

Lancashire County Council

Regulatory Committee

Wednesday, 6th April, 2016 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Supplementary Agenda

We are now able to enclose, for consideration at the next meeting of the Regulatory Committee on Wednesday, 6th April, 2016, the following information which was unavailable when the agenda was despatched.

Part I (Open to Press and Public)

No. Item

7. Urgent Business (Pages 1 - 12)

Application to amend the Register to record a Transfer of a Right of Common in gross

The Chair has agreed that this matter be dealt with at an item of urgent business.

I Young
Director of Governance,
Finance and Public Services

County Hall
Preston

Regulatory Committee

Meeting to be held on 6th April 2016

Electoral Division affected: Lancaster Rural East
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Commons Act 2006 Section 12 The Commons Registration (England) Regulations 2014

Application to amend the Register to record a Transfer of a Right of Common in gross

(Appendices 'A', 'B' and 'C' refer)

Contact for further information:

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Executive Summary

An application from Paul John France and Mark Kelsall France to record a transfer of a right of common currently held in gross.

Recommendation

That the application be accepted and the transfer of rights in gross be recorded in the Commons Register in accordance with the Commons Registration (England) Regulations 2014 that Mr Paul John France and Mr Mark Kelsall France are entitled to the right to graze 79 and a half sheepgates over the whole of CL23.

Background and Advice

The Commons Act 2006 (the 2006 Act) makes provision for the registration of common land and of town and village greens. Registration Authorities were created to maintain two registers, one for common land and the other for village greens. The County Council is the Registration Authority for the County of Lancashire and has previously delegated powers and functions concerning alteration of the registers to the Commons and Town Greens Sub-Committee. These powers are now with the Regulatory Committee.

Section 12 Commons Act 2006 states that, the transfer of a right of common which is registered in a register of common land or town or village greens but is not registered as attached to any land only has effect if it complies with such requirements as to form and content as regulations may provide; and does not operate at law until, on an application under this section, the transferee is registered in the register as the owner of the right.

Such applications can only be made by either the registered owner of the right in gross or the transferee of that right, meaning the person to whom the right in gross will be transferred. Further, where the applicant is the transferee, consent must be obtained from the registered owner of the right in gross.

In this matter the rights currently held in gross were attached to Bell Hill Farm, Littledale. The rights previously registered under Rights Entry 3 were to graze sheep to a limit of 79 and a half sheepgates (one ewe together with followers and a hog counting as one sheepgate) over the whole of Common Land Unit CL123 otherwise known as Black Fell, Blanch Fell and Haylot Fell.

At a meeting of the Commons and Town Greens Sub-Committee held on the 22nd September 2011, the minutes of which are attached as Appendix 'A', a report was presented to the Sub-Committee on an Application from William Alan Huddleston, Margaret Elizabeth Atkin, Christine Mary Sayer and Barbara Ruth Huddleston. The Application was to register the severance of the rights away from the land at Bell Hill Farm and the subsequent transfer of those rights to the Applicants in that matter to be held in gross. It was resolved by the Sub-Committee that the application be accepted and the Commons Register was duly amended and updated.

On the 15th August 2012, William Alan Huddleston, Barbara Ruth Huddleston, Christine Mary Sayer and Margaret Elizabeth Atkin, transferred land at Bell Hill Farm, part of LA916839 and land at Bell Hill, part of LA126196 to the Applicants. In addition the rights to graze 79 and half sheepgates comprised in the Register entry relating to CL123 were also transferred to the Applicants with full title guarantee. The transfer is referred to in the Land Registry Title LA133886, at section 8 of the Property Register which is attached as Appendix 'B'. The corresponding Land Registry Title Plan is attached as Appendix 'C'

It is advised that if the application is well founded then the application be accepted and the transfer of the right of common be recorded in the Commons Register.

Consultations

Notice of the application was given on the County Council web site and also to all parties who have requested to be notified of applications under the 2006 Act.

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 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/Tel
File of papers denoted 3.682		Danielle Jay Legal and Democratic Services Ext 535526

Reason for inclusion in Part II, if appropriate

N/A

4. Minutes of the Meeting held on 7 February 2011

Resolved: That, the Minutes of the meeting held on the 7 February 2011 be confirmed and signed by the Chairman.

5. Commons Act 2006 Schedule 3 Commons Registration (England) (Amendment) Regulations 2009

Application for the Amendment of a Register in relation to Rights of Common being grazing rights registered as Entry 3 in the Rights section of Register Unit CL123, Black fell, Blanch Fell and Haylot Fell Littledale, Lancaster

A report was presented on an Application from William Alan Huddleston, Margaret Elizabeth Atkin, Christine Mary Sayer and Barbara Ruth Huddleston to register severance of the rights away from land at Bell Hill Farm and then subsequent transfer of rights to the Applicants which were rights in gross.

The Sub-Committee was informed that the rights at present were registered as being the right to graze sheep to a limit of 79 and a half sheepgates (one ewe together with followers and a hog counting as the sheepgate) over the whole of CL123 and that these rights were currently shown as attached to land at Bell Hill Farm Littledale as shown on the supplemental map with the Registers referred to in the report. Copies of various Deeds had been provided and the Deed plan which was marked on the agenda as to be presented at the meeting (due to its large size) was shown to the Sub-Committee to illustrate that the farm, along with its grazing rights, was purchased in 1951 by Edward and Mary Huddleston to which parts of the land had since been transferred.

It was reported that the first transfer was in 1985 and that the grazing rights were expressly reserved to Edward and Mary Huddleston. It was a Deed of Gift of a small part of the farm and it was agreed and declared that it "does not include (and there are expressly reserved to the Donors) all those rights of common sheep and cattle gaits on Black Fell Blanche Fell and Haylot Fell appurtenant to Bell Hill Farm". It was arguable that this was when all the rights became severed but it was suggested that on balance it was not clear enough and it might be considered that only those rights attached to the small section being transferred were severed at this time. The Sub-Committee was advised that these few rights were then held in gross by Edward and Mary Huddleston.

It was also reported that there were further transfers in 1991 with rights retained by Mary Huddleston and a trustee, as Mr Huddleston had died. The Solicitors confirmed the rights in gross had passed to Mary Huddleston and Mr Gillibrand on the death of Mr Edward Huddleston. There was then a transfer of part of the farm in January 2002 but the rights had not been mentioned and in August 2002 there was the transfer of most of the remainder of the land together with all the commons rights as per the 1951 purchase to the applicants.

It was reported that notice of the application had been duly served according to the Regulations and that no response had been received save for further details being requested by a neighbouring landowner but no objection raised and a visit to inspect the file by a rights holder.

The Sub-Committee was advised that if the application was well founded the appropriate amendment to the register should be made.

The Sub-Committee was also advised that some rights were expressly reserved and thereby were not transferred with the land but became severed in 1985 and 1991. The small piece of land at the farm which had not been the subject of any transfer had any rights which were attached to it were sold separately in 2002 when all the rights were stated to be transferred to the applicants.

It was reported that the Solicitors who acted for the purchasers in 2002 confirmed that there was no intention to transfer any grazing rights and confirmed that the purchaser made no claim to any grazing rights nor believed that they ever held any. They were not aware of them exercising any rights. A letter direct from the purchasers confirmed their belief that their Solicitors could provide the information about the grazing rights. The Sub-Committee was informed that only a few months after the sale, were the rights then transferred to the applicants separately from the land.

The Sub-Committee was advised that, on balance there would appear to be sufficient evidence of the rights being severed at various times to end up held in gross by Mr and Mrs Huddleston and then Mrs Huddleston and Mr Gillibrand as trustee and that they then transferred the rights to the Applicants in 2002. It was considered that the severance and transfer should now be shown on the Register and the rights shown as jointly held in gross by the Applicants.

Resolved: That

- i. The application to register the severance of rights and transfer in gross to the applicants jointly of the rights registered in Entry 3 of the Rights Section of CL123 namely the right to graze sheep to a limit of 79 and a half sheepgates (one ewe together with followers and a hog counting as the sheepgate) over the whole of CL123 be accepted; and
- ii. The register be amended in accordance with the Commons Registration (England) Regulations 2008 as amended to register said severance and transfer.

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED FROM HM LAND REGISTRY SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 11 MAY 2015 AT 15:12:16. BUT PLEASE NOTE THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT IN THE SAME WAY AS AN OFFICIAL COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE OR SHE SUFFERS LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

THIS TITLE IS DEALT WITH BY LAND REGISTRY, FYLDE OFFICE.

TITLE NUMBER: LAN133886

There is no application or official search pending against this title.

A: Property Register

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

LANCASHIRE : LANCASTER

- 1 The Freehold land shown edged with red on the plan of the above title filed at the Registry and being land at Bell Hill Farm, Littledale, Lancaster.
- 2 (20.02.2012) The land has the benefit of the rights reserved by but is subject to the rights granted by a Deed dated 31 December 1985 made between (1) Edward Huddleston and Mary Huddleston and (2) John Richard Huddleston and Margaret Helen Huddleston.

NOTE: Copy filed under LAN126196.

- 3 (05.08.2002) The land tinted pink on the title plan has the benefit of the following rights reserved by a Conveyance of Bell Hill Farm dated 22 July 1991 made between (1) Mary Huddleston and Richard Martin Nuttall Gillibrand and (2) John Richard Huddleston and Margaret Helen Huddleston:-

"Excepting and Reserving unto the Vendors and their successors in title the owners and occupiers for the time being of the remainder of Bell Hill Farm the right to the free flow of water through the existing water pipe situate under the parcel of land numbered 7052 on the Ordnance Survey Map and any replacement thereof together with a right to enter upon such land for the purpose of inspection maintenance repair and renewal of such pipe the Vendors or other persons exercising such rights making good all damage occasioned in the exercise thereof and reserving also to the Vendors any sheep gaits or other rights of grazing or of common appurtenant to Bell Hill Farm."

NOTE: Copy plan filed under LA916839.

- 4 (05.08.2002) The land has the benefit of the rights reserved by a Transfer of the land tinted pink on the title plan and other land dated 1 August 2002 made between (1) Mary Huddleston and Richard Martin Nuttall Gillibrand and (2) William Alan Huddleston and others.

NOTE: Original filed under LA916839.

- 5 (20.02.2012) The land tinted blue on the title plan has the benefit of the rights granted by a Deed dated 10 June 2003 made between (1) William Alan Huddleston and others and (2) Mary Huddleston and Richard Martin Nuttall Gillibrand.

NOTE: No copy of the deed referred to is held by Land Registry.

- 6 (22.10.2012) The land has the benefit of the rights reserved by a Transfer of Udale Barn dated 7 November 2003 made between (1) Mary Huddleston and Richard Martin Nuttall Gillibrand and (2) Timothy Mark Preece and Amelia Margaret Preece.

NOTE: Copy filed under LA950555.

- 7 (22.10.2012) The land has the benefit of the rights reserved by a

A: Property Register continued

Transfer of Wisp Cottage dated 21 November 2003 made between (1) Mary Huddleston and Richard Martin Nuttall Gillibrand and (2) Timothy Mark Preece and Amelia Margaret Preece.

NOTE: Copy filed under LA950548.

- 8 (22.10.2012) The land has the benefit of the rights granted by a Transfer of the land in this title dated 15 August 2012 made between (1) William Alan Huddleston and others and (2) Paul John France and Mark Kelsall France.

NOTE: Copy filed.

- 9 (05.08.2002) The Transfer dated 1 August 2002 referred to above contains provisions as to other matters.

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 (22.10.2012) PROPRIETOR: PAUL JOHN FRANCE of Cross Ghyll Farm, Littledale, Lancaster LA2 9EX and MARK KELSALL FRANCE of Foxdale Cottage, Littledale, Lancaster LA2 9EX.
- 2 (22.10.2012) The price stated to have been paid on 15 August 2012 was £270,000.
- 3 (22.10.2012) RESTRICTION: No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.
- 4 (22.10.2012) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the Charge dated 15 August 2012 in favour of The Agricultural Mortgage Corporation PLC referred to in the Charges Register.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (20.02.2012) The tinted blue on the title plan is subject to the following rights reserved by a Conveyance thereof and other land dated 5 June 1951 made between (1) Harold Howarth and Beatrice Howarth (Vendors) and (2) Edward Huddleston and Mary Huddleston (Purchasers):-

"SUBJECT to all existing rights of way water drainage and other easements (if any) affecting the same"
- 2 (22.10.2012) A Deed dated 18 July 2003 made between (1) Mary Huddleston and Richard Martin Nuttall Gillibrand (2) Jeremy Henry Moore Newsum and others and (3) William Alan Huddleston and others relates to maintenance of an Accessway.

NOTE: Copy filed under LA681037.

- 3 (23.12.2004) The land is subject to the rights granted by a Deed of Grant dated 30 July 2004 made between (1) William Alan Huddleston and others and (2) Timothy Mark Preece and others.

The said Deed also contains restrictive covenants by the grantor.

C: Charges Register continued

NOTE: Copy filed under LA966598.

- 4 (20.02.2012) The land tinted blue on the title plan is subject to the following rights granted by a Transfer of the land tinted yellow on the title plan dated 6 February 2012 made between (1) Richard Martin Nuttall Gillibrand and Barbara Ruth Huddleston and (2) Phillip John Durow and Pamela Jean Whalley:-

"The Property is sold together with a right of way for all purposes and at all times with or without vehicles for access to and egress from the Property

.....

over the land shown coloured brown on Plan 1 subject to the Transferees and their successors in title contributing to the maintenance and upkeep of the said land according to user"

NOTE: The land coloured brown referred to is edged blue on the title plan.

- 5 (20.02.2012) The land tinted blue on the title plan is subject to the following rights granted by a Transfer of the land tinted brown on the title plan dated 6 February 2012 made between (1) Richard Martin Nuttall Gillibrand and Barbara Ruth Huddleston (Transferors) and (2) Timothy Preece and Amelia Preece (Transferees):-

"The Property is sold together with a right of way for all purposes and at all times with or without vehicles for access to and egress from the Property

.....

over the land shown coloured brown on Plan 1 subject to the Transferees and their successors in title contributing to the maintenance and upkeep of the said land according to user"

NOTE: The land coloured brown referred to has been edged blue on the title plan.

- 6 (22.10.2012) REGISTERED CHARGE dated 15 August 2012.

- 7 (22.10.2012) Proprietor: THE AGRICULTURAL MORTGAGE CORPORATION PLC (Co. Regn. No. 234742) of Charlton Place, Charlton Road, Andover, Hants. SP10 1RE.

End of register

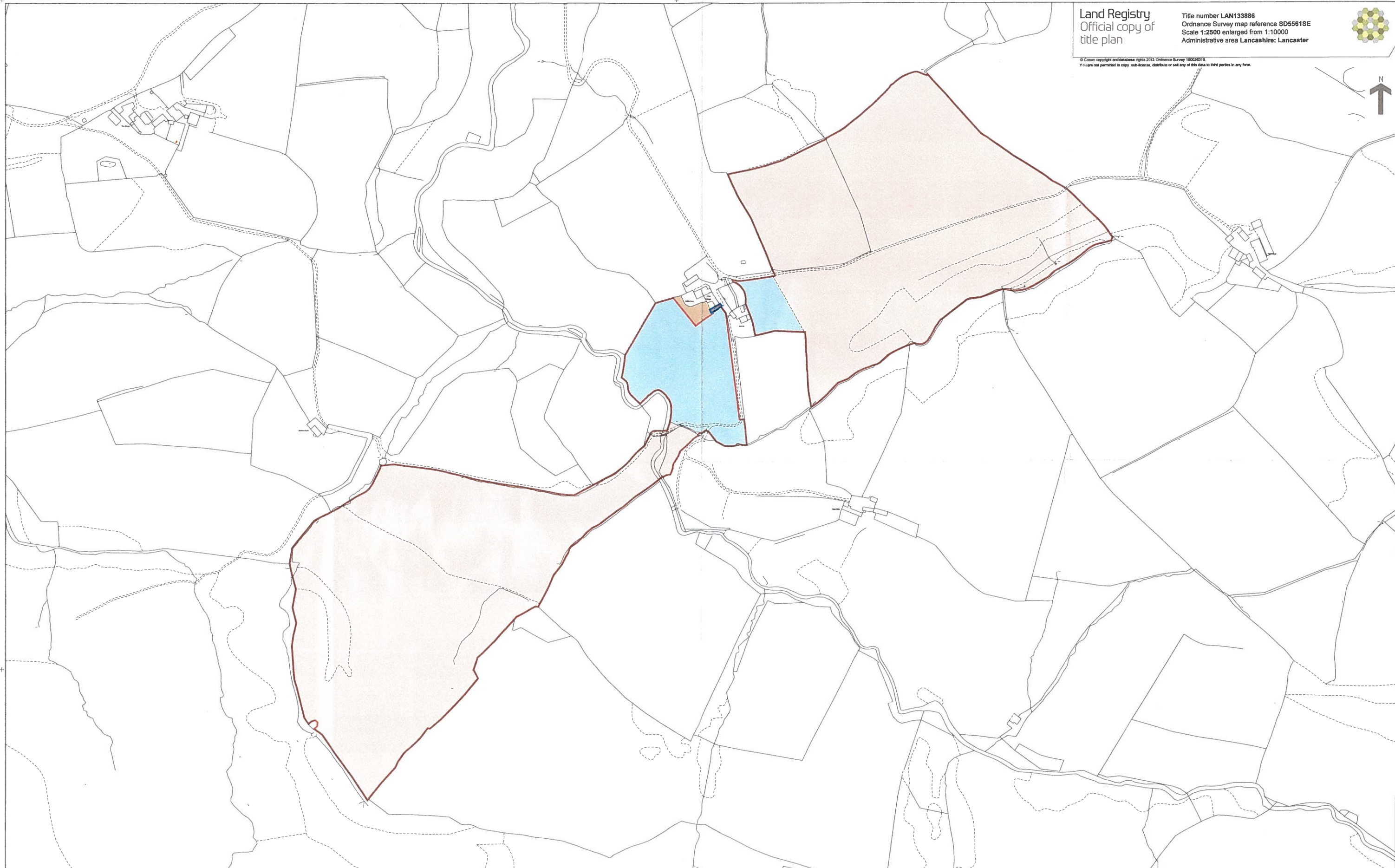
Appendix C

Land Registry
Official copy of
title plan

Title number LAN133886
Ordnance Survey map reference SD5561SE
Scale 1:2500 enlarged from 1:10000
Administrative area Lancashire: Lancaster



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This official copy issued on 30 March 2016 shows the state of this title plan on 30 March 2016 at 15:55:28. 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.

