres	Pasture
PART OS 440	3.190 Acres	Part Meadow/Pasture
OS 442	1.475 Acres	Meadow
OS 441	1.700 Acres	Pasture
OS 443	2.427 Acres	Tunstall Scar Plantation
OS 449	4.148 Acres	Pasture
PART OS 448	1.000 Acres (est)	Pasture
OS 387	.100 Acres (est)	Pasture
OS 482	.500 Acres (est)	River Bed
OS 450	1.126 Acres	Pasture
OS 451	1.230 Acres	Pasture
OS 452	2.148 Acres	Pasture
OS 438	.500 Acres	Pasture
OS 437	1.490 Acres	Pasture
OS 437a	.604 Acres	Scrub
PART OS 390	.596 Acres (est)	2 Garths Farm Buildings and Derelict Cottages
Total	49.696	
Acreage		

THE SECOND SCHEDULE before referred to

20th June 1973

The said CONVEYANCE of this date made John Atkinson of the one part and Krishna Properties Limited of the other part

20th June 1973

The said LEGAL CHARGE of this date mad Krishna Properties Limited of the one the Bank of the other part

(THE COMMON SEAL of BARCLAYS
(BANK LIMITED was hereunto
(
(affixed in the presence of:-

.....
General Managers Assistant

..... Assistant Secretary
Authorized Sealing Officer G.43467

Authorized Sealing Officers

(SIGNED SEALED AND DELIVERED by
(the said CHRISTOPHER JOHN
(
(MARSHALL in the presence of:-

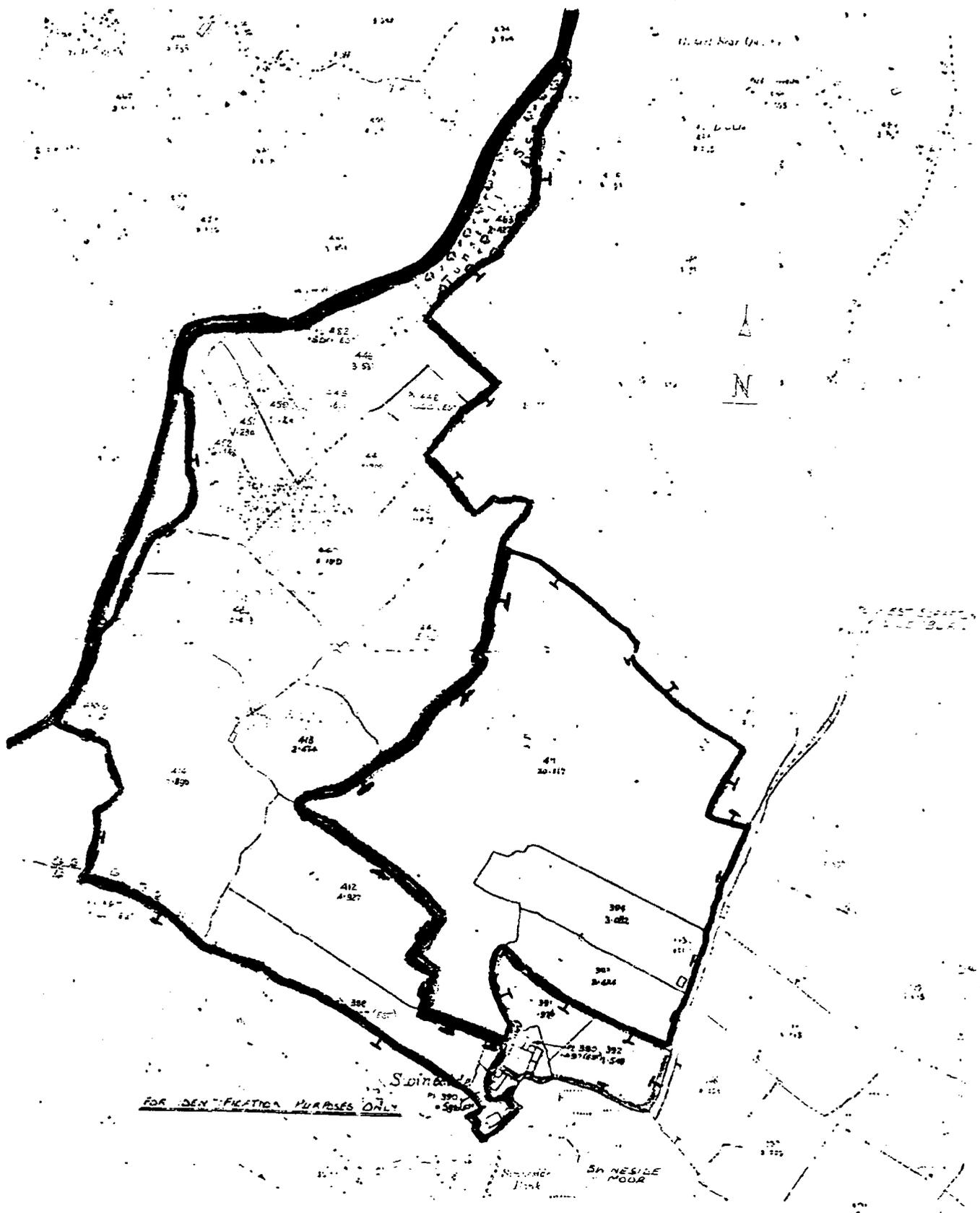
(secretary)

Hill Farm Cottages,
Swine, Hill.

(SIGNED SEALED AND DELIVERED by
(the said JOSEPHINE JILL
(
(MARSHALL in the presence of:-

(Secretary)

Hill Farm Cottages,
Swine, Hill.



FOR IDENTIFICATION PURPOSES ONLY

N

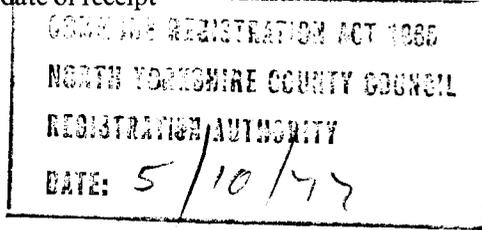
Swiner

SH NESILE MOOR

Official stamp of registration authority
indicating date of receipt

Application No. NY/52
Register unit No. 2237

This section for official use
only.



COMMONS REGISTRATION ACT 1965

Section 13

**Application for the amendment of a
register in relation to a right of common**

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

¹Insert name of registration authority maintaining the register containing the registration of the land.

To the¹ NORTH YORKSHIRE COUNTY COUNCIL

Application is hereby made for the amendment of the register mentioned in part 3 below, in relation to the undernoted right of common, in accordance with the particulars set out hereunder.

Part 1.

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

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

THOMAS WILSON DENT of TOWN HEAD FARM,
WEST SCRAFTON, NORTH YORKSHIRE.

Part 2.

Name and address of solicitor, if any.

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

MR. J.C. HALL,
Messrs. Willan & Johnson,
Midland Bank Chambers,
Leyburn, North Yorkshire.

Part 3.

Register containing the registration of the land.

(Insert "Common Land" or "Town or Village Greens". See Notes 3 to 5.)

Common Land

Part 4.

Register unit number.

(See Note 4.)

CL37

Part 5.

Rights section entry number.

(Give the number of the entry in the rights section of the register unit relating to the right of common sought to be amended. Previous (cancelled) entries relating to the same right of common, if any, should be disregarded.)

1

Part 6.

Nature of applicant's interest in the proposed amendment.

(Read Note 2 and insert, e.g., "as owner of the soil", "as transferee" or as the case maybe.)

As Transferee

Part 7.

Nature of change in the right of common.

(See Note 7.)

Transfer of seventeen sheepgaits

Part 8.

On what date did the change take place?

18th July 1977

Part 9.

How did the change take place?

(See Note 8.)

By Conveyance dated 18th July 1977 and made between (1) Michael Avison of Middlefields, Melmerby, Leyburn, North Yorkshire and (2) Thomas Wilson Dent

²If the applicant is a body corporate or charity trustees the application must be signed by the secretary or some other duly authorised officer.

Signature(s) of applicant(s) or of person on his or their behalf²



Date 19th August 19 77

(See Note 10.)

Statutory Declaration in Support

To be made by the applicant, or every applicant, personally, unless the applicant is a body corporate or charity trustees, in which case the declaration must be made by the person who has signed the application. Inapplicable wording should be deleted throughout; in particular, all references to a benefice should be struck out except where the Church Commissioners are the applicants.

¹Insert full name(s).

(I) ~~(We)~~¹ THOMAS WILSON DENT of Townhead Farm, West Scafton, Leyburn, North Yorkshire

²Strike out this paragraph if it does not apply.

solemnly and sincerely declare as follows:—

³Insert capacity in which acting.

1. ³(I am) ~~(We are)~~ the person(s) who (has) ~~(have)~~ made the foregoing application.
2. ³I am³ 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—

MWS.

⁴Delete all but one of these alternatives.

*that (I) ~~(we)~~ ~~(the applicant(s))~~ (am) ~~(are)~~ (is) entitled to the interest mentioned in the application, and

~~*that the person(s) entitled to the interest mentioned in the application (is) (are) the person(s) therein stated to be so entitled, that, under or by virtue of the matters referred to therein (I) (we)(am) (are) authorised, in the capacity or respective capacities therein mentioned, to make this application, and~~

~~*that the land described in the application belongs to the benefice therein mentioned, that the said benefice is vacant, and~~

that, by reason of the facts therein stated, the register to which the application relates ought to be amended accordingly.

⁵Strike out this paragraph if there is no plan.

⁶Insert "marking" as on plan (see Note 10).

4. ~~The plan now produced and shown to me marked "A" is the plan referred to in part 7 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 THOMAS WILSON DENT



at Leyburn in the County of North Yorkshire this 19th day of August 1977

Name

Address Leyburn North Yorkshire

Qualification Solicitor

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

Dated 24th October 1978

MR. J. ATKINSON

-to-

T.W. DENT & PARTNERS

Conveyance

- of -

41 sheepgaits on Swineside Moor, Swineside, West
Scafton, near Leyburn, North Yorkshire.

WILLAN & JOHNSON
SOLICITORS
LEYBURN

Wilson & Johnson
RD Stamp

INLAND REVENUE
PRODUCED
- 8. NOV. 1978
FINANCE ACT 1931

DENNIS
WELBOURN LTD.
Law Stationers.
PUDSEY,
YORKSHIRE.

Gifts Conveyance

dated

Twenty fourth day of October

One thousand nine hundred and seventy eight is made between the Vendor JOHN ATKINSON of 36 Hargill Harmby Leyburn North Yorkshire and the Partners THOMAS WILSON DENT MARY MARGARET DENT and ALLAN GEOFFREY DENT of Town End Farm West Scafton Leyburn trading in partnership as T.W. DENT and PARTNERS as farmers _____

1. THE Vendor acknowledges the receipt from the Partners of SIX HUNDRED AND FIFTEEN POUNDS the purchase price of the sheepgaits described in the Schedule hereto (the sheepgaits) _____

2. THE Vendor as beneficial owner conveys to the Partners his freehold estate in the sheepgaits _____

3. THE Partners agree:-

- (a) They are tenants in common in equity _____
- (b) The sheepgaits shall hold as part of their partnership property _____
- (c) The trustees for sale of the sheepgaits shall have power to deal with the sheepgaits equal to those of a sole beneficial owner _____

4. IT IS CERTIFIED that this transaction does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds Fifteen thousand pounds _____

THE SCHEDULE

ALL THOSE forty one sheepgaits or stints in over and upon the moor known as Swineside Moor situate on the westerly side of West Scafton Moor Swineside in the parishes of Carlton Highdale and West Scafton both near Leyburn in the County of North Yorkshire

TOGETHER with the right of shooting over Swineside Moor aforesaid
in common with the Vendor and the other owners of grants on such
Moor _____

SIGNED SEALED and DELIVERED by)
)
the said JOHN ATKINSON in the)
)
presence of:-)

Houses

SIGNED SEALED and DELIVERED by)
)
the said THOMAS WILSON DENT in)
)
the presence of:-)

*Solicitor
Leyburn*

SIGNED SEALED and DELIVERED by)
)
the said MARY MARGARET DENT in)
)
the presence of:-)

SIGNED SEALED and DELIVERED by)
)
the said ALLAN GEOFFREY DENT)
)
in the presence of:-)

I, the within-named JOHN ATKINSON hereby acknowledge the right of the within-named THOMAS WILLIAM DENT, MARY MARGARET DENT and ALLAN GEOFFREY DENT trading as T. W. Dent & Partners to the production and delivery of copies of a Conveyance dated the Twelfth day of October One thousand nine hundred and sixty six and made between Alan Atkinson of the one part and myself of the other part and hereby undertake with the said Thomas William Dent, Mary Margaret Dent and Allan Geoffrey Dent for the safe custody thereof.

SIGNED by the said JOHN ATKINSON)
in the presence of :-) X

ditto ↑
↓

✓
✓
✓
✓

Initial equality impact assessment screening form (As of October 2015 this form replaces 'Record of decision not to carry out an EIA')			
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 grant application CA14 046 which is seeking to record a historic severance event in the common land register		
Officer(s) carrying out screening	Jayne Applegarth		
What are you proposing to do?	Grant 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 all the legal tests have been met therefore the application should 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.		
<p>Is there likely to be an adverse 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:</p> <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? <p>If for any characteristic it is considered that there is likely to be a significant 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.</p>			
Protected characteristic	Yes	No	Don't know/No info available
Age		✓	
Disability		✓	
Sex (Gender)		✓	
Race		✓	
Sexual orientation		✓	
Gender reassignment		✓	
Religion or belief		✓	
Pregnancy or maternity		✓	
Marriage or civil partnership		✓	
NYCC additional characteristic			
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		

<p>Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.</p>	<p>No</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 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>20 September 2021</p>			

Extract from the Commons Bill Explanatory Notes January 2006

Clause 9 and Schedule 1: Severance

53. Clause 9 effects a prohibition on the severance of rights of common. Before the passing of the 1965 Act, most rights of common were attached to the land farmed by the commoner (the dominant tenement). The reason was that, at common law, the numbers of animals which could be grazed on the common by the commoner was determined by the capacity of the dominant tenement to accommodate animals over the winter (known as rules of 'levancy and couchancy'). Typically the common was not grazed in winter and dates were established when animals were allowed on to the common and when they had to be removed. Livestock usually had to be over-wintered on commoners' own farms which imposed a natural ceiling on their grazing rights. Such rights, while not explicitly quantified, were thus subject to a theoretically measurable constraint. It was therefore not possible to trade in a right of common separately from the land owned by the commoner, as the right could not exist independently of the dominant tenement because it was defined by reference to the dominant tenement. The courts adopted a rule that any purported severance of unquantified rights from the holding to which they were attached would extinguish the rights.

54. Section 15 of the 1965 Act required that, for the purposes of registration, all commoners register the actual number of animals in respect of which they claimed rights of grazing. This meant that, once rights of grazing had been quantified and registered, the capacity of the commoner's own holding to over-winter stock ceased to be relevant. In *Bettison v. Langton*¹⁵, the judicial committee of the House of Lords determined that a consequence of the quantification of grazing rights as required by section 15 of the 1965 Act was to enable a commoner to dispose of rights of common independently from the land to which they were traditionally attached (or, alternatively, to sell the land and retain the rights). This is known as 'severance'. Rights which have been severed become 'rights held in gross' and may be freely bought and sold as an incorporeal asset.

¹⁵ *Bettison and another v. Langton and others* [2001] 1 AC 27.

55. The problem with grazing rights which have been severed is that the local link between the commoners and the land over which the grazing rights are exercised may be lost since the owner of the rights can sell them to anyone, including farmers who live far away from the common. This can cause management difficulties for common land where some right holders have no close contact with the common and those who manage it.

56. Clause 9 prohibits further severance of rights of common, subject to the exceptions specified in any other Act¹⁶ or in Schedule 1. Clause 9, and therefore the exceptions in Schedule 1, apply to registered rights of common only which would otherwise (apart from clause 9) be capable of being severed. They do not, therefore, apply to rights of common which are unquantified (such as a right to gather firewood or to dig peat for the hearth), nor are they likely to apply to 'appendant rights' (which the courts have held not to be severable, regardless of whether the right is quantified).

¹⁶ The only enactment known to permit severance in certain circumstances is contained in section 33 of the Greenham and Crookham Commons Act 2002.

57. *Subsections (3) and (4)* make provision in relation to any disposition of rights of common attached to land, or any disposition of land to which rights of common are attached, made after the commencement of this clause by which rights are purported to be severed, so that the severance is of no effect. *Subsection (3)* provides that an instrument (such as a conveyance) which purports to effect the severance of a right of common from the dominant tenement, is to be void to the extent that it would effect severance. So where a conveyance provides that the rights attached to a dominant tenement are to be conveyed from X to Y (but X remains the owner of the dominant tenement), the conveyance will be void to the extent to which it conveys the rights, and the rights will remain attached to X's dominant tenement. *Subsection (4)* also provides that a disposition of the dominant tenement by which the rights are purported to be reserved to the vendor has effect so that the rights are conveyed with the land, notwithstanding the terms of the conveyance.

58. *Subsection (5)* provides that the apportionment of rights of common must be *pro rata*. To the extent that any instrument purports to apportion otherwise than *pro rata*, it will be void. This means that, where a dominant tenement is divided into two or more parcels in separate ownership (for example, on a sale of a farm in two separate lots), the rights attached to the original dominant tenement are assigned proportionately to the separate parcels according to the area of each parcel relative to the area of the original dominant tenement. The reason for this is that non-*pro rata* apportionment is a form of severance. For example, a commoner might own land to which 100 rights to graze cattle are attached. That commoner sells half that land to X and half the land to Y, but purports to assign 75 of the rights as attached to X's land and 25 as attached to Y's land. In that case the instrument of sale will be void to the extent that it purports to convey more (or for that matter less) than half the rights of common with each of the two parcels of land. The provision ensures that rights of common will continue to be attached to the same land as now, even where apportionment is not registered (see clause 8).