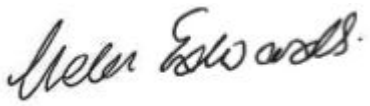
The Commons Act 2006, application under Schedule 2(7)
The Commons Registration (England) Regulations 2014.
Decision regarding application to correct the register of Common Land by the removal of land registered as CL54 at Upper Sheringham, Norfolk

Notice is hereby given that an application made by Hansells Solicitors, instruction later passed to Leathes Prior LLP, on behalf of the Sheringham Poors and Ploughlets Trust to Norfolk County Council as the Commons Registration Authority, to remove from the register of common land the area of land known as CL54 at Upper Sheringham, Norfolk as hatched and edged in blue on the plan which accompanies this Notice, has been granted.

The reasons for the decision can be found in the 'Final Decision' document which accompanies this notice. That land as marked on the plan accompanying this notice is removed from the Common Land register.

Dated: 07/07/2022

Signed 

Helen Edwards
Director of Governance
Norfolk County Council

COMMONS ACT 2006 Schedule 2, para. 7

The Commons Registration (England) Regulations 2014 No.3038

Application to deregister land at CL54 Upper Sheringham Common, Norfolk incorrectly registered as common land CL54/70574

FINAL DECISION

Application was made to Norfolk County Council (NCC) as Commons Registration Authority (CRA) to correct the register of Common Land by removing the area of land hatched blue on the plan attached to this Decision under Schedule 2, paragraph 7 of the Commons Act 2006.

Schedule 2, paragraph 7, of the Commons Act 2006 allows applications to correct certain errors in the registers. Schedule 2, paragraph 7 reads as follows:-

Other land wrongly registered as common land

7 (1) If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove the land from its register of common land.

(2) This paragraph applies to land where —

(a) the land was provisionally registered as common land under section 4 of the 1965 Act;

(b) the provisional registration of the land as common land was not referred to a Commons Commissioner under section 5 of the 1965 Act;

(c) the provisional registration became final; and

(d) immediately before its provisional registration the land was not any of the following —

(i) land subject to rights of common;

(ii) waste land of a manor;

(iii) a town or village green within the meaning of the 1965 Act as originally enacted; or

(iv) land of a description specified in section 11 of the Inclosure Act 1845 (c. 118).

(3) A commons registration authority may only remove land under sub-paragraph (1) acting on —

(a) the application of any person made before such date as regulations may specify; or

(b) a proposal made and published by the authority before such date as regulations may specify.

The onus on proving the case in support of the application rests with the applicant and it is for the applicant to supply sufficient evidence which would merit granting the application, on the balance of probabilities.

Was the land wrongly registered as common land in 1967 on the balance of probability (the civil burden of proof)? Based on the evidence adduced by the applicant, the answer is yes.

The application satisfactorily meets the tests set out in Schedule 2(7)(2)(a-c) with further comment on the Schedule 2(7)(2)(d) below;

Paragraph 7(2)(d)(i) Immediately prior to registration was the land subject to rights of common?

There are no registered rights of common over the land. The Inclosure Award was provided and is deemed sufficient proof that any rights of common, if they existed, would have been extinguished over the application land. No other evidence adduced by the applicant is indicative that any new rights were acquired over the land. Furthermore, there is no evidence in CRA files of any cancelled applications for rights of common over this land.

- Paragraph 7(2)(d)(ii) Immediately prior to registration was the land waste land of a manor?

In relation to Common Land, the legal authority on which to judge whether land is waste land is Attorney General v Hanmer (1859). Waste land of the manor was defined as “the open, uncultivated and unoccupied lands parcel of the manor…other than the demesne lands of the manor”

Was the land open?

Norfolk County Council as CRA is satisfied that the land does not meet the 'open' definition of waste land, largely as a result of the supplied Inclosure Award. This Award required the allotment of land to be fenced in part by the trustees, and otherwise to be fenced by the adjoining allotees. These barriers were to be maintained 'for ever hereafter'. The Tithe Award of 1838 shows the entirety of land as enclosed. In addition, there are further indications in the minute books of the Sheringham Poors and Ploughlets Trust (in 1908, 1932 and 1949) that the fencing of the common was maintained well into the 20th century. Contemporaneous Ordnance Survey maps are consistent with these recorded minutes. It is thus more likely than not to have been enclosed in this way since Inclosure. It is for these reasons it is deemed that the land does not satisfy the Hanmer test in terms of being 'open' immediately prior to provisional registration.

Was the land unoccupied?

Land is not necessarily considered occupied if it is leased as a lease does not necessarily prevent others from using it. In the case of this land, the evidence adduced by the applicant shows that the land was let out from 1909 up until the year of provisional registration, 1967. While it is acknowledged that there is little in the adduced evidence regarding specific occupation of the land, it would seem that when taking into account the leases from the early to mid-20th century and the Inclosure Award the land could be considered occupied. The land was let by the charity to obtain an income to benefit those in the locality. While finely balanced it is for the above reasons that the CRA concludes the land was occupied immediately prior to its provisional registration and does not meet the Hamner test in terms of being 'unoccupied'.

Was the land uncultivated?

The witness evidence provided was indicative of the land being uncultivated, it was stated that the property 'was a piece of rough land covered in bracken with some trees' and 'I cannot recall the Property ever being used for the grazing of livestock, herbage or pannage as the ground was too rough'. A contemporaneous Ordnance Survey map is suggestive the assertions are correct with regard the state of the land.

Thus, it is deemed the land meets the Hanmer test of being uncultivated at the time of provisional registration.

The land was inclosed by the Inclosure Act of 1811. Gadsden, a leading expert on Common Land matters states that 'Inclosure of waste is probably the most unequivocal act possible to indicate an intention to take the land into demesne."[1] If the land was manorial waste before enclosure, and no evidence was found to suggest it was, then post inclosure it was certainly not. Since this date the land has been owned, fenced and leased. Whilst the land could have been of manorial origin, and was uncultivated at the time of provisional registration, there is sufficient evidence to show on the balance of probabilities the land was both enclosed and occupied, immediately prior to provisional registration, and therefore cannot be considered waste land of a manor at that time.

- Paragraph 7(2)(d)(iii) Immediately prior to registration was the land a town or village green within the meaning of the 1965 Act as originally enacted?

The Inclosure Award did not allot the land for the recreation of the inhabitants. Witness testimony provided states 'The property was also not used as a town or village green…'. Statement of truths are good evidence of the status of the land contemporaneous to its registration. Further, the land's geographic location is indicative that such use is unlikely.

- Paragraph 7(2)(d)(iv) Immediately prior to registration was the land of a description specified in section 11 of the Inclosure Act 1845?

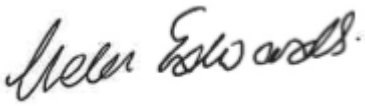
The applicant provided a copy of the relevant Inclosure Act. Such evidence is usually conclusive that no rights as per Section 11 subsisted following inclosure. The CRA agrees with a view expressed by a respondent that '… the evidence of inclosure means that any such rights as are specified in s.11 of the 1845 Act were, if subsisting, extinguished at inclosure, and are unlikely to have been acquired

[1] Cousins, EF & Honey, R, (2012) Gadsden on Commons and Greens, 2 nd Edition, Sweet & Maxwell, London

subsequently.' Indeed, none of the other evidence adduced by the applicant nor any interested party is suggestive of such rights being acquired post-inclosure.

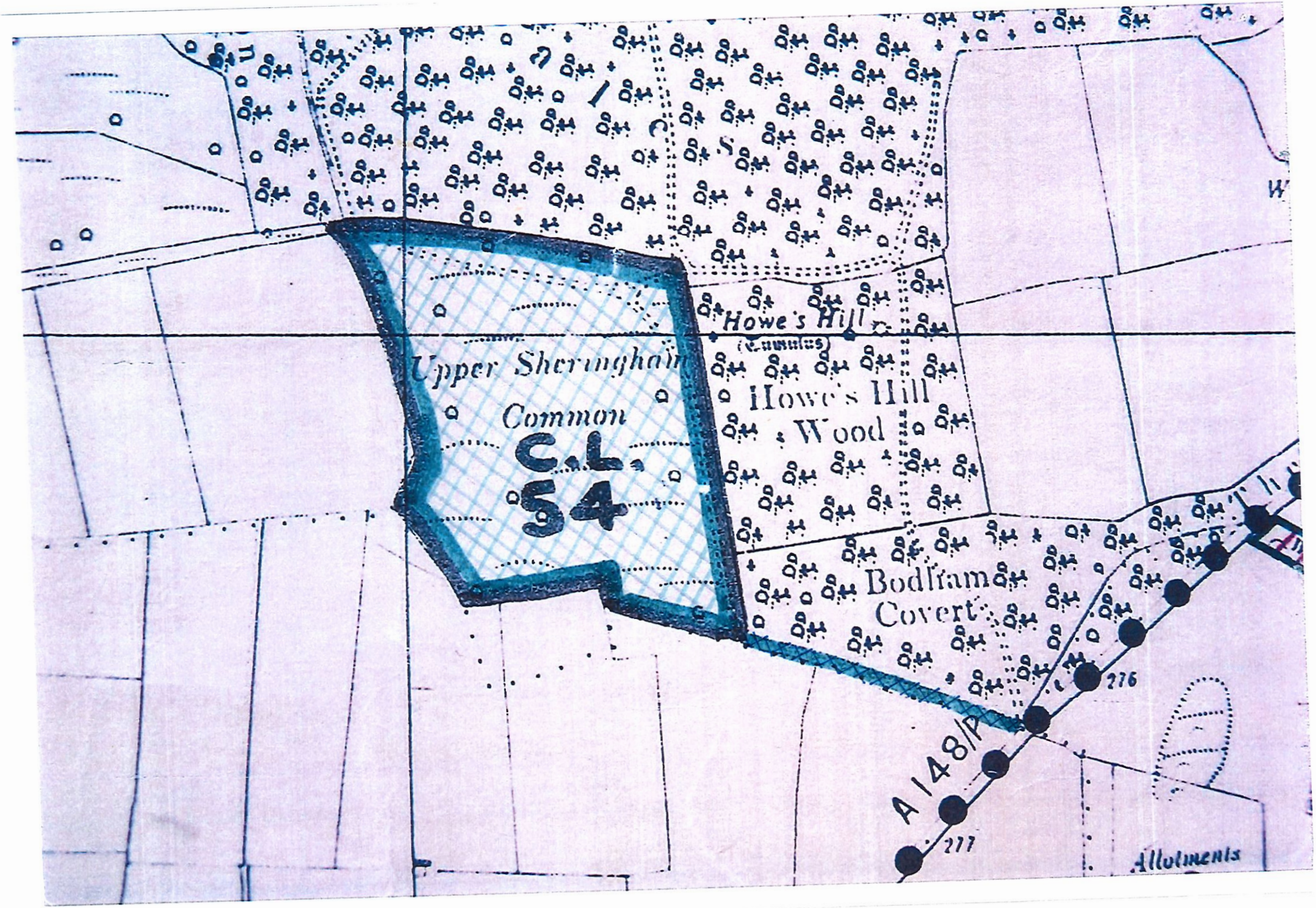
As the application satisfactorily meets all of the criteria set out in Schedule 2 Paragraph 7(2)(d)(i-iv) on the balance of probabilities, the application is granted. The area of land known as CL54, Upper Sheringham Common is removed from the Common Land Register for Norfolk.

N.B. Those who made representations were offered the opportunity to make oral representations by means of a Hearing - no Hearing was requested.



Helen Edwards,
Director of Governance
Norfolk County Council

Date 7th July 2022


Upper Sheringham
Common
C.L.
54
Howe's Hill
(Remains)
Howe's Hill
Wood
Bodfram
Covert
276
277
A148/P
Allotments