

Commons Registration Act 1965
Commons Registration (General) Regulations 1966 (as amended)

**Application for the Amendment of the Register in relation to Rights of
Common on Common Land registered as Entry 9 in the Rights Section of
Register Unit CL23**
(Appendices 'A' and 'B' refer)

Contact for further information:
Jane Turner, (01772) 532 813, Office of the Chief Executive
Jane.turner@lancashire.gov.uk

Executive Summary

Application from John Mark Lawson and Doreen Lawson trading as ' J & A Lawson & Son' of High Threaber Farm, Westhouse, to register a transfer of rights of common away from the land.

Recommendation

That the Application be not accepted and the register be not amended.

Background and Advice

The Commons Registration Act 1965 (the 1965 Act) made provision for the registration of common land and of town or village greens. Registration Authorities were created to maintain two registers, one for common land and the other for town and village greens. This Act was repealed in Lancashire last year however legislators provided that applications which had already been received in respect of transfers of grazing rights may continue to be dealt with as if section 13(c) of the 1965 Act had not been repealed. The County Council is the Registration Authority for the County of Lancashire and has previously delegated the function concerning amending the register of rights of common to the Sub-Committee.

The Commons Registration Act 1965 makes provision in Section 13 for Regulations to provide for the amendment of the registers where in Section 13(c) "any rights registered under this Act are apportioned, extinguished or released or are varied or transferred". One set of Regulations made are the Commons Registration (General)

Regulations 1966 as amended in 1968. Regulation 29 provides that where a right of common "being or having become a rights in gross, has been transferred" an application may be made by the transferee for the amendment of the register.

The Commons Registration Act is now repealed in Lancashire but a savings provision states that applications made under Section 13(c) of the 1965 Act before 1st October 2008 shall be dealt with as if Section 13(c) had not been repealed.

The Registration Authority had received an application under Section 13 of the 1965 Act prior to October 2008 for the all rights registered under entry number 9 as attached to Nether Beck Farm to graze 33 sheep over the unit of common land CL23 to be shown as now held by the Applicants and no longer attached to land.

The Applicants have sought to show that these rights were severed from the land and eventually bought by them in 1995.

It is apparent that the rights at present are shown as registered as attached to land known as Nether Beck Farm, West House as shown on the supplemental map attached (Appendices 'A' and 'B' refer). The rights were registered by a Mr and Mrs Diggle as being attached to the land.

Documentation has been received showing the following:

- A hand written receipt by Mr Diggle on the notepaper headed JK and AV Diggle Ltd of Nether Beck Farm for a sum of money paid on 17th August 1971 by a Mr Bracken of Over Hall Ireby for the "sale of 33 sheep gaits on Ireby Fell".
- A copy of the will of Mr Bracken bequeathing his estate to Mrs Catherine Mary Bracken.
- Copy of a Deed whereby the Applicants purchased the "33 sheep gaits on Ireby Fell Lancashire Register Unit CL23 Entry no. 9 of the Rights Section of the Register of Common Land" from the attorneys of Mrs Bracken in 1995.

It is advised that if the application is well founded the appropriate amendments to the register should be made. The Statutory provisions specifically provide for amendment of the register in cases of transfer of rights in gross.

It is advised that a grazing right for a fixed number of animals is a right in gross and the law recognised that such a right can be sold separately from the land, i.e. severed from the farm to which they were attached so long as severance predated 28th June 2005. The Commons Act 2006 (section 9) makes severance after that date ineffective save under certain conditions.

It is however advised that severance of common rights should be by Deed. Rights in Gross are separate incorporeal hereditaments. In this matter the sale of the rights without the land is evidenced only by the receipt from Mr Diggle in 1971. This

appears to be after at least some of the land passed to Mr Haslam (see below) and no Deed has been found.

Therefore it is advised that there is not sufficient evidence of legal severance and although purchased by the Applicants there is not sufficient evidence that Mrs Bracken held the rights in gross to sell them.

Consultations

Notices were given to persons appearing from the register to be interested in the rights of common as above.

An owner of part of the land on the supplemental map contacted the authority. She had not thought that she had any sheep rights and did not think that Mr Bracken had owned the Nether Beck sheep rights. She did not think that the Brackens had owned Nether Beck but was aware that the Diggles had been owners.

Solicitors for another owner of part of the land refers to their client , Mr Haslam, owning Nether Beck since 1970 and the farm being in the ownership of family members since 1956. He nor his predecessor had no knowledge of how the Lawson's could claim grazing rights but he also did not claim that the rights still attached to his land.

Implications:

This item has the following implications, as indicated:

Risk management

Consideration has been given to the risk management implications associated with this proposal. The Sub-Committee is advised that, provided the decision is taken in accordance with the advice and guidance given, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

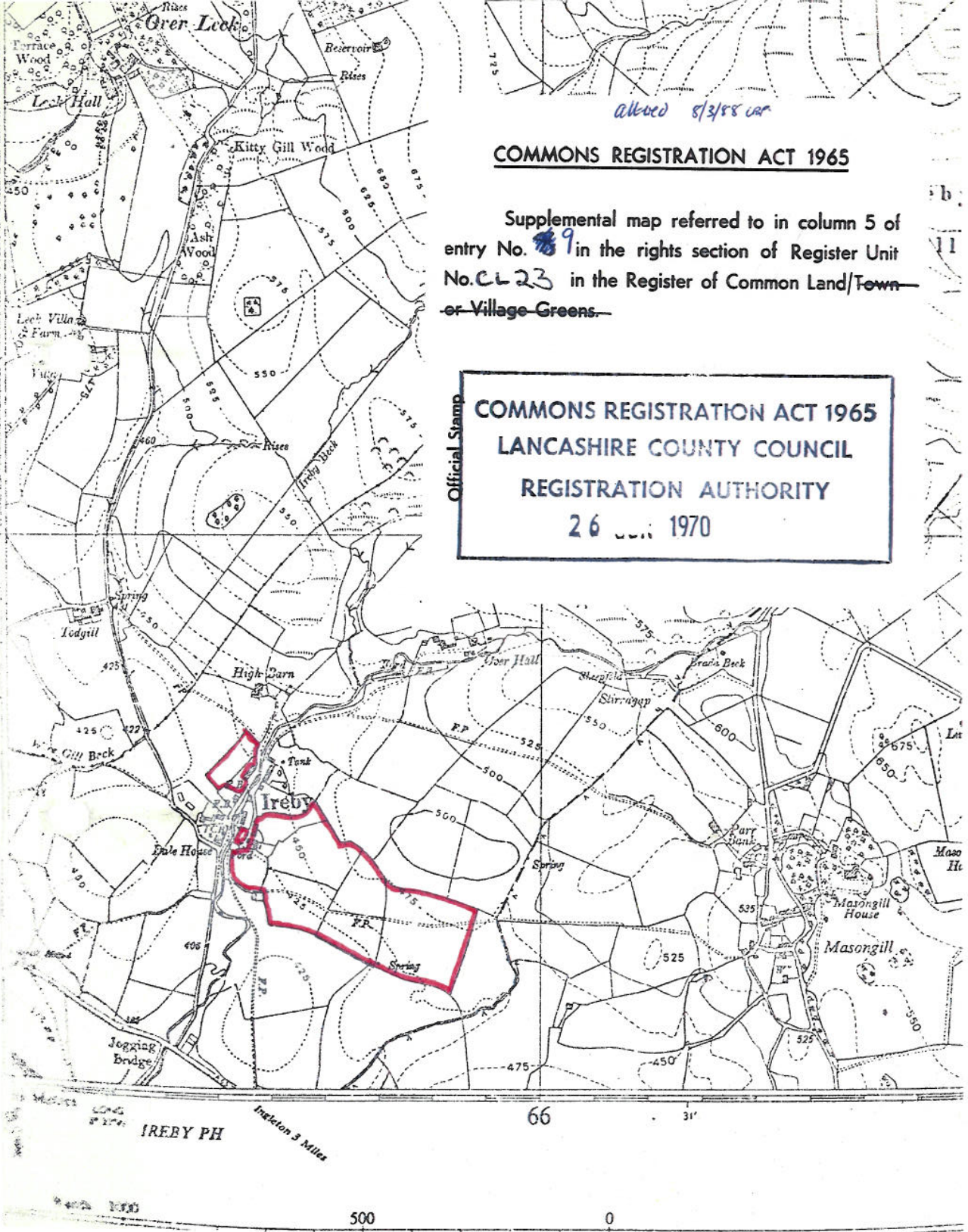
Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
Files of papers denoted 3.462		Jane Turner Office of Chief Executive Ext. 32813

Reason for inclusion in Part II, if appropriate

N/A



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COMMONS REGISTRATION ACT 1965

Supplemental map referred to in column 5 of entry No. 9 in the rights section of Register Unit No. CL 23 in the Register of Common Land/Town or Village Greens.

COMMONS REGISTRATION ACT 1965
LANCASHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
26 JUN 1970

Official Stamp

IREBY PH

Ingleton 3 Miles

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Register of COMMON LAND

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

See Overleaf
for Notes

RIGHTS SECTION—Sheet No.

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
9 26th June, 1970 (See entry No. 11 below)	1281 2nd January, 1970	John Kay Diggle and Ann Vipont Diggle, Nether Beck, Ireby, Kirkby Lonsdale, Lancashire. Owners.	To graze 33 sheep over the whole of the land comprised in this register unit. (Registration provisional)	Nether Beck, Ireby, Kirkby Lonsdale, Lancashire as shown edged red on the supplemental map bearing the number of this registration.
10 5th January 1971				The registrations at entries 1, 2 and 3, being undisputed, became final on 1st October, 1970.
11 9th August, 1972				The registrations at entries Nos 4 to 9 above, being undisputed, became final on 1st August, 1972