

Transfer of Rights of Common at Higham Common (CL86)

A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on Wednesday 24th February 2021.

Recommendation: I recommend that the County Council informs the applicant that the application to amend the Register of Common Land to reflect the recent transfer of rights of common has been accepted and that the Register of Common Land for unit number CL86 be amended accordingly.

Local Member: Mr. B. Sweetland

Unrestricted item

Introduction

1. The County Council is the 'Commons Registration Authority' for Kent for the purposes of the Commons Act 2006 (and, previously, the Commons Registration Act 1965). In this capacity, it is responsible for holding the legal record of Common Land and Town or Village Greens for the county, known as the Registers of Common Land and Town or Village Greens, and for making any necessary amendments to the Registers using the requisite legal processes.
2. The County Council has received an application to amend the Register of Common Land from the Royal Society for the Protection of Birds ("the applicant"). The application, dated 19th February 2020, has been made under section 12 of the Commons Act 2006 and seeks to amend unit number CL86 of the Register of Common Land to reflect a transfer of rights of common.

Background

3. Common Land was defined in the Commons Registration Act 1965 as land subject to certain traditional rights (known as 'rights of common') or waste land of a manor not subject to rights of common. The most widely exercised right of common remaining today is the common of pasture (a right to graze animals), but other examples of rights of common include pannage (a right to turn out pigs in woodland to graze on acorns), piscary (a right to fish), turbary (a right to dig peat or turf) and estovers (a right to collect firewood).
4. In some parts of the country, particularly in moorland areas, rights of common are widely exercised and form an important asset to the local farming community. In lowland counties, such as Kent, they are far less prevalent (because Common Land here consists mainly of manorial waste) but these traditional rights are nonetheless still exercised in certain areas.
5. Rights of common are normally attached to a particular property, but in some cases they are held by an individual. In the latter case, the rights may be sold on to other individuals and, in these circumstances, it will be necessary to record the change of ownership in the Register of Common Land. Note that the transfer does not take legal effect unless and until it is recorded in the Register of Common Land.

Procedure

6. Section 12 of the Commons Act 2006 enables the transfer of ownership of any rights of common to be recorded in the Register of Common Land. The application must be made in accordance with the provisions of the Commons Registration (England) Regulations 2014 (“the 2014 Regulations”).
7. As a standard procedure set out in the 2014 Regulations, the County Council must put a copy of the Notice of Application on its own website and serve notice on the existing holder of the right of common (if this is not the applicant) and the owner(s) of any other rights of common exercisable over the land. The publicity must state a period of at least six weeks during which objections and representations can be made.
8. In determining the application, the County Council must be satisfied that:
 - the applicant is entitled to make an application under section 12; and
 - where the applicant is not currently the registered owner of the rights of common, there is evidence that the registered owner consents to the application.

The Case

Description of the rights of common affected by the application

9. The rights of common affected by this application are set out at entry number 7 on the Rights section of the Register of Common Land for unit number CL86. They are: “16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this Register unit during the period from 25th March to 25th December in each year”.
10. The rights are currently registered to ET Ledger and Son Ltd. By deed of transfer dated 19th February 2020, the ownership of these rights of common was transferred to the applicant.

Notice of Application

11. As required by the 2008 Regulations, notice of the application was published on the County Council’s website. No objections have been received.

Capacity to apply

12. The County Council must be satisfied that the person making the application under section 12 of the Commons Act 2006 has the capacity to apply. Those eligible to apply for such applications are the registered owner of the right of common or the transferee of that right.
13. The applicant in this case is the transferee and, as such, the applicant is able to make the application to amend the register under the Commons Act 2006.

Evidence that the registered owner of the rights of common consents to the application

14. The County Council must also be satisfied that the current registered owner of the rights of common consents to the application.

15. In this case, the application form is considered a formal deed between the two parties and is signed by both the existing owner of the rights and the transferee (the applicant). Notice of the application has also been served on the current registered owner and no objection has been made.

Conclusion

16. It can therefore be concluded that the necessary criteria concerning the amendment of the Register of Common Land for unit number CL86 have been met.

Recommendations

17. I recommend that the County Council informs the applicant that the application to amend the Register of Common Land to reflect the recent transfer of rights of common has been accepted and that the Register of Common Land for unit number CL86 be amended accordingly.

Accountable Officer:

Mr. Graham Rusling – Tel: 03000 413449 or Email: graham.rusling@kent.gov.uk

Case Officer:

Ms. Melanie McNeir – Tel: 03000 413421 or Email: melanie.mcneir@kent.gov.uk

The main file is available for viewing on request at the Countryside Access Service, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

Appendices

APPENDIX A – Copy of the Register of Common Land for CL86

APPENDIX A:

Extract of the Register of Common Land (CL86)

COMMONS REGISTRATION ACT 1965

Note: This section contains the registration of the land comprised in this register unit.

COMMONS REGISTRATION ACT 1965
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
10 JUL 1968

Register unit No. CL.86
Edition No.

See Overleaf
for Notes

Register of COMMON LAND

LAND SECTION—Sheet No.

No. and date of entry	Description of the land, reference to the register map, registration particulars etc.
10.7.68	An area of land of approximately 32 acres in extent known as Higham Common in the Parish of Higham in the Rural District of Strood as marked with green verge lines inside the boundary on sheets 39 and 43 of the register map and distinguished by the number of this register unit. Registered by the registration authority in pursuance of section 4(2)(b) of the Commons Registration Act, 1965. (Registration provisions)
16.8.72.	<i>The registration at entry No. 1 above, being unfulfilled, became final on 1st August, 1972.</i>

COMMONS REGISTRATION ACT 1965

Register unit No. **CC 86**
Edition No.

Register of COMMON LAND

Note: This section contains the registration of every person entered under the Act as owner of any part of the land described in the land section of this register unit. It does not necessarily indicate that the land is registered in respect of land of which the freehold is registered under the Land Registration Acts 1925 and 1936, but the absence from this section of a registration in respect of any land described in the land section does not necessarily indicate that the freehold of that land is registered under those Acts.

See Overleaf for Notes

OWNERSHIP SECTION—Sheet No.

1 No. and date of entry	2 No. and date of application	3 Name and Address of person registered as owner	4 Particulars of the land to which the registration applies
		<p>Extract from Chief Commons Commissioner's report of 12 March 1979. "In the absence of any evidence I am not satisfied that any person is the owner of the land and it will therefore remain subject to protection under Section 9 of the Act of 1965."</p>	

Register unit No. CL.86
Edition No.

See Overleaf
for Notes

COMMONS REGISTRATION ACT 1965
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
10 JUL 1968

Register of
COMMON LAND

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
1 10.7.68	344 25.6.68	Roy George Batchelor, Frances Batchelor, Joyce Light, Frederick Leslie Duck, as Trustees of H.H. Batchelor, deceased, White House Farm, Higham, Rochester.	16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this register unit during the period from 25th March to 25th December in each year. (Registration provisional)	None
2 10.7.68	345 25.6.68	Sidney Dartnall and Phyllis Dartnall (trading as Dartnall Bros) 1, Bull Lane, Lower Higham, Rochester.	A right to graze one bullock, two calves, one horse or five sheep over the whole of the land comprised in this register unit during the period from 25th March to 25th December in each year. (Registration provisional)	None
16.8.72.		The registration at entries Nos. 1 and 2 above, being unfulfilled, became final on 1st August, 1972.		
3 28.7.78	12.12.77	Registration amendment: entry No. 1 above is replaced by entry No. 4 below.		
4 18.7.78	12.12.77	R. & P. Batchelor Ltd, Whitehouse Farm, Higham, Kent.	16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this register unit during the period from 25th March to 25th December in each year.	None
5 06.06.2008 01.04.2008		Registration amendment: entry No. 4 above is replaced by entry No. 6 below.		
6 06.06.2008 01.04.2008		Master Fellows and Scholars of the College of St. John the Evangelist in the University of Cambridge c/o (Mills & Keen) Francis Hovess, 12 Hills Road Cambridge CB2 1PA	16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this register unit during the period from 25th March to 25th December in each year.	None

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.

Registration Authority:
KENT COUNTY COUNCIL

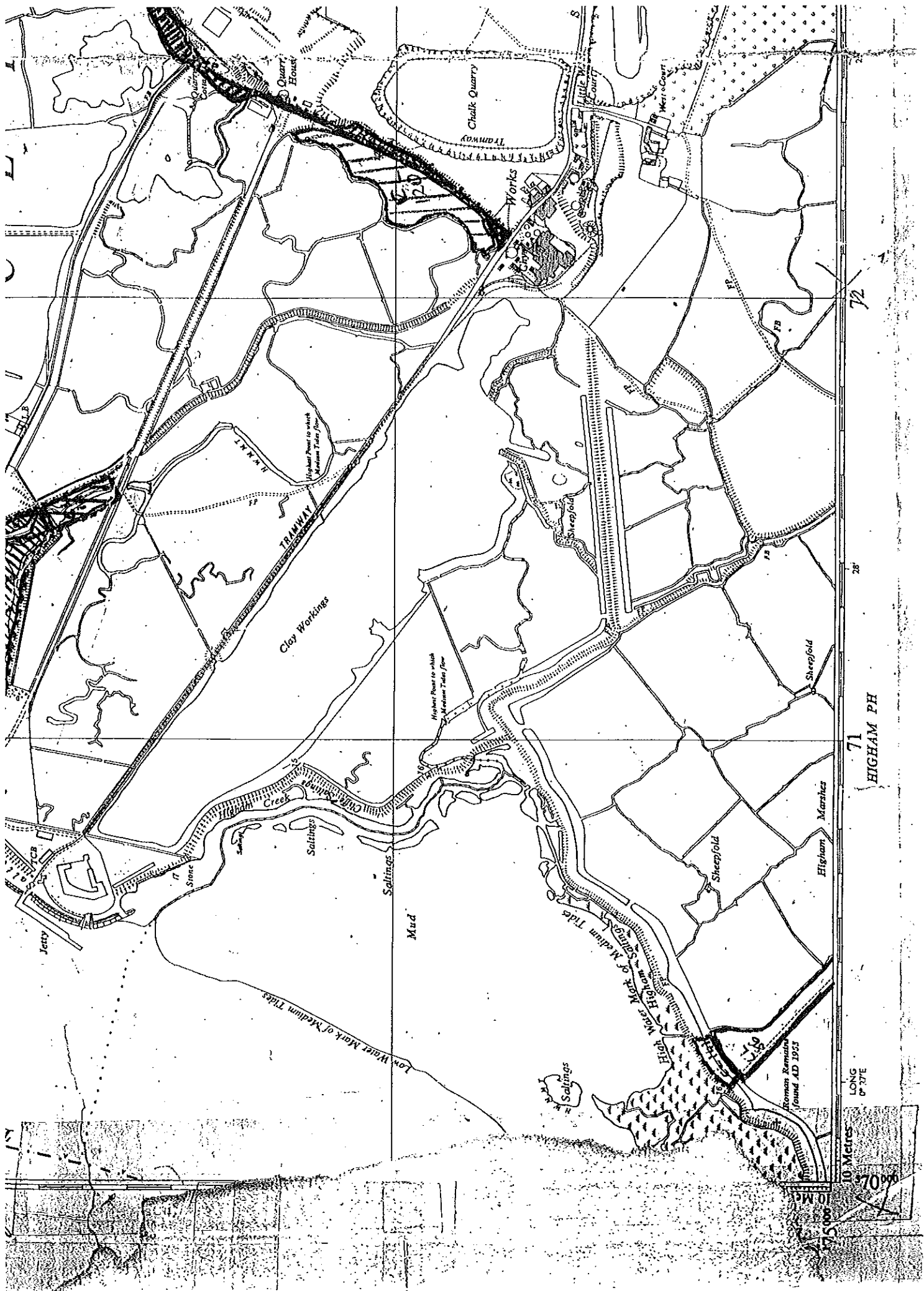
Register of Common Land

Register unit No. **CL86**
Edition No. 1

RIGHTS SECTION – Sheet No. 2

See overleaf
for notes

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 or details of the owner of any right held in gross	6. Declaration of entitlement to right and details of the right claimed
7. 20 th March 2012 (see entries 1, 4 and 6)	CAA12/CL86 11 th April 2011 s12 of the Commons Act 2006	ET Ledger and Son Ltd. Wormdale Farm Wormdale Hill Sittingbourne Kent ME9 7PX (Transferee)	16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this register unit during the period from 25 th March to 25 th December in each year.	Right of common held in gross: ET Ledger and Son Ltd. Wormdale Farm Wormdale Hill Sittingbourne Kent ME9 7PX	



71 HIGHAM PH

LONG
10° 37' E

10 Metres

NET TQ 77 SW

ORDNANCE SURVEY

Scale 1:10,560 or 6 Inches to 1 N

Links 1000 500 0

570 000

LONG 0° 27' E

10 Metres

175 000

KENT

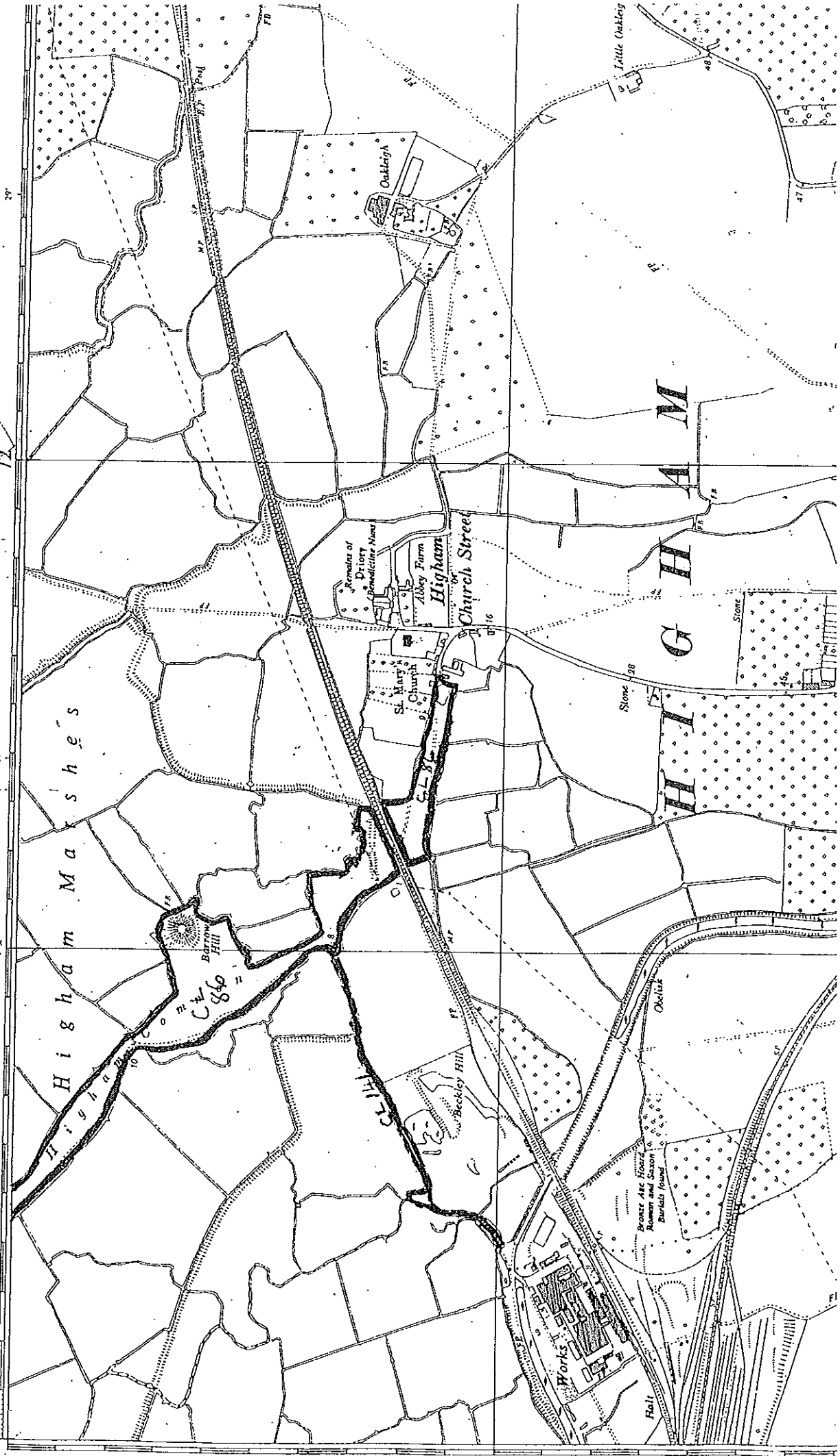
GRAVESEND CO CONST

STROOD RD

71

28

72



74

LAT 51° 26'