



Northumberland

County Council

TYNEDALE LOCAL AREA COUNCIL

Date: 11 June 2019

Corrective Application: Clayhole, Spartylea, Allendale – s19 (2) (a)
Commons Act 2006

Report of the Deputy Chief Executive

Executive Member: Nick Oliver

A. Report to Rights of Way Committee

1. Report to Rights of Way Committee 21-05-2019 A 1 - A 5

B. Appendix 1

1. Application to correct the register 18-10-2017 B 1 - B 31

C. Appendix 2

1. Email from Hugh Craddock to Helen Lancaster 30-04-2018 C 1

D. Appendix 3

1. Objection to s.19 application D 1 - D 3

E. Appendix 4

1. Responses E 1 - E 3

A. Report to Rights of Way Committee



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Date: 11 June 2019

Corrective Application: Clayhole, Spartylea, Allendale – s19 (2) (a) Commons Act 2006

Report of the Deputy Chief Executive

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Purpose of report

The purpose of this report is

- 1) To inform Members of an application under s19 (2) (a) of the Commons Act 2006
- 2) To advise Members of the background to the application
- 3) To request Members to approve the instruction of Counsel with a view to Counsel making a recommendation as to whether the application should be granted and, if minded to do so,
- 4) delegate the determination of this matter to the Deputy Chief Executive in consultation with the Chair of the Local Area Council.

Recommendations:

- 1) That Counsel is appointed to make a recommendation as to whether this application should be granted, and**
- 2) the determination of this matter is delegated to the Deputy Chief Executive in consultation with the Chair of the Local Area Council.**

Key issues

1. The Council is the Commons Registration Authority under the provisions of the Commons Act 2006 and is obliged to amend the statutory registers of Common Land and Village Greens in certain circumstances.
2. On 15 December 2015 regulations, namely the Commons Registration (England) Regulations 2014 came into effect providing for applications to be made to the Commons Registration Authority (CRA) to amend their registers of common land and town or village greens in certain circumstances including to correct a mistake made by the CRA in making or amending an entry in the registers of common land or town or village green (section 19 (2) (a)).

3. On 21 December 2017 an application under the Commons Act 2006 ('the Act') was validated in relation to land falling within Allendale Common, registered under register unit CL1 to correct an alleged mistake by the CRA in plotting the boundary of the common land adjacent to the Applicants' land.
4. That application must now be determined by the CRA and, this being the first application of its kind received by the CRA that has proceeded to this point, a procedure should be in place to enable the authority to do this.
5. Applications for registrations of new village greens have historically been dealt with by the CRA appointing independent Counsel to make a recommendation to Members, usually after a non statutory Inquiry.
6. This application also requires, if successful, an amendment to the statutory Register of Common Land although it differs in that it requires technical expertise within the decision making process with regard to an assessment of the correct plotting of boundaries in addition to consideration of any legal issues connected with the case. Other authorities in the region have delegated their decision making powers away from Committees, for example to officers and in this case given the potentially complex consideration of historic boundaries it is proposed that Members approve the Instruction of Counsel (who may in turn, require the assistance of a boundary surveyor) and delegate the determination of the application to the Deputy Chief Executive in consultation with the Chair of the Local Area Council.

BACKGROUND

Legislative background

1. The Council is the Commons Registration Authority ('CRA') for the registration of Town and Village Greens and Common Land within Northumberland. As such, it has a duty under s1 of the Commons Act 2006 ('the Act') to continue to keep and maintain a register of Commons and Town and Village Green within its area. It is obliged to amend those Registers in certain circumstances.
2. Section 19 (2) (a) of the Act provides that a Registration Authority may amend its register of common land or town or village greens for the purpose of correcting a mistake made by the Commons Registration Authority in making or amending an entry in the register. Some CRAs are 'pioneer authorities' which means that they have wider powers under the Act than Northumberland, with more sections of the Act having been brought into effect for such authorities. Northumberland however did not form part of the original tranche of authorities named as 'pioneer authorities' and as such has more limited powers. The process for non-pioneer authorities is governed primarily by The Commons Regulations (England) Regulations 2014 ('the Regulations').

The Original Registration

3. The DEFRA Guidance to applicants in the pioneer implementation areas states that the Commons Registration Act 1965 was intended to establish definitive registers of common land and of town and village greens in England and Wales and to record details of rights of common. Registration Authorities were appointed to draw up the registers. Applications were invited between 2 January 1967 and 2 January 1970 for the provisional registration of common land, greens and rights of common. Applications were advertised and disputed applications for provisional registration were referred to a Commons Commissioner for determination but unopposed registrations became final automatically.
4. The land which is the subject of this application forms part of the Register of Common Land. It appears that it was registered pursuant to application number 2 being an application for the registration of rights of common (namely 186 stints, each stint being the right to graze: 5 sheep, or 1 two year old beast, or 8 lambs under one year, or 1 colt or filly, or 2 young beasts, or for two stints, 1 mare or gelding) made by Laline Marguerite Lucie Martell, Colin Colenso Martell and Raymond Lee Bellway dated 29 December 1966, received 2 January 1967 which was accompanied by a plan and was added to the CL01 section of the register, namely Allendale Common. It was added to the Register at entry number 1 dated 18 January 1968.

The Application

5. On 21 December 2017 an application under section 19 (2) (a) of the Commons Act 2006 was validated in relation to land at Clayhole, Spartylea, Allendale. The Application appears as Appendix 1 of this report. The Applicants state that the CRA incorrectly plotted the boundary of the Common Land adjacent to their property in the Commons Register in error. They state that Allendale Common was registered in consequence of application number 2 dated 29 December 1966 'Application for the registration of a right of common' and the CRA incorrectly plotted the boundary of the common when transposing the boundary line from the

plan attached to that application onto the register plan. They state that that they therefore wish to make an application to have the register amended in order to correct the error and have the area of land, which is within the curtilage of Clayhole and has been incorrectly included in the Common, removed from the Commons Register.

Process

6. Upon a check by the CRA the application was found to have been 'duly made' and the matter proceeded to being advertised in accordance with the relevant regulations by way of Notices of Application appearing on the Council's website and on the land in question and by way of the notices of application being served on all relevant parties.
7. Representations were received from the Open Spaces Society and from Steve Byrne. Redacted copies of these are attached at Appendices 2 and 3. The content of the representations are not strictly at this stage a matter for the Local Area Council but are provided for background.
8. The Regulations provide that once representations have been received they must be provided to the Applicants to enable them to provide any further representations in response and this was duly undertaken.
9. Further representations were then received from the Applicants which are attached, again, for information only as Appendix 4.
10. The Regulations then provide for the determination of the application and provide that an application made in accordance with the Regulations must be determined by the registration authority to which it was made unless the registration authority has an interest in the outcome of the application or proposal such that there is unlikely to be confidence in the authority's ability impartially to determine it or where a person having a legal interest in the land being the subject of the application has made representations amounting to an objection to the application.
11. In this case, it is not believed that the registration authority has an interest in the outcome of the application or proposal such that there is unlikely to be confidence in the authority's ability impartially to determine it and no objection was received from a landowner which means that the CRA must determine the application.
12. This is the first application of this nature which has reached this stage that has fallen to be determined by the CRA and there is currently no formal procedure in place. In the case of applications to establish village green status for new areas of land there are no formal requirements in statute as to how applications should be determined but a practice has built up whereby CRAs appoint an independent legally qualified inspector to conduct a non statutory Inquiry into the application and to report on whether the application should be accepted. An independent barrister has generally been appointed to either prepare an Advice Note as to whether the statutory grounds for registration have been established or to hold a non statutory inquiry within which directions have been issued as to how the case should then be dealt with. An Inquiry has been held and Counsel has then prepared a report advising whether the land in question should be registered.

13. In the case of applications under s19 (2)(a) the Regulations state that the determining authority may decide that a public inquiry or hearing is to be held. It is submitted that as this is also an application to amend a Register (although it is an application to correct it rather than adding a new entry to it) which involves detailed determination of boundaries and dealing with representations received, that Counsel should be appointed who may in turn, if thought appropriate, advise that a hearing or Inquiry is appropriate. Counsel may also consider that the instruction of a specialist boundary surveyor is necessary to establish whether the CRA incorrectly plotted the boundaries and if so, where the correct boundary should lie. The Regulations provide that the procedure at any Public Inquiry is to be determined by the Inspector. Applications must be determined fairly.
14. Members will see at Appendix 2 that the representation from the Open Spaces Society, while acknowledging, from an examination of the extracts of the original 1966 application plan, that the plan 'does appear to show an intention to exclude part of the land at Clayhole which was subsequently registered as common land by the Commons Registration Authority. In that respect, it is evidence of a mistake made by the authority, which is amenable to rectification under s19'. They go on to say however that they believe that not all of the application land is excluded from the original application map attached to the original application and that they object to the deregistration of the application land in excess of what is identified as eligible for deregistration in the original 1967 map and the 1920 conveyance map as produced by the applicant. Members will also see at Appendix 4 that the Applicants have responded to this point by stating that they accept that the area marked on the conveyance does differ in shape to the application land but that the southern boundary extends further west and refers to other copy plans which he states show more accurately the shape and extent of the curtilage which also replicates, they believe, the shape of the land excluded from the common. It is therefore clear that there are disagreements in this case about exact boundaries about which historic documentation has been produced and which potentially must be evaluated when a determination is made as to whether and if so, to what extent, a mistake was made by the CRA when application number 2 was registered.
15. Given the issues above it is proposed that specialist Counsel is instructed (who may in turn wish to have the input of a boundary surveyor) to prepare a report and make a recommendation as to whether the application should be granted and that the determination of the matter be delegated to the Deputy Chief Executive in consultation with the Chair of the Local Area Committee.

BACKGROUND PAPERS

Application documentation and documentation referred to above submitted in response.

B. Appendix 1

Commons Act 2006: section 19**Application to correct the register****This section is for office use only**

Official stamp

Application number

<p>COMMONS REGISTRATION ACT 2006 NORTHUMBERLAND COUNTY COUNCIL</p> <p>21 DEC 2017</p> <p>REGISTRATION AUTHORITY</p>

CA03

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

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

Note 1

Insert name
of commons
registration
authority.

1. Commons Registration Authority

To the: *NORTHUMBERLAND COUNTY COUNCIL*

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

enclosed the appropriate fee for this application:

or

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

Note 2

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

Note 3

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

2. Name and address of the applicant

Name:

Leslie Smith & Carole Diane Smith

Postal address:

[Empty box for postal address]

Telephone number:

[Empty box for telephone number]

Fax number:

[Empty box for fax number]

E-mail address:

[Empty box for e-mail address]

3. Name and address of representative, if any

Name:

[Empty box for name]

Firm:

[Empty box for firm]

Postal address:

[Empty box for postal address]

Postcode

Telephone number:

[Empty box for telephone number]

Fax number:

[Empty box for fax number]

E-mail address:

[Empty box for e-mail address]

Note 4

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

4. Basis of application for registration and qualifying criteria

Specify the register unit number to which this application relates:

CL 1

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

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

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

Note 5

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

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

It is my belief that the Commons Registration Authority incorrectly plotted the boundary of the Common land adjacent to my property, Clayhole, Swinhope, Sparty Lea, Allendale NE47 9UR and included land which was within the curtilage of the property, in the Commons Register in error.

It is my understanding that Allendale Common was registered in consequence of application number 2 dated 29th of December 1966 "Application for the registration of a right of common" and the CRA incorrectly plotted the boundary of the common when transposing the boundary line from the plan attached to that application onto the register plan.

I wish to make application to have the register amended in order to correct this error and have the area of land, which is within the curtilage of Clayhole and has been incorrectly included in the Common, removed from the Commons Register.

It was only when exploring the possibility of providing foul drainage to my property known as Clayhole, that I discovered that land within the curtilage had been included in the common by mistake.

Note 6

List all supporting consents, Documents and maps Accompanying the application, including evidence of the mistake in the register. There is no need to submit copies of documents issued by the registration authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.

6. Supporting documentation

- LS 1) Application for the registration of a right of common dated 29th December 1966 application no. 2 (provided by the CRA)
- LS 2) Extract from plan attached to application number 2 (obtained from the CRA)
- LS 3) Official copy of Land Registry register of title ND179121.
- LS 4) Copy of conveyance dated 22nd February 1913
- LS 5) Copy of conveyance dated 6th July 1920
- LS 6) Copy of extract from Register Unit CL1 showing the boundary of the property known as Clayhole within the area coloured green, the Common Land.
- LS 7) Photographs northern and western boundaries of curtilage of Clayhole
- LS 8) Photographs northern and western boundaries of curtilage of Clayhole
- LS 9) Photographs remaining roof tiles from former part of property
- LS 10) Aerial photograph circa 1980's showing spoil from demolished part of building
- LS 11) Ordnance survey plan circa 1923 – 1924 showing boundary of Clayhole
- LS 12) Ordnance survey plan circa 1953 – 1957 showing boundary of Clayhole

Note 7

List any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

7. Any other information relating to the application

See attached additional information

Form CA10 Additional Information

7. Any other information relating to the application

The land in question is clearly within the curtilage of the property known as Clayhole as can be seen from conveyance dated 22nd February 1913 (LS4), conveyance dated 6th July 1920 (LS5) and Official copy title no ND179121 (LS3). The remains of the northern and western boundary can clearly be seen on the attached photographs (LS7 & LS8). Part of the property stood on a part of the land which has been included in the common and the remaining roof tiles from this can be seen in the attached photograph (LS9). This part of the property was demolished in the late 1970's so was in existence at the time the common was registered.

I made a previous application in December 2015 to correct a mistake made by the registration authority which was considered by the Planning Inspectorate, but which was not granted.

The Inspector in his decision stated 16. "It is highly likely that the CRA's understanding of the boundary of the common was based on the information contained within application no. 2. No evidence has been submitted regarding application no. 2 and in the absence of any evidence relating to that application it is not possible to determine whether the CRA did or did not accurately record the extent of the common claimed in that application"

In his conclusion the Inspector stated 17) "Additional research into application no. 2 may reveal evidence that sheds further light on this matter. However, I am not persuaded that the CRA mistakenly transcribed the map attached to application no. 285 when it originally recorded the boundaries of Allendale Common. I do not consider that Mr Smith has produced convincing evidence that a mistake was made when the CRA first compiled the register".

Having investigated the matter further, following the receipt of the previous application decision from the Planning Inspectorate, it can clearly be seen on the extract from the plan attached to application number 2 (LS 2), which I believe the CRA used to register the boundary of the common, at the point immediately to the north of Clayhole, that the colouring determining the boundary of the application land "steps in" slightly to the west, appearing to exclude from the application, the land contained within my title documents which has been included within the common

I believe that evidence provided herein, relating to application number 2, clearly shows that the plan submitted with that application excluded the land within the curtilage of Clayhole and therefore when the Commons Registration Authority transposed that boundary onto the Register plan, a mistake was made which included land within the curtilage of Clayhole in the Common. I therefore request that the land within the curtilage of Clayhole, which I believe has been incorrectly included in the Common, be removed from the Register in accordance with Section 19 (2) (a) of the Commons Act 2006, to correct a mistake made by the Commons Registration

<p>Note 8 <i>The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or an unincorporated association.</i></p>	<p>8. Signature</p> <p>Date: <input data-bbox="603 159 1533 237" type="text" value="18/10/17"/></p> <p>Signatures: <input data-bbox="603 282 1533 551" type="text"/></p>
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REMINDER TO APPLICANT

You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

You are advised to keep a copy of the application and all associated documentation.

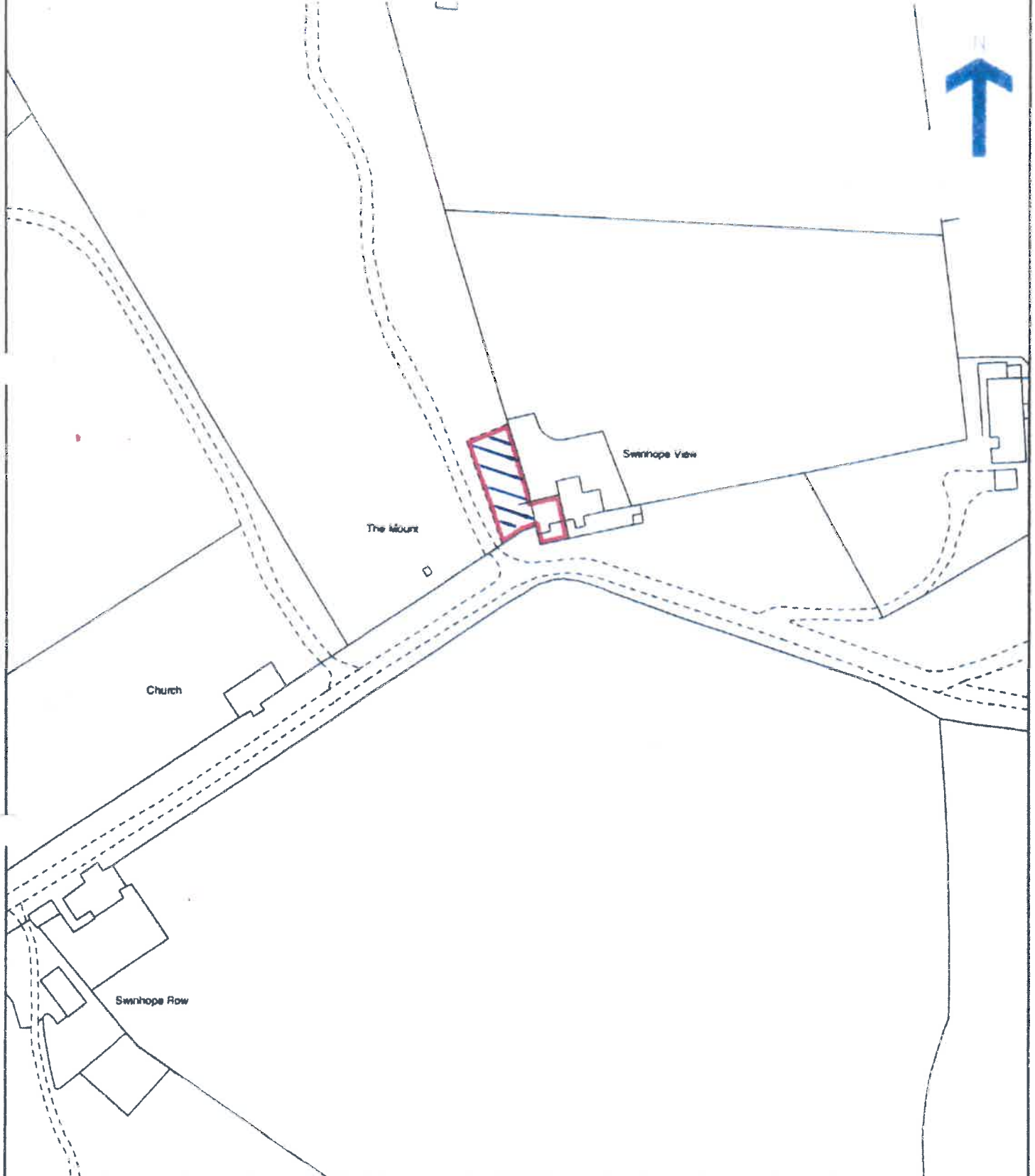
Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the commons registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.



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This official copy issued on 21 April 2015 shows the state of this title plan on 21 April 2015 at 14:25:26. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by Land Registry, Durham Office.

CR Form 9.

This section for official use only.

Official stamp of registration authority indicating date of receipt

Application No. 2.

COMMONS REGISTRATION ACT 1965
NORTHUMBERLAND COUNTY COUNCIL
REGISTRATION AUTHORITY
- 2 JAN 1967

Register Unit No(s)

CL 1

CL 2

COMMONS REGISTRATION ACT 1965

Application for the registration of a right of common

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

Insert name of registration authority (see Note 1).

To the Northumberland 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.

Laline Marguerite Lucie Martell of Shotley Hall,
Shotley Low Quarter, Northumberland

Colin Colenso Martell of the same address

and

Raymond Lee Bellwood, of 42 Mosley Street, Newcastle upon Tyne

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.

Gibson Pybus Reay-Smith & Bellwood,
42 Mosley Street,
Newcastle upon Tyne, 1.

Part 3.

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

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

Owners

LSI

Name by which commonly known :Hexhamshire and Allendale stinted pastures

Locality

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

Colour on plan the Hexhamshire pastures are coloured round in blue. The Allendale pastures in red.

Part 5.

Description of the right of common.

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

The ownership of 186 "stints"; each stint being the right to graze 5 sheep.(or one two year old beast or eight lambs under one year or one colt or filly or two young beasts or (for two stints) a mare or gelding) Vide General Award dated 31st December 1800 enrolled at the Office of the Clerk of the Peace for Northumberland 16th April 1801.

Part 6.

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

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

The Carrshield Estate consisting of Smallburns Farm and Temperance Farm which are shown by way of identification only on the plan by being coloured round in green.

(Note: 80 stints are appropriated to Smallburns Farm and 106 to Temperance Farm)

Part 7.

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

(See Note 8.)

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.

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

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

Notification of Disposal of an Application for Registration (Rights)

Application No. 2 Register Common Land.

Short description of land over which right exercised Allendale and Hexhamshire Commons.

To (name of applicant) Carrshield Estate or his solicitor. per Messrs Gibson, Pybus, Reay-Smith & Bellwood.

Your reference

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

Table with 2 columns: Register unit No., Entry No. Rows include CL 1 and C.L. 2, both with entry number 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):-

Table with 2 columns: Register unit No., Entry No. (This section is crossed out with a diagonal line).

* (Your application has accordingly been noted on the register. This means that 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).

* Delete as necessary.

Statutory Declaration in Support

(See Note 6)

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

*Insert full name(s).

[I] ~~[We]~~ Raymond Lee Bellwood of 42 Mosley Street,
Newcastle upon Tyne Solicitor

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

solemnly and sincerely declare as follows:

- one of
1. [I am] ~~[We are]~~ the person(s) who ~~[has]~~ [have] signed the foregoing application.
 2. 'I am' Solicitor to the applicant(s) and am authorised by the applicant(s) to make the foregoing application on ~~[his]~~ [their] behalf.
 3. [I] ~~[We]~~ have read the Notes on the back of the application form and believe that ~~[I]~~ ~~[we]~~ [the applicant(s)] ~~[am]~~ [are] ~~[is]~~ entitled, in the capacity or respective capacities stated in the application, to apply for the registration under the Commons Registration Act 1965 of the right of common described in the application.

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

4. 'The plan now produced and shown to me marked " R.L.B.1 " is the plan referred to in part 4 of the application.
5. 'The plan now produced and shown to me marked " R.L.B.1 " 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 RAYMOND LEE
BELLWOOD

at Newcastle upon Tyne
on the 29th of December
this _____ day of _____ 1966

Before me,

Signature

Address

Qualification

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

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;
- 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.

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

3. Meaning of "rights of common"

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

"A right of common is generally taken to mean a right which a person may have (generally in *common with* someone else) to take part of the natural produce of another man's land; for example, a right to the herbage (a right of common of pasture); a right to take tree loppings or gorse, furze, bushes or underwood (a right of estovers); a right to take turf or peat (a right of common of turbary); a right to take fish (a right of common of piscary); a right to turn out pigs to eat acorns and beechmast (pannage). There are various other

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

4. Land descriptions

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

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

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

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

5. Inspection and search of registers

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

6. Statutory declaration

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

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

19 before me,

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

8. Submission of application: fees

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

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

tion to make the application, or
(b) the right of common did not become registrable until after 30th April 1968.

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

9. Action by registration authority

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

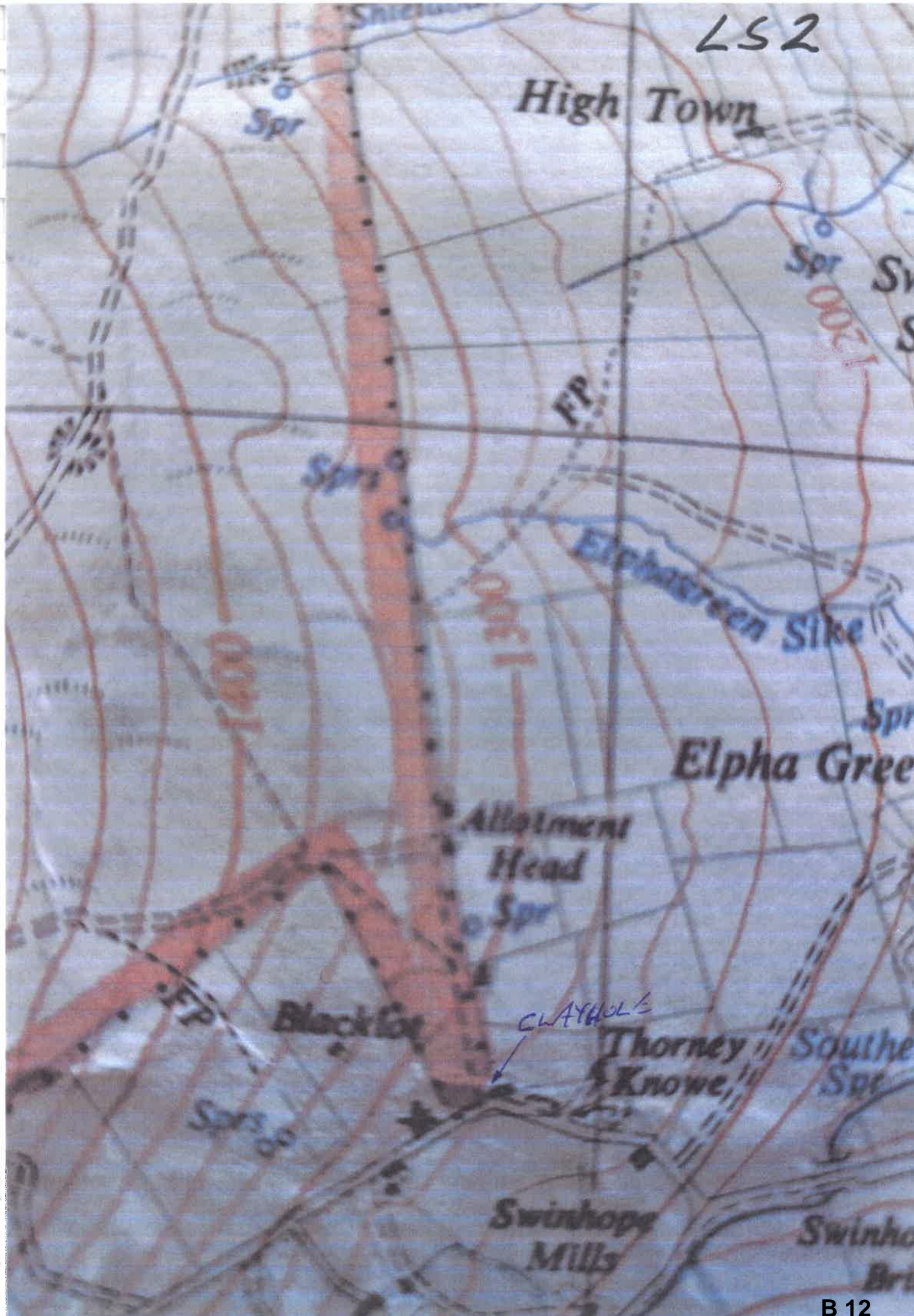
- if the land over which the right of common is claimed to be exercisable is not already registered under the Act, it will be provisionally so registered, and the right of common will be provisionally registered as exercisable over it, or
- if that land is already registered under the Act, the right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

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

10. False statements: groundless applications

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

LS2



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Spr

Spr

Elpha Green Sike

Elpha Green

Allotment Head

Spr

Blackfoot

CLAYHOL'S

Thorney Knowe

Southe Spr

Swinhope Mills

Swinhope Br

Head

LS 2
(ENLARGED)

CLAYHOLE





Official copy of register of title

Title number ND179121

Edition date 19.02.2015

- This official copy shows the entries in the register of title on 21 April 2015 at 14:25:26.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 21 April 2015.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website www.landregistry.gov.uk or Land Registry Public Guide 1 - *A guide to the information we keep and how you can obtain it.*
- This title is dealt with by Land Registry Durham Office.

A: Property register

This register describes the land and estate comprised in the title.

NORTHUNDERLAND

- 1 (19.02.2015) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being The Clayhole, Swishope, Spartylea, Allendale, Hexham (NE47 9UR).
- 2 (19.02.2015) The mines and minerals together with ancillary powers of working are excepted with provision for compensation in the event of damage caused thereby.

B: Proprietorship register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

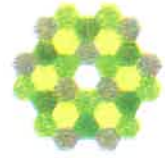
Title absolute

- 1 (19.02.2015) PROPRIETOR: LESLIE SMITH and CAROLE DIANE SMITH of The Clayhole, Swishope, Spartylea, Allendale, Hexham NE47 9UR and of 67 Eastfield Avenue, Whitley Bay NE25 8NQ.
- 2 (19.02.2015) The value stated as at 19 February 2015 was £90,000.

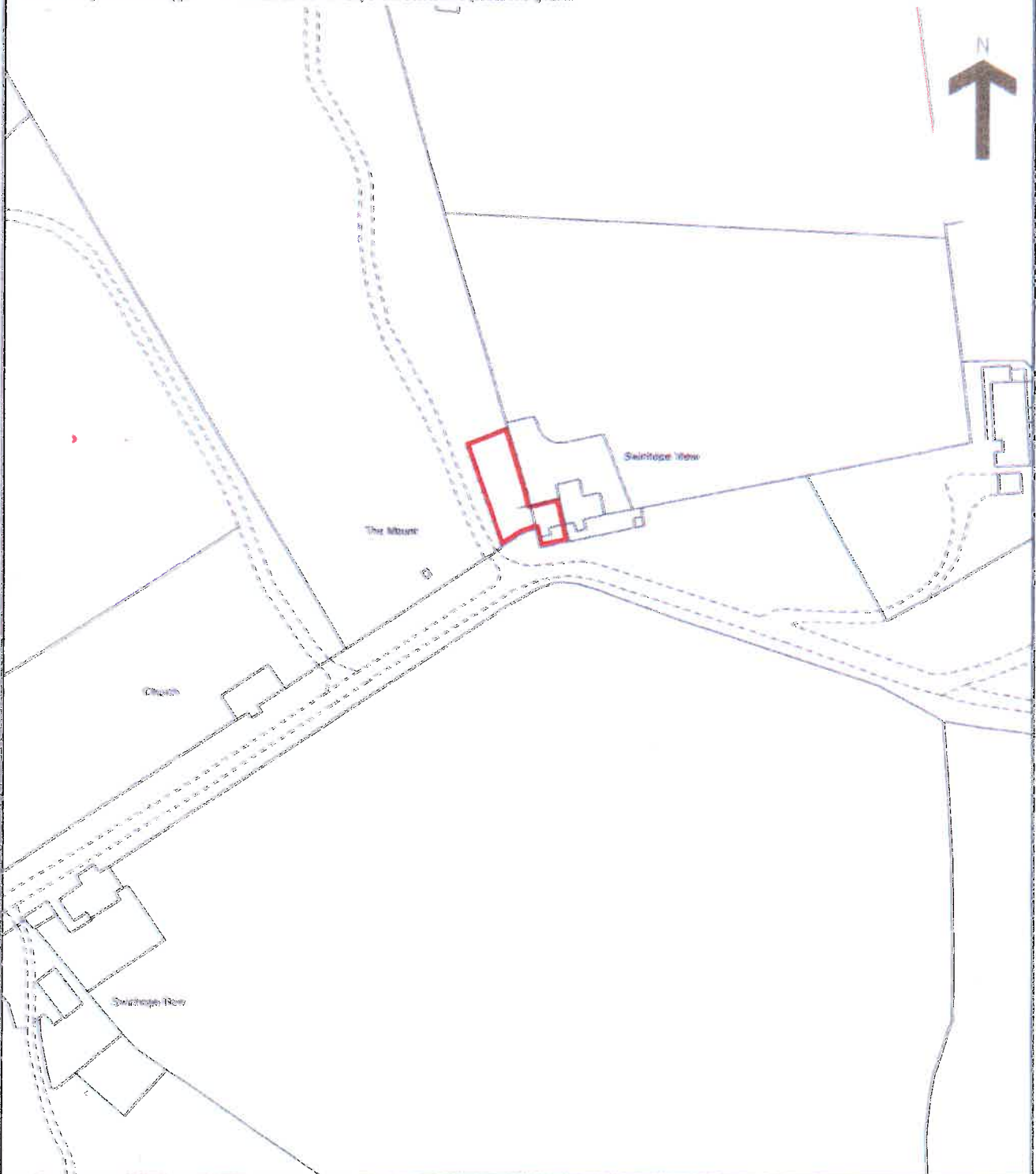
End of register

Land Registry
Official copy of
title plan

Title number **ND179121**
Ordnance Survey map reference **NY8348SE**
Scale **1:1250** enlarged from 1:10000
Administrative area **Northumberland**



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You are not permitted to copy, sublicense, distribute or sell any of this data to third parties in any form.



This official copy issued on 21 April 2015 shows the state of this title plan on 21 April 2015 at 14:25:26. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

①

Dated 29th Oct 1863

Messrs E. J. Coulson & R. W. M.
Coulson — to —
Reginald T. Coulson Esq.

Conveyance

land and hereditaments known
as 'Thorney Knave Farm' and
situate at the Marshes situate at
the Fenhope in the County of
Northumberland



Witnessed by us
Stockton on Tyne



Chris Indenture

made the day by second day of February One thousand nine hundred and thirteen Between William Henry John Ellison of 28 The Lane, Gosport in the County of Southdown Merchant and Richard Walter Arthur Ellison of 4 Clancy Orchard Road, Middleborough in the County of York Esquire (together hereinafter called "the executors") of the one part and Reginald Thomas Ellison late residing at South Fouldes but now of the Union Bank of Australia, Melbourne Australia Bank & Co of the other part Thomas Coulson late of Gosport in the Parish of Allendale in the County of Northumberland late made and executed his last Will and Testament bearing date the 11th day of February thousand nine hundred and ten which by and by the executors to be the executor of that his Will William Ellison former an elder being devised to his nephew the said Reginald Thomas Ellison about William Ellison his farm of Thornow Grove situate at Thornow Grove together with the garden houses barns stables and all appurtenances to the said farm and the House at the Clayfield with its appurtenances Richard Walter Arthur Ellison the said testator died on the 11th day of March One thousand nine hundred and thirteen without having revoked or altered his said recited Will which was duly proved in the Probate Court of the District Court of Gosport by the executors on the 11th day of July One thousand nine hundred and twelve Richard Walter Arthur Ellison at the time of his death the said testator was seized of the said premises and having devised to his hereinafter recited Will to the said Reginald Thomas Ellison in fee simple in possession free from incumbrances Richard Walter Arthur Ellison the funeral and testamentary expenses and debts of the said testator who as by law is made the heirs and assigns of the executors and the said Reginald Thomas Ellison have been paid and satisfied out of the principal estate of the said testator Richard Walter Arthur Ellison the executor of who have advanced or expended pursuant to the provisions of the Statute in that behalf made (as 1837) law at the request of the said Reginald Thomas Ellison some £ 1000 00 00 and in witness whereof the said Reginald Thomas Ellison has caused this Indenture to be signed as aforesaid as is hereinafter contained William Henry John Ellison as follows:

To have in full of the said agreement and in consideration of the price the executors of the said testator have paid to the said Reginald Thomas Ellison the sum of £ 1000 00 00 the sum of £ 1000 00 00 the sum of £ 1000 00 00 and the sum of £ 1000 00 00



The said Thomas Coulson in the said INSTRUMENT whereby the parties hereto have borne at their burden and seals the day and year first above written

The Schedule hereunto annexed to
First Part

All that piece or parcel of land situate at Tomshole in the parish of Allendale aforesaid 1000 with the messuage or dwelling house erected and built thereon and known as the "Playlock" which said tenement are more particularly delineated and described in the plan hereunto annexed and coloured round with red

Second Part

All that piece or parcel of land situate at Tomshole aforesaid containing 324 acres or thereabouts and known as Murphy's Shore Farm and more particularly delineated and described in the plan hereunto annexed and coloured round with blue 1000 with the Shore Farm and other buildings erected thereon 1000 with two fifth parts of an acre in Allendale Parish Presbytery

Memorandum The hereditaments and tenements comprised in the second part of this schedule are numbered on the Ordinance map of Scotland (in the Sheet) Sheet 14 Scale 25000 inches to the Mile Sheet 14 as before and are stated to contain the areas set out below to each number respectively

<u>Number</u> <u>of</u> <u>Acres</u> <u>&</u> <u>Parts</u> <u>of</u> <u>an</u> <u>Acre</u>	<u>Quantity</u>
1987	3.214
1986	2.576
1985	0.357
	<u>6.147</u>

Witness Dealt and delivered to the said Thomas Coulson in the presence of

James Hayles Clark

As Witness
Wardle Terrace
Newcastle-on-Tyne
Clark

Witness Dealt and delivered to the said Richard Walker in the presence of

Richard Walker

Wardle
upside Grange
Wardle
vicinity of ironworks



Dated

1920

LS5

Mr. R. J. Boulson

— to —

Mr. J. Holmes.

Conveyance

— of —

Thornley Knowe Farm and House at
The Blayhols, situate at Swinhope in
the County of Northumberland.

1920
S 30833

W. G. Maddison
Solicitor



This Indenture



made the
Sixth

day of July

one thousand nine

hundred and twenty Between Reginald Thomas
boulton formerly of 119 Westoe Road South Shields in the
bounty of Durham but now of 36, Blaxendon Street East Melbourne
in the State of Victoria Australia Bank Clerk (hereinafter called
the Vendor) of the one part and Francis Holmes
of Brierville in the City of Durham Farmer (hereinafter
called the purchaser) of the other part

Whereas the Vendor is seized in fee simple in possession
free from incumbrances of the hereditaments hereinafter
described and has agreed to sell the same to the purchaser
for the sum of three hundred and thirty pounds.

Now this Indenture witnesseth that in con-
sideration of the sum of three hundred and thirty pounds
to the vendor now paid by the purchaser (the receipt whereof
the vendor hereby acknowledges) the vendor as beneficial
owner hereby conveys unto the purchaser

All these the hereditaments and premises comprised
and described in the first and second parts of the Schedule
hereto

To hold the same unto and to the use of the purchaser
in fee simple

And it is hereby certified that the purchase transaction
effected by these presents 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 five hundred pounds.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written

Schedule

First Part.

All that piece or parcel of land situate at Swinhope in the Parish of Allendale in the County of Northumberland together with the messuage or dwellinghouse erected and built thereon and known as "the Blayhole" which said premises are more particularly delineated and described on the plan endorsed hereon and thereon coloured round with red.

Second Part.

All that piece or parcel of land situate at Swinhope aforesaid containing six acres and decimal three hundred and twenty seven parts of an acre or thereabouts and known as Thorney Knowe Farm and more particularly delineated and described on the plan hereon endorsed and thereon coloured round with blue together with the farmhouse and other buildings erected thereon and together with two fifth of a stint on Allendale stinted pasture.

Memorandum The hereditaments and premises comprised in the second part of the Schedule are numbered on the Ordnance Survey Map (Northumberland) Sheet 6711 fourteen scale twenty five inches and decimal three hundred and thirty four parts of an inch to the mile Second Edition.

as below and are said to contain the areas appearing opposite to such particulars respectively.

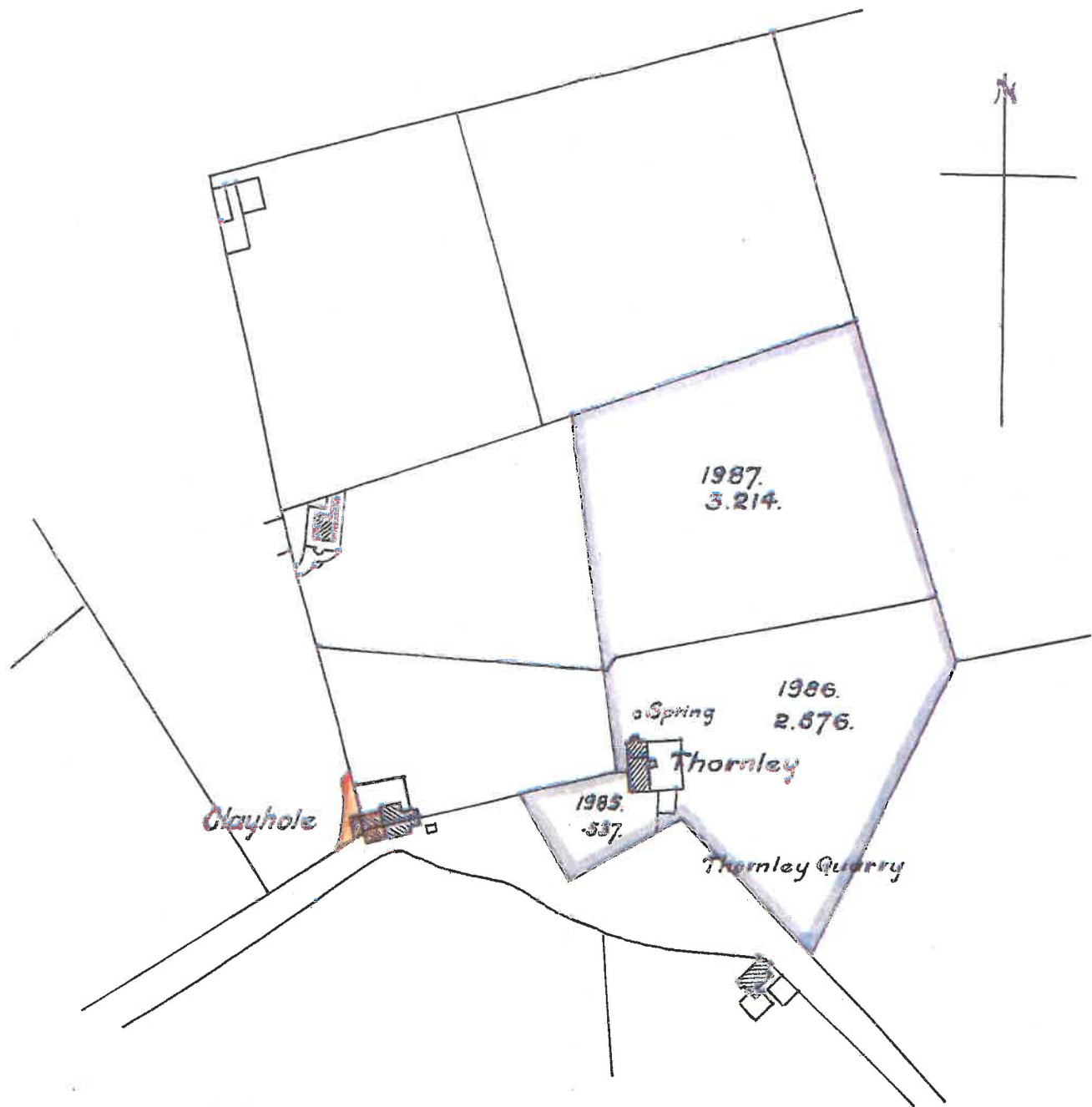
no. on Ordnance Map.	Quantity
1987.	3.214
1986.	2.576.
1985.	.537.
	6.327

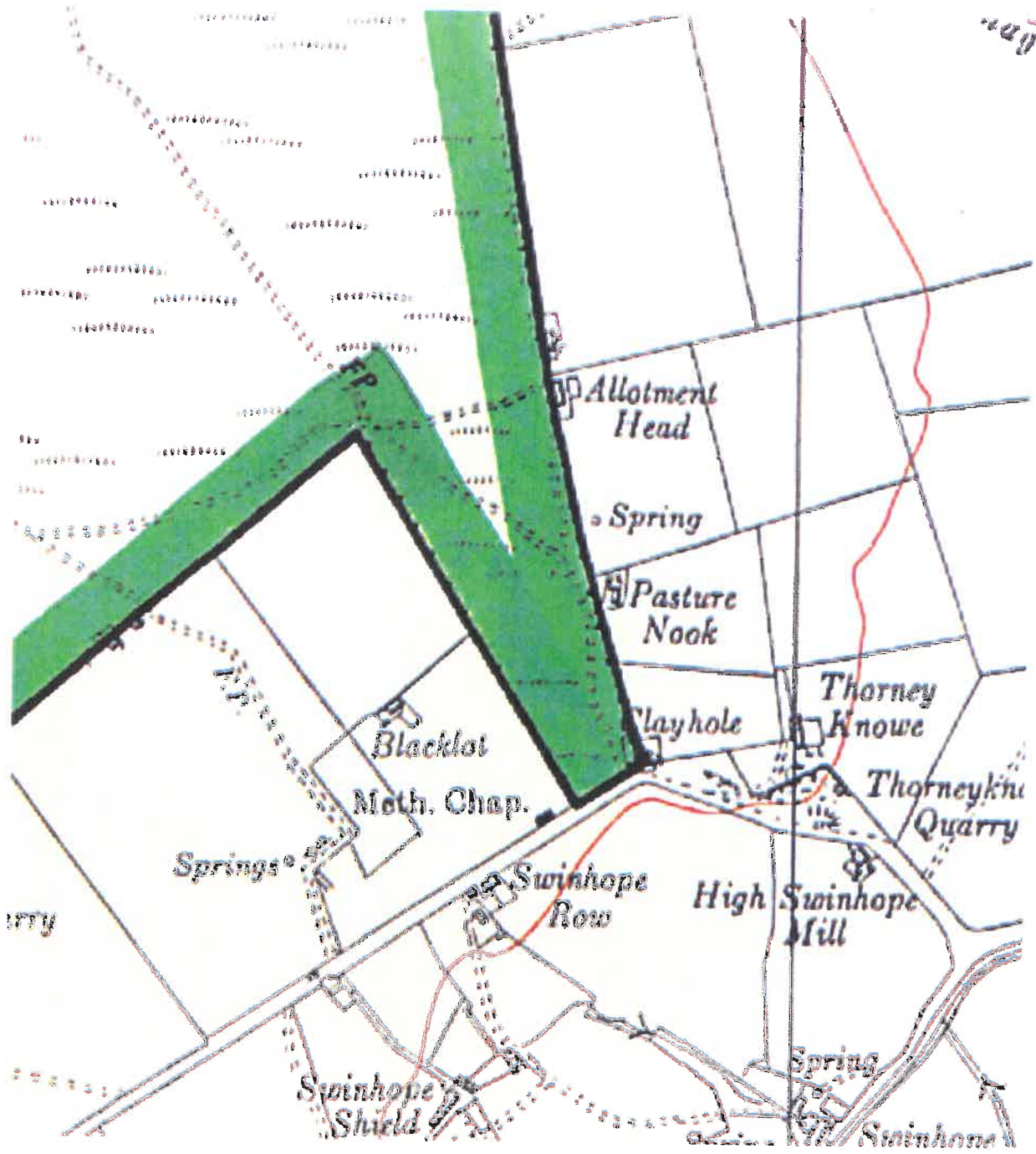
Signed sealed and Delivered by the said Reginald Thomas Boulson by Allendale Boulson his Attorney duly appointed by Deed Poll under the hand and seal of the said Reginald Thomas Boulson dated the thirtieth day of December one thousand nine hundred and nineteen in the presence of:-

J Temperting
 Barclays Bank Ltd
 6 Mansard, Newcastle upon Tyne
 Bankers

Allendale Boulson















LS10

C. Appendix 2

From: Hugh Craddock
Sent: 30 April 2018 11:03
To: Helen Lancaster
Subject: RE: Common Act Corrective Application - Clayhole, Swinhope, Spartylea, Allendale CL01: deadline 11 May

Hi Helen

Thank you for the further information about application HL-CA03. I make the following representation on behalf of the society, which has no legal interest in the application land. By 'application land', we mean to refer to the land sought to be deregistered under this application.

We understand that the extract of the plan marked 'LS2' is indeed the map of Allendale common originally marked 'RLB1' and annexed to original rights application no.2 made by Martell, Martell and Bellwood. The map appears to be based on the Ordnance Survey 1958 First Series 1:25,000 map NY84. If we are wrong about that, please let us know.

If it is, we agree that the plan does appear to show an intention to exclude part of the land at Clayhole which was subsequently registered as common land by the commons registration authority. In that respect, it is evidence of a mistake made by the authority, which is amenable to rectification under s.19.

However, it appears to us that not all of the application land is excluded from the map attached to the original application, and that what was excluded from the original map approximates to the land coloured orange in the map attached to the 1920 conveyance. We therefore object to the deregistration of the application land in excess of what is identified as eligible for deregistration in these two maps.

Other commoners, or the owner of Allendale Common, may have originally applied to provisionally register rights of common, or the common itself, on the basis of what was provisionally registered as common land by the authority, consequent to rights application no.2. They may or may not have included a map of the common in connection with the original application, which may have showed the application land as part of the common. In such cases, had the authority given proper effect to rights application no.2, by excluding part of the application land, it might then have been required to register that excluded part consequent upon any of those original applications. The authority will therefore need to give careful consideration to the test in s.19(5), as to whether granting the application (in part) would be fair, taking all the circumstances into account.

regards

Hugh

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

D. Appendix 3

OBJECTION TO SECTION 19 APPLICATION TO DEREGISTER A PART OF ALLENDALE COMMON (REF NO: HL/CA03)

I am writing to comment on and object to the application made to you under Section 19(2)(a) of the Commons Act 2006 to deregister a part of Allendale Common (CL.1). The application reference number is HL/CA03. My personal details are as follows:

NAME & ADDRESS: Steve Byrne

E-MAIL:

TELEPHONE:

INTEREST: Member of public (no legal interest)

(1). I have not had the opportunity to examine the application papers. However, I have responded to a number of Section 19(2)(a) applications submitted to other registration authorities. In many, if not most, cases these applications have been misconceived; because they have been based solely on the claim that the land was wrongly registered as common land (and that it was therefore registered 'by mistake'). This might be enough to support an application under Schedule 2 of the 2006 Act; it is not, however, sufficient to support a Section 19(2)(a) application. In this case, the applicant must show not only that the land was wrongly registered; but that a particular kind of mistake (a copying error) was made by the registration authority which caused it to be registered.

(2). There are two entries in the land section of the CL.1 register [[Attachment 2](#)] describing the land comprising Allendale Common. The second entry concerns an area shown at sheet 7 of the register map. The land affected by the present application is mapped at sheet 13 [[Attachment 3](#)]. It is therefore covered by the first land section entry which concerns the area registered in January 1968 as the result of a rights application.

(3). As the land had not previously been registered as common land, the rights applicant would have been required to submit a map showing the area affected by his claim (in effect, a map of the common). This map would then have been used by the registration authority to produce the register map of CL.1.

(4). As noted at para 1 above, it is not enough for the applicants to show that the Section 19(2)(a) land was registered by mistake. However, let's assume – for the sake of the argument – that it was. There would then seem to be two possibilities:

- (i) The map submitted by the rights applicant included the Section 19(2)(a) land within the boundary of his claim and this map was faithfully copied by the registration authority in producing the register map;
- (ii) The rights applicant's map did not include the Section 19(2)(a) land but this land was shown by mistake as part of the common when the registration authority produced the register map.

(5). If option (i) was true, there would be no grounds for a Section 19(2)(a) application because the mistake was not made by the registration authority. According to section 108 of the 'Explanatory Notes' to the 2006 Act [[Attachment 4](#)]:

.....An error made in a map supplied by an applicant defining the area of common land which was faithfully reproduced in the register entry could not be corrected under this provision [i.e. Section 19(2)(a)].....

(6). In short, the present applicants are required to prove that the registration authority made a mistake of the kind described at para (4)(ii) above. In order to do so, they would need to produce a copy of the map submitted with the original rights application (entry 1 in the CL.1 land section). They would then need to show that this map was transcribed incorrectly by the registration authority in producing the register map. If they cannot do so the Section 19(2)(a) application must be rejected.

Steve Byrne

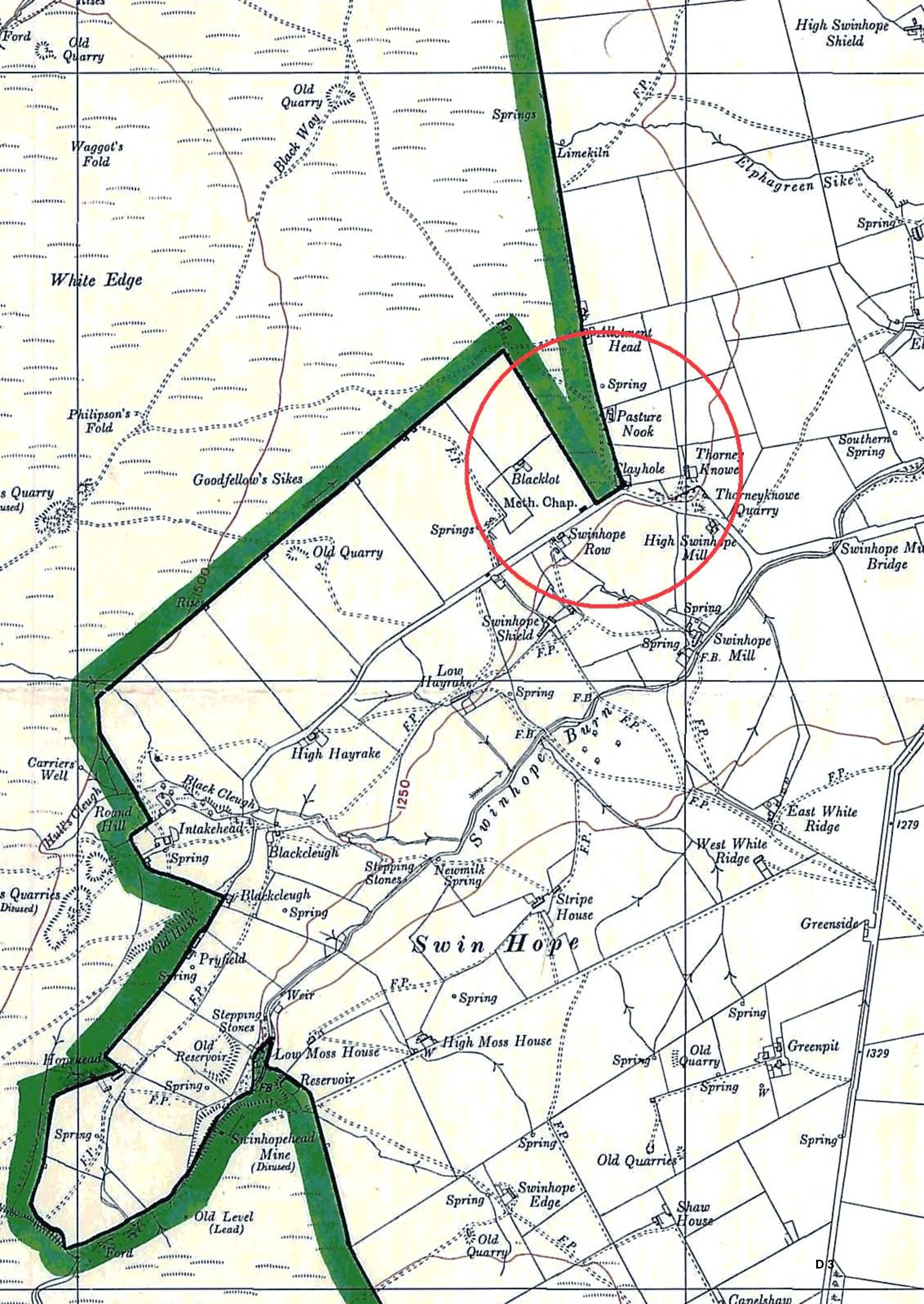
[26 March, 2018]

See Overleaf for Notes

Register of COMMON LAND

LAND SECTION—Sheet No. 1

No. and date of entry	Description of the land, reference to the register map, registration particulars etc.
1 10th January 1968 <i>(See map 1 of register)</i>	<p>The tract of land called Allendale Common in the parishes of Allendale and West Allen in the rural district of Hexham as marked with a green verge line inside the boundaries thereof on sheets, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17 and 18, of the register map and distinguished by the number of this registration unit. Registered by the registration authority in consequence of application No. 2 (Rights)</p> <p>(Registration Provisional)</p>
2 11th July 1968 <i>(See map 2 of register)</i>	<p>The two pieces of land at Mohope Moor and Pinch Park in the parish of West Allen in the rural district of Hexham as marked with green verge lines inside the boundaries thereof on sheet 7 of the register map and distinguished by the number of this register unit. Registered pursuant to application No. 281 made the 27th June 1968 by the Trustees of the Allendale Settled Estates per Dees and Thompson, Griffith & Co., 40 Grey Street, Newcastle upon Tyne.</p> <p>(Registration Provisional)</p>
3 1st March 1970	<p>The registration at entry No. 1 above, being undisputed, became final on the 1st October, 1970.</p>



High Swinhope Shield

Waggot's Fold

White Edge

Philipson's Fold

Goodfellow's Sikes

Old Quarry

Carriers Well

Quarries (Disused)

Hophead

Ford

High Hayrake

Blackcleugh

Blackcleugh

Low Moss House

Reservoir

Old Level (Lead)

Swin Hope

High Moss House

Swinhope Edge



Springs

Swinhope Shield

Low Hayrake

Spring

Stopping Stones

Newmilk Spring

Spring

Spring

Spring

Spring

Limekiln

Head

Spring

Pasture Nook

Clayhole

Swinhope Row

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D3

E. Appendix 4

Response to Steve Byrne representation re the removal of land from the Commons Register – Clayhole, Swinhope, Spartylea, Allendale

- 1) In his opening sentence in para one, Mr Byrne states that he has not had the opportunity to examine the application papers. This is critical to the remaining points raised by Mr Byrne as the plan used to register the common, provided with my application (LS2), clearly excludes the land which falls within the curtilage of Clayhole. As such it is my opinion that the Commons Registration Authority, in transposing the boundary from the application plan to the registry plan, made an error and included land within the curtilage of Clayhole by mistake.
- 2) The remaining points raised, whilst correct so far as the legislation is concerned, are not relevant in this particular case as evidence submitted clearly shows a mistake has been made by including land within the curtilage of Clayhole within the common. I am sure if Mr Byrne had details of the relevant application documentation this would be apparent.

Response to Open Spaces Society representation re the removal of land from the Commons Register – Clayhole, Swinhope, Spartylea, Allendale

- 1) It is pleasing to note that the Open Spaces Society acknowledge, based on the evidence provided, that a mistake was made by the authority in recording the boundary of the common at this point, which is amendable to rectification under Section 19.
- 2) It is however disappointing that they question the extent of the land included in my application compared to that marked on the conveyance dated the 6th July 1920 (LS 5) and the application plan to register the common dated 29th December 1966 (LS 2). I accept that the area marked on that conveyance does differ in shape to the application land however based on that conveyance plan, the southern boundary, I would suggest, extends further west than that contained in my application and would in fact include the access track onto the common.
- 3) The Open Spaces Society do not make reference to the plan attached to the conveyance dated 22nd February 1913 (LS 4), the ordnance survey plan circa 1923 (LS11), the ordnance survey plan circa 1953 (LS 12), or the register plan itself (LS 6), which show more accurately the shape (more or less rectangular) and extent of the curtilage. This rectangle also I believe, replicates the shape of the land excluded from the common as shown on the application plan accompanying the application to register the common dated 29th December 1966, which clearly excludes land to the west of the building, although because of the scale one could argue about the exact position of the line. Paragraph 4.3 of Defras guidance on The Commons Registration Act 1965 – How the commons registers were prepared makes reference to:-

4.3 - In addition to recording applications in the textual part of the registers, applications to provisionally register land also resulted in an amendment to the register map. These maps were generally prepared at a scale of six inches to one mile which, in some cases, made it difficult to accurately transfer boundaries from an application form onto the register map. This occasionally resulted in drafting errors. The scale also means that in some cases the maps can be ambiguous as to the exact location of a boundary (e.g. the width of a boundary line on the map may translate to a band of uncertainty of several metres on the ground).
- 4) Notwithstanding that contained in 3 above, the Land Registry, in completing the registration of the property on the 19th February 2015, ND179121 (LS3), were obviously satisfied that adequate evidence of title existed to complete the registration, (Title Absolute), and accurately determine the extent of the boundary. This is further evidenced by the physical features on site namely the remains of the northern and western boundaries of the curtilage (LS 7 & 8) in the form of the remains of the boundary wall and mature trees. This boundary, I believe, is that which is excluded from the application plan to register the common.

- 5) I believe that the evidence provided in my application confirms beyond reasonable doubt that the Commons Registration Authority made a mistake in transposing the boundary of the common from the application plan to the register plan and in by doing so incorrectly included land within the curtilage of Clayhole within the common. The plan submitted with the application dated the 29th of December 1966, to register the common, clearly excludes land which is within the curtilage of Clayhole but this was not reflected in the register plan.