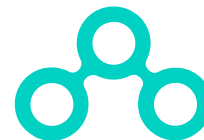


APPENDIX 4



Steven Abbott Associates LLP
Chartered Town Planners

Commons Registration Service
Cumbria County Council
Lady Gillford's House
Petteril Bank Road
Carlisle
CA1 3AJ

Via email:
commons.registration@cumbria.gov.uk

13 April 2022

Our ref: [REDACTED]
Your ref: CA13/36

www.abbott-associates.co.uk



Dear Sirs

COMMONS ACT 2006: SCHEDULE 2

APPLICATION TO CORRECT NON-REGISTRATION OR MISTAKEN REGISTRATION

Site: Waterhead Marine, Waterhead, Ambleside

1. This letter provides a response on behalf of the applicant to representations submitted in relation to application reference CA13/36. Copies of representations from six parties have been provided.
2. Matters raised in representations relate primarily to parcel of land to the east of the A591, in particular whether it can be considered to be within the curtilage of the buildings on the western side. There appears broad acceptance, notably from the Open Spaces Society, that the land on the western side of the A591 meets the paragraph 6 tests, as it is either covered by buildings or within the curtilage of those buildings.
3. In relation to the land to the east of the A591, it is the appellant's case that it is also within the curtilage of the buildings.
4. It is relevant that the two parcels of land were entered onto the register of common land as a single entry, recognising a link between the two parcels at the time the registration was made. Copies of the original registration documents and register entry are included as items **1, 2 and 3**.

Partners

Steven H Abbott
BSc (Hons) MRTPI

Alastair J Skelton
BSc (Hons) DipTP MRTPI



RTPI
Chartered Town Planners

Balmoral House, Ackhurst Business Park, Foxhole Road, Chorley, Lancashire, PR7 1NY **T 01257 251 177**

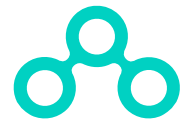
130 Highgate, Kendal, Cumbria, LA9 4HE **T 01539 724 766**

Penstraze Business Centre, Penstraze, Truro, Cornwall, TR4 8PN **T 01872 562 061**

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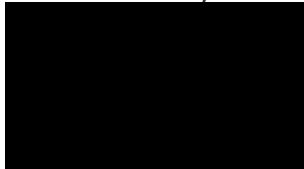


5. All of the land in question is in a single ownership – copies of the relevant registers of title are included as item **4**. The land is understood to have been in a single ownership at the time it was registered as common land and has been at all times since. A letter submitted in relation to a previous application relating to the land in question confirms that the land was owned by Waterhead Marine Limited at the time the registration was made, and remaining it that ownership until it was purchased by the current applicant in 2012 – see item **5**.
6. It is recognised that land being in the same ownership as a building or buildings does not necessarily mean that it is within the curtilage, however it is a factor which must be taken into consideration.
7. The issue of curtilage was considered by the Court of Appeal in *Blackbushe Airport Ltd v Hampshire County Council, R (On the Application of) & Ors* [2021] EWCA Civ 398. Whilst the judgement provides useful consideration of the definition of curtilage, it must be recognised that that case related to a substantially larger area than the current application, approximately 46 hectares compared to approximately 0.2 hectares. The Court confirmed that the curtilage of a building relates to land which is part and parcel of the building to which it is related. Therefore, the question in present case is whether the land around the buildings on the site is within the curtilage of those buildings.
8. There is no question that the land on the western side of the A591 is within the curtilage of the buildings which stand on that parcel of land. The land is covered by hardstanding and is used in connection with the various operations that take place within the buildings – this largely accepted by the representations received. The eastern parcel of land is separated from the buildings by the A591, but this does not automatically mean that it is not within the curtilage.
9. The land on the eastern side of the A591 has been used for the storage of boats and to provide parking in connection with the operations in the buildings. One of the buildings on the western parcel is a workshop, which is used in connection with the adjacent marina and the land and on the east side of the road is part and parcel of the operations which take place within the building.



10. In summary, the land which is the subject of the current application was covered by buildings or within the curtilage of those buildings at the time of the original provisional registration and has been continuously since that time. There can be no doubt that the error in registering the right in common, on land that was covered by buildings, resulted in all of the ownership being registered as common land. Without that error none of the land would have been registered.
11. Therefore, under the provision of paragraph 6 of Schedule 2 of the Commons Act 2006, the land should be removed from the register of common land.

Yours sincerely



Harry Tonge, BA (Hons) MCD MRTPI

Associate

E:

Supporting Items

- 1 Application to register common land
- 2 Original register entry
- 3 Register map
- 4 Registers of title
- 5 Letter from Hill Dickinson

CR Form 9 (Revised).

This section for official use only.

Official stamp of registration authority indicating date of receipt

Application No. 1238

Register Unit No(s)

CL.155



(1)

COMMONS REGISTRATION ACT 1965

Application for the registration of a right of common

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

¹Insert name of registration authority (see Note 1).

To the¹ Westmorland County Council

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

Part 1.

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

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

The National Trust,
Broadlands,
Borrans Road,
AMBLESIDE,
Westmorland.

Part 2.

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

Name and address of solicitor, if any.

Sheet 100-

Part 3.

(Read Note 2 and insert

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

Part 4.
(See Notes 3 and 4.)

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

Name by which commonly known **Manorial Waste in the Parish of Ambleside**

Locality **Ambleside**

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

Colour on plan² **blue**

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

Description of the right of common.

Right of Woodmere

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

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

Over land verged red on plan

Part 7.
(See Note 8.)

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

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

No - CL 5 acknowledged 18.6.68

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

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

afford

C.R. FORM 12

WESTMORLAND COUNTY COUNCIL

COMMONS REGISTRATION ACT 1965

Notification of Disposal of an Application for Registration (Rights)

Application No.....1238..... Register...Common Land.....

Short description of land over which right exercised...Lakeside, South of Waterhead,
...Ambleside.....

To (name of applicant) ...The National Trust, Broadlands, Borrans Road, Ambleside.
.....
(or his Solicitor)

Your reference *Wausfell Estate*

1. The right of common described in the application has been provisionally registered under the following No(s):-

Register unit No.	Entry No.
.....CL.155.....1.....
.....

(A register unit number with the prefix CL indicates a registration in the Register of Common Land. If the prefix is VG the registration is in the Register of Town or Village Greens.)

~~*2. The right of common described in the application has already been provisionally registered under the following No(s):-~~

Register unit No.	Entry No.
.....
.....

*(Your application has accordingly been noted on the register. This means you will receive notice of any objection to the registration, and that the registration may not be cancelled or modified, except by direction of a Commons Commissioner, without your written consent).

(and the registrations conflict. Each, therefore, has to be treated as an objection to the other, and the registers have been so noted. If you consider that the registration(s) made pursuant to your application should be cancelled or modified, you may make a request to this effect to the Council as registration authority, and the Council may, if it thinks fit, and subject to any necessary consents, cancel or modify (it) (them) accordingly. Unless (this) (these)* registration(s), or (the one) (those)* with which (it) (they)* conflict(s), (is) (are)* cancelled, the matter will be referred to a Commons Commissioner for decision, and you will be entitled to appear at the hearing before him. You will be notified of the time and place of the hearing, which will not in any case take place before 1st January, 1971. If there are registrations during the second registration period affecting the land the hearing will not take place before 1st July, 1972).

COMMONS REGISTRATION ACT 1965
 20 JUN 1968
 WESTMORLAND COUNTY COUNCIL
 REGISTRATION AUTHORITY

CR.6

To the Westmorland County Council.

PLEASE TAKE NOTICE that I intend, during the second registration period to make an application to you under the Commons Registration Act 1965 for the registration of which short particulars are given below.

1. Name and address of applicant The National Trust, Broadlands, Borrans Road,
 Ambleside, Westmorland.

2. Particulars of the land concerned in the registration:-

- (1) name by which commonly known Land at Wansfell
- (2) location Ambleside

(NOTE: Unless the land is in the registration area of the registration authority, the notice will be ineffective.)

3. Type of registration:-

- (a) of the land as common land or as a town or village green;
 - (b) of rights of common over the land; (b)
 - (c) of a claim to ownership of the land.
- (Insert '(a)', '(b)' or '(c)' opposite as appropriate.)

4. Where the registration is to be of rights of common:-

- (1) indicate the general nature of the rights (e.g. turbarry, grazing, piscary, etc.) 'Rights of Woodmere'
- (2) where the rights of common are enjoyed in virtue of the ownership or occupation of any farm, holding or other land, give brief particulars of that land. agricultural land at Wansfell
formally part of Wansfell Estate

Dated 18th June, 1968

Signature of applicant *R. Ward*
 for and on behalf of the National Trust

CR. FORM 5

COMMONS REGISTRATION ACT 1965Notice of Intention to Apply for RegistrationIMPORTANT NOTE

You need use this form only if you think you will be unable to submit your application for registration during the first registration period, that is to say from 2nd January, 1967 to 30th June, 1968, and the only purpose of the form, from your point of view, is to save you the fee of £5 which, except as stated below, you would otherwise have to pay in respect of an application made in the second registration period, which runs from 1st July, 1968 to 2nd January, 1970. The form, properly completed and signed, must reach the registration authority not later than 30th June, 1968 in order to save you the fee.

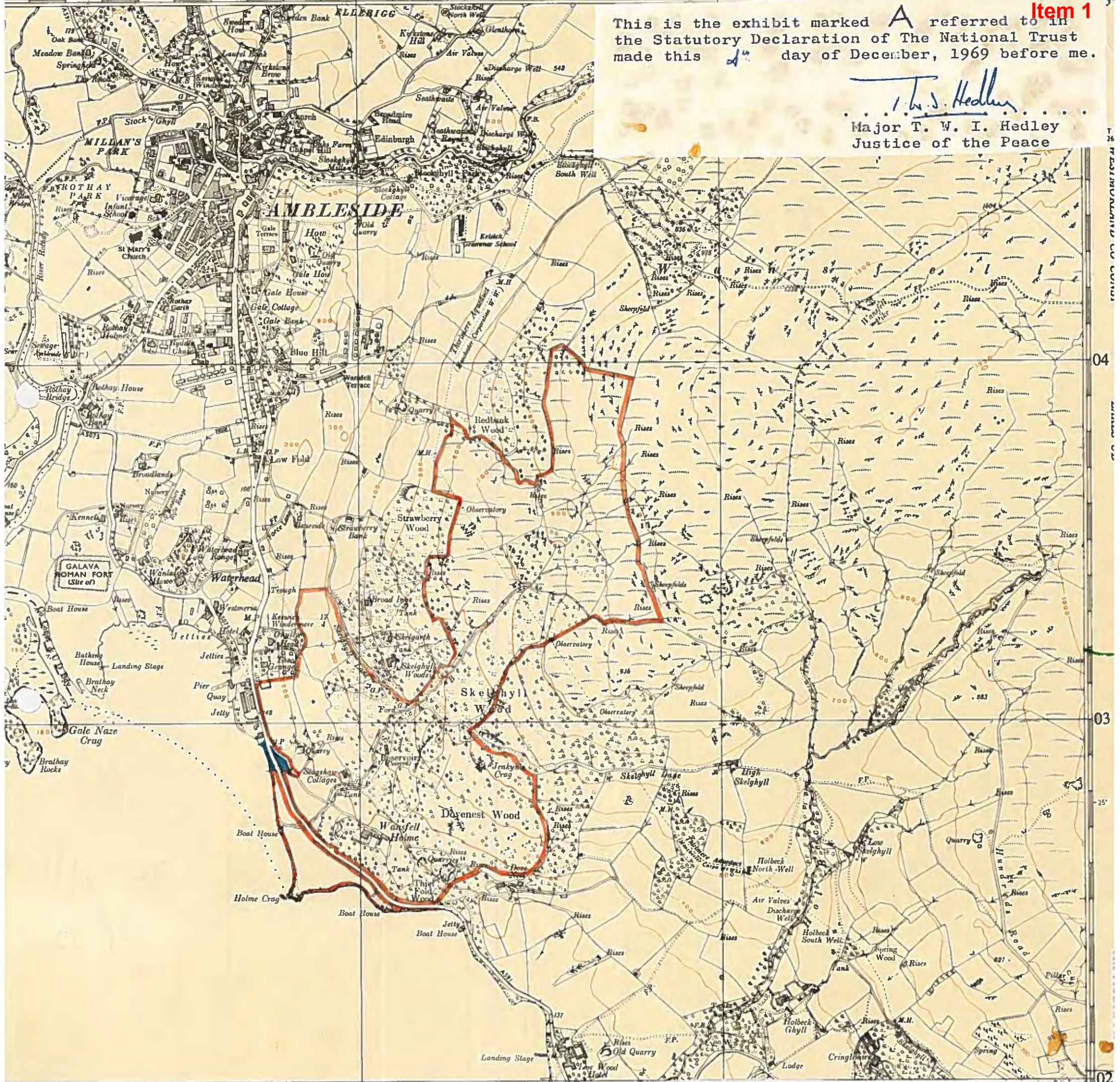
If your application will be to register a claim to ownership, and the land to which it relates is not registered under the Act until after 30th April, 1968, you will not have to pay a fee in any case, and so need not use this form. Further, no fee is chargeable for an application to register land as common land or a town or village green, if the land did not become so registrable until after 30th April, 1968, nor for an application to register a right of common which only became registrable after that date, so that the use of this form is not necessary in such cases.

If, after you have sent in the form, you find that you will, after all, be able to submit your application before the end of the first registration period you should do so, and not wait until after 30th June, 1968.

The registration authority will acknowledge the receipt of this form and the acknowledgment should be carefully kept. If you do not receive an acknowledgment within 10 days you should make inquiries of the registration authority.

This is the exhibit marked A referred to in the Statutory Declaration of The National Trust made this 4th day of December, 1969 before me.

T. W. I. Hedley
Major T. W. I. Hedley
Justice of the Peace



Statutory Declaration in Support

(See Note 6)

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

¹ Insert full name(s).

[I] [We]¹ Anthony John Lord

solemnly and sincerely declare as follows:

² Strike out this paragraph if it does not apply.

³ Insert capacity in which acting and adapt as necessary.

⁴ Strike out this paragraph if there is no plan.

⁵ Insert "marking" as on plan (see Note 6).

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

2. "I am" Agent to the applicant(s) and am authorised [by the applicant(s)] [in manner stated in the application] to make the foregoing application on [his] [their] behalf.

its

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

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

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

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

Declared by the said

.....

Anthony John Lord

.....

.....

.....

.....

.....

at Briery Close, Windermere

in the County..... of Westmorland

this Fourth..... day of December 19.69

Alford

for and on behalf of
The National Trust

Before me,

Signature *J. S. Hedder*

Address *Briery Close*

Windermere

Qualification *Justice of the Peace*

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

Notes

1. Registration authorities

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

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

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

2. Who may apply for registration

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

- by the owner of the right or in certain cases (see below) by someone on his behalf or in his stead;
- where the right is attached to any land, and is comprised in a tenancy of the land, by the landlord, the tenant, or both of them jointly;
- where the right belongs to an ecclesiastical benefice of the Church of England which is vacant, by the Church Commissioners.

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

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

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

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

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

3. Meaning of "rights of common"

Rights of common are not exhaustively defined in the Act, but it is provided that they include catlegrates or beastgrates (by whatever name known) and rights of sole or several pasture or herbage or of sole or several pasture. They do not, however, include rights held for a term of years or from year to year. Further information is contained in the official explanatory

or underwood (a right of estovers); a right to take turf or peat (a right of common of turbary); a right to take fish (a right of common of piscary); a right to turn out pigs to eat acorns and beechmast (pannage). There are various other types of rights of common, some existing only in particular areas, and it is impossible to give a complete list. The Act does not therefore attempt to give a comprehensive definition of the expression 'rights of common'."

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

4. Land descriptions

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

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

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

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

5. Inspection and search of registers

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

6. Statutory declaration

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

This is the exhibit marked "A" referred to in the statutory

Register of COMMON LAND

Register unit No. CL. 155

Item 2

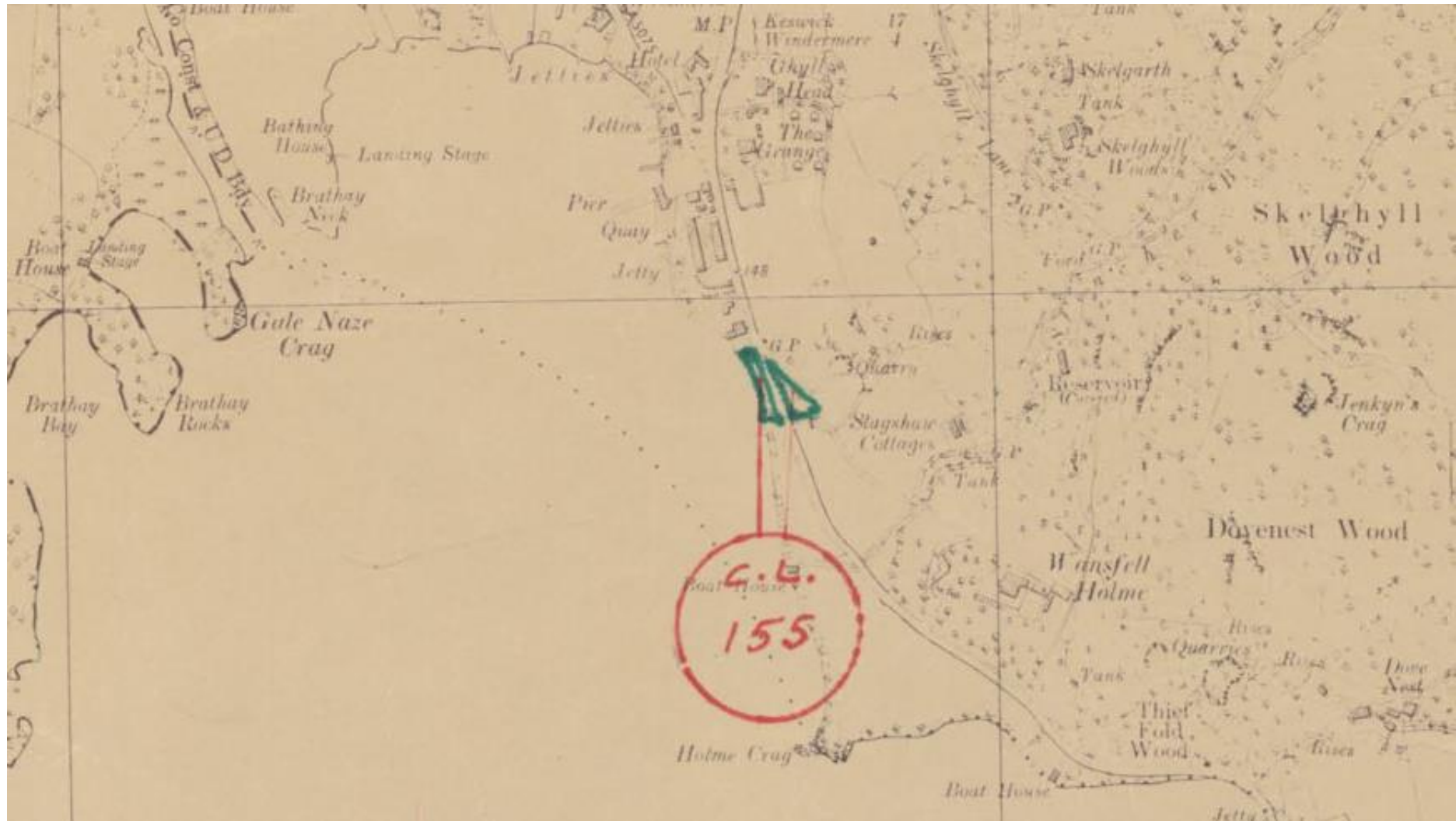
Edition No. 1

See Overleaf
for Notes

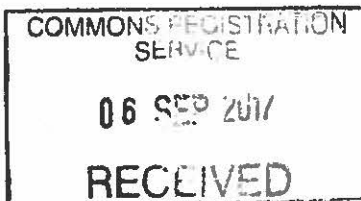
RIGHTS SECTION—Sheet No. 1

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 16th March, 1970 <i>for entry under rule</i>	1238 5th December 1969	The National Trust, Broadlands, Borrans Road, Ambleside, Westmor- land, Owner.	The right of <u>Woodmere</u> over the whole of the land comprised in this register unit. (Registration provisional)	Land at Wansfell in the parish of Ambleside, Westmorland shown coloured blue on the supplemental map bearing the number of this registration.
² 9th October 1972				

The registration at entry no. 1 above, being unopposed, became final on 1st August 1972



HILL DICKINSON



Cumbria County Council
Lady Gilford's House
Petteril Bank Road
Carlisle
Cumbria
CA1 3AJ
RECORDED DELIVERY

Your Ref: CA14/22/CL155
Our Ref: GA.PCB.123223.91
Doc Ref: 148215540.1
Date: 05 September 2017

Direct Line: +44(0)151 600 8800
graham.archibald@hilledickinson.com

Please ask for Graham Archibald

Dear Sirs

Re: **Form CA14 - Application to amend the register to record an historic event
Application by Windermere Aquatic Limited, CL155 - Land either side of the A591,
south of Waterhead, Entry 2**

We write in response to your letter to us dated 17 August 2017 (and that to our client dated 16th August 2017) relating to the matter above.

Further to the representations made by the Open Spaces Society in their e-mail dated 13 July 2017, we respond as follows:

The National Trust for Places of Historic Interest or Natural Beauty (**the National Trust**) is the registered proprietor of title number CU248472. Please find attached a copy of both the title register and title plan dated 3 months prior to the date of the Deed of Release (**Deed**), which evidences their ownership at the time the Deed was entered into.

As you will see from the title plan, the land that was under the ownership of the National Trust at the time of the application to register the right of woodmere (**the Right**) corresponds with the land comprised within their title at the date of the Deed.

A parcel of land (shown edged brown on the title plan) was erroneously shown as falling within National Trust ownership when the application for registration of the Right was made in 1969 but, as can be seen from entry C3 on title CU248472, this land was transferred out of National Trust ownership on 17 September 1958.

Given that the National Trust is still the registered proprietor of the same extent of land as when they made the initial application to register the Right, they are entitled to surrender the Right by virtue of the Commons Registration (England) Regulations 2014.

Further we understand that the proprietor of the land within parcel CL155 at the time of the application for registration of the Right was Waterhead Marine Limited, from whom our client acquired the land, and not The Rt. Hon. James Hugh William, who is listed as the owner in

hilledickinson.com

The Hill Dickinson Legal Services Group has offices in Liverpool, Manchester, London, Piraeus, Singapore, Monaco and Hong Kong.

Hill Dickinson LLP
No. 1 St. Paul's Square
Liverpool L3 9SJ
Tel: +44 (0)151 600 8000
Fax: +44 (0)151 600 8001

column 3 of the Ownership Section of the Commons Register. Waterhead Marine Limited acquired the subject property in 1957.

We trust that this information is sufficient to enable the application to be processed, but please let us know if you require any further details.

Yours faithfully



HILL DICKINSON LLP