

# APPENDIX 3

1.

**From:** Christopher Lasper <[REDACTED]>  
**Sent:** 31 January 2022 16:07  
**To:** Registration, Commons <Commons.Registration@cumbria.gov.uk>  
**Cc:** [REDACTED]  
**Subject:** Re: Commons Act 2006 - Notice of Application

Dear Sirs,

Please email me promptly with confirmation of your receipt of my representations below on Application CA13/36.

The plan accompanying the Notice of application appears to concur with the Google map of the area in showing buildings on parts of the westerly parcel but none on the easterly.

I am not aware of any appeal from the Court of Appeal's decision at [2021] EWCA Civ 398.

So, the buildings (themselves) on the westerly parcel (and perhaps, some or even all of the rest of that parcel) might satisfy "still is" in paragraph 6(2)(d) of Schedule 2 to the 2006 Act but it verges on the impossible that any of the easterly parcel can: since the two parcels are divided by one of Cumbria's arterial roads, how is it possible to say that any (or all) of the easterly parcel is "part and parcel" of any (or all) of the westerly parcel's buildings? Conceivably, the use or function of the easterly parcel is ancillary (even integral) to that of the westerly but, as the Court of Appeal have established, that is the wrong test of "part and parcel".

I refer you to paragraphs 57-61 of the Court of Appeal's decision, especially the last sentence of paragraph 59.

Yours sincerely,

Christopher J.R. Lasper

[REDACTED], Cockermouth [REDACTED]

OBJECTION TO APPLICATION REF NO CA13/36 TO DEREGISTER CL.155 (TWO SMALL AREAS OF LAND TO THE SOUTH OF WATERHEAD, AMBLESIDE ON EITHER SIDE OF THE A.591)

I am writing to object to the application made to you under Schedule 2(6) of the Commons Act 2006 to deregister CL.155. The application reference number is CA13/36. My personal details are as follows:

**NAME & ADDRESS:** Steve Byrne, [REDACTED] ACCRINGTON, Lancs, [REDACTED]

**E-MAIL:** [REDACTED]

**TELEPHONE:** [REDACTED]

**INTEREST:** Member of public (no legal interest)

1. Firstly, there was a previous application relating to CL.155 which I commented on in July 2017. This was to record the extinguishment of a right of common. As I pointed out at the time, the extinguishment would have no effect on public rights of access over the land under s.193 of the Law of Property Act 1925. And you assured me that there was no indication of any intention to remove the public right of access or to deregister the land.

2. This has now changed. The present application is to deregister CL.155. I note the copy of your correspondence querying whether the application was to be taken to cover the whole of CL.155; and the reply from the applicant confirming that it was. This, however, is not apparent from the application itself.

3. CL.155 comprises two separate pieces of land. The area covered by buildings lies to the west of the A591. The other piece of land lies to the east of the A591. There are no buildings on the eastern side; and given its separation from the western part of the common by a main road, the land could hardly be said to form part of the curtilage of a building (or buildings) on that side.

4. The above is confirmed by the 1969 OS map extract presented by the applicants. However, all of the other (photographic) evidence they have supplied relates to the land on the western side of the A591. There is, in fact, no evidence at all in the application relating to the land on the eastern side of the A591. And I'm pretty sure that's not an accident.

5. If the intention is to deregister the whole of CL.155, there is nothing to show that the land lying to the east of the A.591 should be included in the application. It is not covered by buildings; and it does not form part of the curtilage of a building or the buildings (it is not made clear what is actually being claimed) on the opposite side of the road. If the applicants think they have any evidence to the contrary, they should produce that evidence.

6. What is truly remarkable about this application is how little information it contains. For example, though it is implied (at para 3 of the application letter) that the application is made by the owners of CL.155, there is no clear statement to this effect; and no ownership details are provided (e.g. Land Registry documents/plans). Nor is there any attempt to show that the applicants – or their predecessors – owned the two pieces of land together for the whole of the time between its provisional registration under the 1965 Act and the date of the Schedule 2(6) application. If, at any time during this period, the two pieces of land were owned separately it would not be possible to claim that the eastern piece formed the curtilage of a building (or the buildings) on the western piece. It seems pretty obvious to me that, if you want to claim an area of land – call it 'Area A' – as the curtilage of a building that you own, then you must also be the owner of 'Area A'. Was this true for the western and eastern parts of CL.155 for the whole of the period between 1970 and 2022? Or was it not?

Steve Byrne

5<sup>th</sup> February 2022

**From:** Steve Byrne <[REDACTED]>  
**Sent:** 05 February 2022 08:29  
**To:** Registration, Commons <Commons.Registration@cumbria.gov.uk>  
**Subject:** Re: Commons Act 2006 - Application CA13/36 (CL.155) (Ambleside)

Dear Sir/Madam

I have a further comment on application CA13/36 that I'd like to add to those I made in my e-mail of 31 January:

*What is remarkable about the Schedule 2(6) application is how little information it contains. For example, though it is implied (at para 3 of the application letter) that the application is made by the owners of CL.155, there is no clear statement to this effect; and no ownership details are provided (e.g. Land Registry documents/plans). Nor is there any attempt to show that the applicants – or their predecessors – owned the two pieces of land together for the whole of the time between its provisional registration under the 1965 Act and the date of the Schedule 2(6) application. If, at any time during this period, the two pieces of land were owned separately it would not be possible to claim that the eastern piece formed the curtilage of a building (or the buildings) on the western piece. It seems pretty obvious to me that, if you want to claim an area of land – call it 'Area A' – as the curtilage of a building that you own, then you must also be the owner of 'Area A'. Was this true for the western and eastern parts of CL.155 for the whole of the period between 1970 and 2022? Or was it not?*

I've attached a formal objection which incorporates the points raised in my original e-mail together with the above. Could you please treat this as my objection to the application.

Best wishes

Steve Byrne  
[1 x Attachment]

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**From:** Registration, Commons <[Commons.Registration@cumbria.gov.uk](mailto:Commons.Registration@cumbria.gov.uk)>  
**Sent:** 02 February 2022 12:20  
**To:** Steve Byrne <[REDACTED]>  
**Subject:** RE: Commons Act 2006 - Notice of Application CA13/36 (CL.155) (Ambleside)

Dear Mr Byrne,

Thank you for the quick response and the confirmation that you are happy for your comments to be treated as a representation. I'm happy to add the header to your initial comments.

Thank you also for your subsequent emails which have been noted.

We will be in touch in due course.

Kind Regards,

Jason Weatherill  
Commons Officer  
Commons Registration Service  
Environment and Community Services  
Cumbria County Council  
Lady Gillford's House  
Petteril Bank Road  
Carlisle  
CA1 3AJ

E: [commons.registration@cumbria.gov.uk](mailto:commons.registration@cumbria.gov.uk)

***Please be aware that I work flexible hours, so whilst this is a convenient time for me to send this email to you – I do not expect a response from you outside your normal working hours.***

**From:** Steve Byrne <[REDACTED]>  
**Sent:** 01 February 2022 17:09  
**To:** Registration, Commons <[Commons.Registration@cumbria.gov.uk](mailto:Commons.Registration@cumbria.gov.uk)>  
**Subject:** Re: Commons Act 2006 - Notice of Application CA13/36 (CL.155) (Ambleside)

Dear Jason

Thanks for your reply to my e-mail. Yes. Please do as you suggest and treat the e-mail as a representation.

With a formal objection/representation, I'd usually start with something like:

*I am writing to comment on the application made to you under Schedule 2(6) of the Commons Act 2006 to deregister CL.155 (Two small areas of land to the south of Waterhead, Ambleside). The application reference number is CA13/36. My personal details are as follows:*

**NAME & ADDRESS:** Steve Byrne, [REDACTED], ACCRINGTON, Lancs, [REDACTED]  
**E-MAIL:** [REDACTED]  
**TELEPHONE:** [REDACTED]  
**INTEREST:** Member of public (no legal interest)

Do you want me to insert this as a header and re-send the original e-mail? Or are you happy with what you have?

Best wishes

Steve Byrne

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**From:** Registration, Commons <[Commons.Registration@cumbria.gov.uk](mailto:Commons.Registration@cumbria.gov.uk)>  
**Sent:** 01 February 2022 15:54  
**To:** Steve Byrne <[REDACTED]>  
**Subject:** RE: Commons Act 2006 - Notice of Application CA13/36 (CL.155) (Ambleside)

Dear Mr Byrne,

Thank you for your comments in relation to application CA13/36. Our policy is to serve all representations on the applicant once the notice period has expired. Under Regulation 25(4) of The Commons Registration (England) Regulations 2014 the applicant will then be given a chance to respond, and any response will be sent to all of those who made representations. I'd suggest that it would be at that stage that the applicant would have the opportunity to address your concerns.

Receiving additional documents from the applicant during the notice period would complicate matters, particularly with regards to anyone else who may have already submitted a representation

Can you confirm if you are happy for your comments to be classed as a representation? If so I will ensure that they are filed and served on the applicant upon the expiry of the notice period.

Kind Regards,

Jason Weatherill  
Commons Officer  
Commons Registration Service  
Environment and Community Services  
Cumbria County Council  
Lady Gillford's House  
Petteril Bank Road  
Carlisle  
CA1 3AJ

E: [commons.registration@cumbria.gov.uk](mailto:commons.registration@cumbria.gov.uk)

***Please be aware that I work flexible hours, so whilst this is a convenient time for me to send this email to you – I do not expect a response from you outside your normal working hours.***

**From:** Steve Byrne <[REDACTED]>  
**Sent:** 31 January 2022 19:32  
**To:** Registration, Commons <[Commons.Registration@cumbria.gov.uk](mailto:Commons.Registration@cumbria.gov.uk)>  
**Subject:** Re: Commons Act 2006 - Notice of Application CA13/36 (CL.155) (Ambleside)

Dear Sir/Madam

There are a number of remarks I'd like to make on this application. Though they do not constitute an objection, I will want to object if the application is not modified or withdrawn.

Firstly, then, there was a previous application relating to CL.155 which I commented on in July 2017. This was to record the extinguishment of a right of common over CL.155. As I pointed out at the time, the extinguishment would have no effect on public rights of access

over the land under s.193 of the Law of Property Act 1925. And you assured me that there was no indication of any intention to remove the public right of access or to deregister the land (see copy of 2017 e-mail correspondence below).

This has now changed. The present application is to deregister CL.155. I note the copy of your correspondence querying whether the application was to be taken to cover the whole of CL.155; and the reply from the applicant confirming that it was. This, however, is not apparent from the application itself.

CL.155 comprises two separate pieces of land. The area covered by buildings lies to the west of the A591. The other piece of land lies to the east of the A591. There are no buildings on the eastern side; and given its separation from the western part of the common by a main road, the land could hardly be said to form part of the curtilage of the buildings on that side.

The above is confirmed by the 1969 OS map presented by the applicants. However, all of the photographic evidence they have produced relates to the land on the western side of the A591.

If the intention is to deregister the whole of CL.155, there is no evidence to show that the land lying to the east of the A.591 should be included in the application. It is not covered by buildings; and it does not form part of the curtilage of the buildings on the opposite side of the road.

If the applicants think they have any evidence to the contrary it would be helpful if they could produce it.

Could you please get back to me on this matter.

Best wishes

Steve Byrne

**From:** Hugh Craddock <[REDACTED]>  
**Sent:** 28 February 2022 11:09  
**To:** Registration, Commons <Commons.Registration@cumbria.gov.uk>  
**Subject:** CA13-36 Waterhead

Dear commons registration team

The society is responding to notice of an application to deregister land at Waterhead, comprising the whole of the register unit CL155. The society has no legal interest in the application land.

The application is made under para.6 of Sch.2 to the Commons Act 2006. The burden therefore lies with the applicant to show that, on and after 5 December 1969, the application land was covered by a building, or within the curtilage of a building.

The application land straddles Skelghyll Lane (A591) at Waterhead. On the west side of the road, we are satisfied that the para.6 test is met. On the east side of the road, the land was and remains undeveloped, and until the untimely surrender in 2017 of a right of common exercisable over this land, was subject to a right of woodmere. It appears the land also is subject to a right of access for air and exercise under s.193 of the Law of Property Act 1925.

The application contains no evidence whatsoever to show that the land on the east side of the road satisfies the para.6 test. The application simply does not address this question. We do not intend to address it in our objection unless the applicant puts some substantive evidence in the balance for our consideration. Without such evidence, the application cannot be granted in relation to this part of the land. The burden remains with the applicant to prove its case.

regards

Hugh

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

*Email:* [REDACTED]

*[www.oss.org.uk](http://www.oss.org.uk)*

*Tel:* [REDACTED]

*Please note that I work mornings only*

*(Registered in England and Wales, limited company number 7846516*

*Registered charity number 1144840)*

### **Support our Grant a Green Appeal**

*and help fund our campaign to protect open space  
through voluntary registration as town or village green*

**From:** Lorayne Wall <[REDACTED]>  
**Sent:** 09 March 2022 09:20  
**To:** Registration, Commons <Commons.Registration@cumbria.gov.uk>  
**Subject:** CA13/36 Notice of Application

Dear Sir or Madam,

Friends of the Lake District (FLD) welcomes the opportunity to comment on the above application. We are the only charity wholly dedicated to protecting and enhancing the landscape and natural environment of Cumbria and the Lake District. FLD has a long-standing involvement in Common Land in Cumbria, including through projects and through lobbying and campaigning for its protection. Common Land is hugely significant in Cumbria, and we will continue to challenge proposals that harm or compromise it, whether this is through inappropriate or unnecessary deregistration, enclosure or other works/activities.

We wish to object to the application (CA13/36) made under Schedule 2(6) of the Commons Act 2006 to deregister the whole of CL.155 at Waterhead, Ambleside.

Our particular concern relates to the portion of CL.155 on the eastern side of the A591. This portion does not accommodate any buildings and, being separated from the western portion by a main road, it cannot be said to form part of the curtilage of the buildings on the western portion. Furthermore, there is no evidence in the application that the western and eastern portions have been held in the same ownership since the provisional registration of CL.155 up to the point of this application. It is difficult to see how either one of two portions of land that are or have been in separate ownerships, and which are separated by a main road, can be claimed to be part of the curtilage of the other.

By virtue of this, we contest that the eastern portion does not qualify for deregistration under the claims made and indeed, the very limited evidence provided in the application to support these claims relates only to the western portion.

We consider therefore that the eastern portion of CL.155 should be excluded from deregistration.

Regards,

Lorayne Wall

Lorayne Woodend Wall MRTPI  
Planning Officer



**Friends of the Lake District**

***The only membership organisation dedicated to protecting and enhancing Lake District and Cumbrian landscapes***

Friends of the Lake District, Murley Moss, Oxenholme Road, Kendal, LA9 7SS

Tel: [REDACTED] [www.friendsofthelakedistrict.org.uk](http://www.friendsofthelakedistrict.org.uk)

Registered Charity Number 1100759, Company No 4878364

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**From:** Will Clark <[REDACTED]>  
**Sent:** 14 March 2022 13:57  
**To:** Registration, Commons <Commons.Registration@cumbria.gov.uk>  
**Cc:** [REDACTED]  
**Subject:** Re: Waterhead Common

Hi Jason,

Thanks for your email. I trust that this email constitutes a response please let me know if you need anything else;

William Clark, County Councillor for Lakes, [REDACTED], Grasmere [REDACTED]

I write in a formal capacity as County Councillor for Lakes, the Ward that the application CA13/36 to de-register two sections of common land either side of the A591 at Waterhead directly impacts.

I have looked at the application in detail. With regards to the Western site I am surprised that permission was originally given for construction of the now derelict building on common land. I was unable to find any information as to how this came to be. Non the less there is no dispute this has already taken place. If this area was deregistered I would hope the development would be undertaken in a well thought out and sympathetic manner. An appropriate construction would compliment the site, which as it stands is very much an eye sore. I would insist that there is a stipulation that a footway/cycleway is maintained beside the busy and narrow A591.

In contrast, to say that the Eastern side of the A591 is developed is very misleading as there is little else other than a small car park on this side of the road. When seeking local opinion and including that of my own this side of the road should not be de-registered or further developed. If this side of the road was deregistered it would mean further construction in a tranquil area. This would lead to further congestion on the A591 and even prove hazardous as there is no form of crossing in order to access the proposed new properties, jetties or lake.

Will Clark  
County Councillor for Lakes  
[REDACTED]

**From:** Registration, Commons  
**Sent:** 04 March 2022 14:25  
**To:** 'The Clerk' <[REDACTED]>  
**Subject:** RE: CA13/36

Afternoon Charlene,

Thank you for your comments made in relation to application CA13/36. All representations received will be served on the applicant once the notice period has expired, and the applicant will then be given a chance to respond. Please note that in order for us to consider your comments as a duly made representation they would need to comply with [Regulation 25 of The Commons Registration \(England\) Regulations 2014](#), which states:

*“(2) Representations under paragraph (1)—*

*(a) must state the name and postal address of the person making them, and the nature of that person’s interest (if any) in any land affected by the application or proposal;*

*(b) may include an e-mail address of the person making them;*

*(c) must be signed by the person making them; and*

*(d) must state the grounds on which they are made.”*

Please note that under current circumstances a typed name/email signature is satisfactory for point ‘c’.

Kind Regards,

Jason Weatherill  
Commons Officer  
Commons Registration Service  
Environment and Community Services  
Cumbria County Council  
Lady Gillford's House  
Petteril Bank Road  
Carlisle  
CA1 3AJ  
E: [commons.registration@cumbria.gov.uk](mailto:commons.registration@cumbria.gov.uk)

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**From:** The Clerk <[REDACTED]>  
**Sent:** 04 March 2022 13:44  
**To:** Registration, Commons <[Commons.Registration@cumbria.gov.uk](mailto:Commons.Registration@cumbria.gov.uk)>  
**Subject:** CA13/36

Response from LAKES PARISH COUNCIL.

Recommend Refusal. Not enough evidence provided by the applicant on ownership of the land. Existing public right of way will be compromised by future developments.



**LAKES PARISH COUNCIL**

*Charlene Iredale*

Clerk & Finance Officer

Tel: [REDACTED]

Email: [REDACTED]

Web: [www.lakesparish.co.uk](http://www.lakesparish.co.uk)