

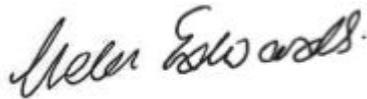
**The Commons Act 2006, application under Schedule 2(7)  
The Commons Registration (England) Regulations 2014.  
Decision regarding application to correct the register of common land by the  
removal of land registered as common at Eaton, Norwich under Unit number  
CL1 NOR**

Notice is hereby given that an application made by Hansells Solicitors on behalf of Mr & Mrs Bradshaw to Norfolk County Council as the Commons Registration Authority, to remove a parcel land from the register of common land at Eaton, Norwich as hatched and edged in blue on the plan which accompanies this Notice, was heard by means of oral representations by the Director of Governance of Norfolk County Council on Friday 18 June 2021 via Microsoft Teams.

The application was granted. The reasons for the decision can be found in the 'Decision Notice' document which accompanies this notice. That piece of land as marked on the plan accompanying this notice has been removed from the Common Land registers for CL1 NOR.

Dated: 23/06/2021

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 Eaton Common, Norwich, incorrectly registered as common land CL1 NOR/2/59951**

**DECISION**

Application was made to correct the register of Common Land by removing the area of land hatched blue on the plan attached to the 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 1854 (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.

A draft decision was previously issued on 20 February 2020, by Jane Linley acting under a delegation from the Chief Legal Officer. The draft decision was that the applicant had not met the burden of proof required to remove the land from the register of Common Land on the basis that it was wrongly registered.

In the draft decision it was accepted that the applicant had met two of the legal tests.

It was deemed that at the time of registration the land was not subject to rights of common (7(2)(d)(i), due to the content of the Tithe apportionment – allotting the land as arable – and detail from the Commons Commissioners Hearing of 1996 – describing frequent conveyancing, letting and leasing for grazing.

It was also deemed that the land was not waste of a manor (7(2)(d)(ii), due to the content of the Tithe apportionment, comment from an Archivist at the Norfolk record Office and subsequent leasing, conveyancing and letting as cited in a Commons Commissioners hearing from 1996.

At the time of the draft decision the application failed on the two other criteria due to a lack of evidence adduced.

Under para 7(2)(d)(iii) a lack of sufficient evidence provided meant that it was not possible to determine on the balance of probabilities that the land was not a town or village green within the meaning of the 1965 Act as enacted, immediately prior to registration.

Under para 7(2)(d)(iv) no Inclosure Award was produced with the application and it was unclear if such a document existed for this location. The additional supporting evidence did not offer sufficient weight to suggest on the balance of probabilities, that immediately prior to registration the land was not of a description specified in Section 11 of the Inclosure Act 1845.

As the application failed to sufficiently meet two of the criteria set out in Schedule 2 para 7(2)(d) the application was refused.

The applicant was offered the opportunity to make oral representations by means of a Hearing before the decision was made final. That hearing took place by way of a Teams call on 18 June 2021. It was attended by the applicants Mr & Mrs Bradshaw, and their legal representative Mr Burgess of Hansells. Lawrence Malyon, Senior Legal Orders Officer, attended on behalf of the commons registration authority. It was heard by Helen Edwards, Director of Governance at Norfolk County Council, the commons registration authority.

Prior to the hearing further evidence had been submitted by the Applicants, and further comments made by the objectors. The objectors were given the opportunity to speak at the hearing but did not wish to do so.

At the time that the draft decision was made, it was determined that two of the legal tests for deregistration had been met.

Although it was accepted in the draft decision that the applicant had shown on the balance of probabilities that the land was not waste of a manor, objections remained that the applicant had not sufficiently discharged the burden of proof on this point. Based on the original and additional evidence provided, particularly that of David Gurney, it is deemed that the applicants have discharged the burden of proof on this test. Mr Gurney's evidence is that the land in question was owned by his family until it was conveyed to him in 1965, and that he subsequently conveyed it to a family trust in 1971. His evidence is that throughout this time the land was let for grazing, that rents were collected on it, and that it was separated from the rest of the common by fencing and not used as common land nor was he aware of anyone claiming any other rights over the land. The evidence suggests, on the balance of probabilities, that the land would not meet the accepted definition of waste land of a manor as being "open, uncultivated and unoccupied land parcel of a manor".

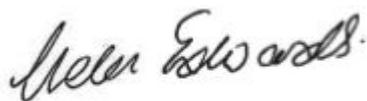
Further, it was deemed at the time of the draft decision that the applicant had discharged the burden of proof that the land was not subject to rights of common and following oral representations this is still deemed to be the case. Only the application by Miss Fitt referred to rights of common over this section of land, and all other evidence is that the land formed part of land let by and subsequently owned by the Gurney family with no indication that it was subject to right of common, and no evidence of any inhabitants of the locality using it as such.

The decision in respect of the first two tests has not changed since the draft decision.

At the time of the draft decision it was deemed that there was insufficient evidence that the land was not a town or village green within the meaning of the 1965 Act as enacted, prior to registration, and insufficient evidence to support the assertion that the land was not of a description specified in Section 11 of the Inclosure Act 1845. Again, the additional evidence provided is helpful, particularly that of Mr Gurney, the various conveyances and Ordnance Survey mapping. The various pieces of historical evidence indicate that, on the balance of probabilities, there is no evidence that the land was ever a town or village green, nor indeed that anyone has ever claimed such rights. The evidence of enclosure by fencing, and use for grazing, would be incompatible with such a right. The evidence from the County Archivist Tom Townsend is also helpful, in explaining that the pre-amble to the Inclosure Act sets out the purpose as "An Act to facilitate the Inclosure and Improvement of Commons and Land held in common..." No Inclosure award has been found for the area in question and as such use would be incompatible with the

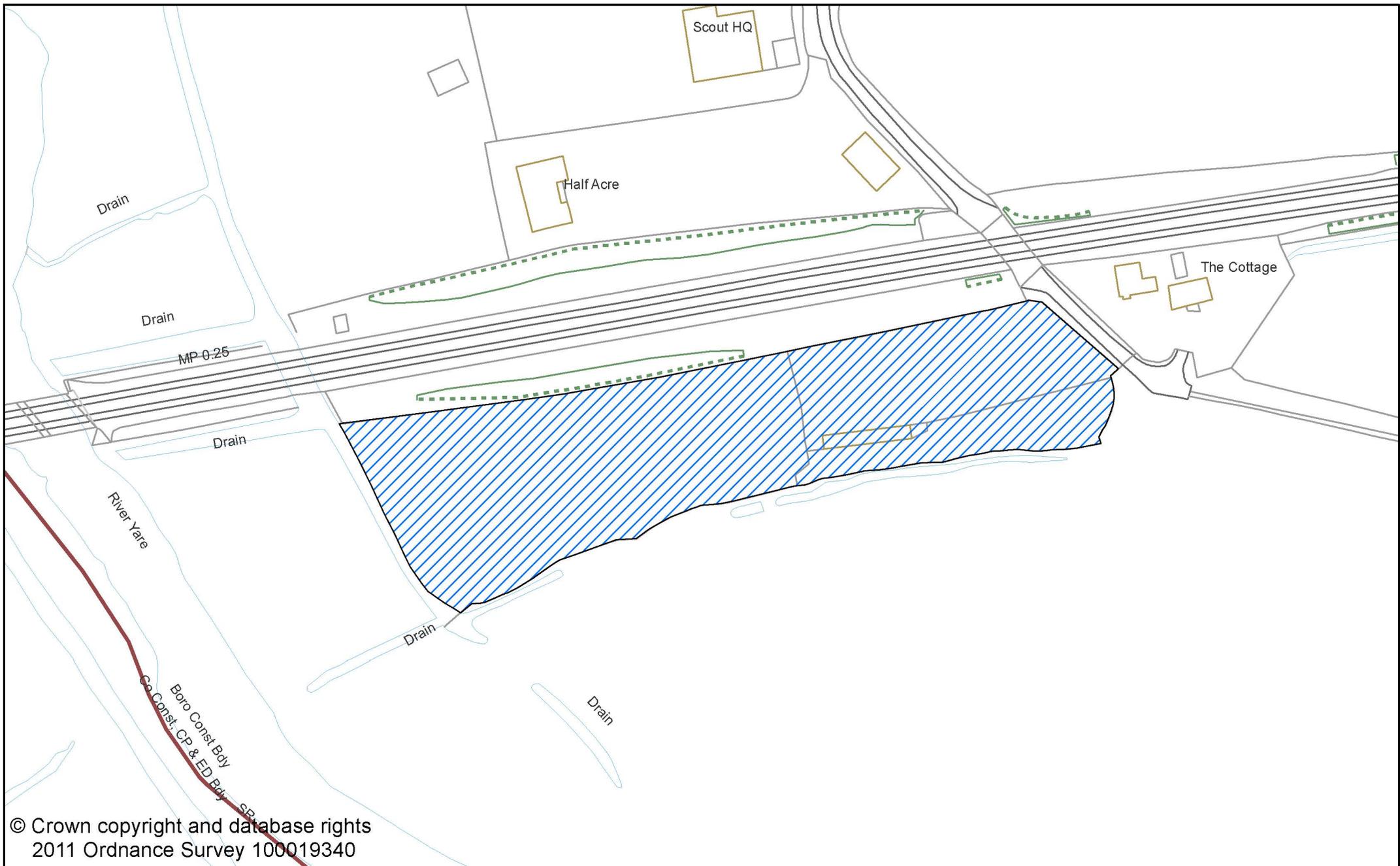
evidence of the land being enclosed and in private ownership and use, on the balance of probabilities it is likely that no such award exists. It is deemed that on considering all of the evidence provided the applicant has satisfied the legal test that the land is not land of a description specified in section 11 of the Inclosure Act.

The applicant has satisfied all of the legal tests, on the balance of probabilities, and the land hatched blue on the plan attached to this Decision under Schedule 2, paragraph 7 of the Commons Act 2006 will be deregistered as common land.

A handwritten signature in black ink, reading "Helen Edwards". The signature is written in a cursive style with a prominent initial 'H'.

Helen Edwards

Director of Governance



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**Land subject to the Application to deregister Common Land at CL1 NOR**

**Eaton Common shown hatched blue**

 **Norfolk** County Council

Center of map:  
**620,737.8239 305,192.0068**

Date created:  
14/02/2019

Scale:  
1:1,025

