

## Transfer of Rights of Common at Higham Common (CL86)

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A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 20<sup>th</sup> March 2011.

**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.**

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Local Members: Mr. M. Snelling

Unrestricted item

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### Introduction

1. Kent County Council is the 'Commons Registration Authority' 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 ET Ledger and Son Ltd. ("the applicant"). The application, received on 11<sup>th</sup> April 2011, 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 recent transfer of rights of common. A copy of the Register of Common Land for unit CL86 is attached at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

### 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 2008 (“the 2008 Regulations”).
7. As a standard procedure set out in the 2008 Regulations, the County Council must put a copy of the Notice of Application on its own website. The publicity must state a period of at least six weeks during which objections and representations can be made. In addition, the applicant should 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.
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 6 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 25<sup>th</sup> March to 25<sup>th</sup> December in each year”.
10. The rights are currently registered to the Master, Fellows and Scholars of the College of St. John the Evangelist in the University of Cambridge (“the University of Cambridge”). By deed of transfer dated 27<sup>th</sup> November 2008 (copy attached at **Appendix C**), 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.
12. Normally, the applicant is expected to serve notice of the application on the existing registered holder of the affected rights of common and the owner of any other rights of common exercisable over the land. However, in this case the existing registered holder of the affected rights of common is a party to the deed transferring ownership (from which it is implicit that the existing owner consents to the transfer).

13. The Register also refers to another right of common being registered to a company known as Dartnall Bros which, it transpires, was dissolved in 1996 and cannot be contacted at the address shown in the Register.

#### Capacity to apply

14. 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.

15. 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

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

17. In this case, the transfer is the subject of a formal deed between the existing registered owner (the University of Cambridge) and the applicant.

#### **Conclusion**

18. 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**

19. 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. Mike Overbeke – Tel: 01622 221500 or Email: [mike.overbeke@kent.gov.uk](mailto:mike.overbeke@kent.gov.uk)

#### Case Officer:

Miss. Melanie McNeir – Tel: 01622 221628 or Email: [melanie.mcneir@kent.gov.uk](mailto: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.

#### **Background documents**

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

APPENDIX B – Copy of application form

APPENDIX C – Copy of the deed of transfer

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. CL86  
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. ( <del>Registration-provisioned</del> )
16.8.72	The register at entry No.1 above, being unauthorised, became void on 1st August, 1972.

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

COMMONS REGISTRATION ACT 1965

KENT COUNTY COUNCIL

Register of COMMON LAND

Register unit No. CC 86  
Edition No.

Note: This section contains the registration of every person who has entered the Act as owner of any of the land the subject in the land section of this register unit. A person who has entered the Act as owner 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

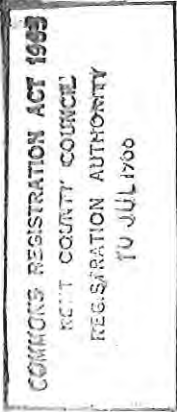
OWNERSHIP SECTION—Sheet No.

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 Commissioners 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 of

COMMON LAND

Register unit No. CL.86  
Edition No.



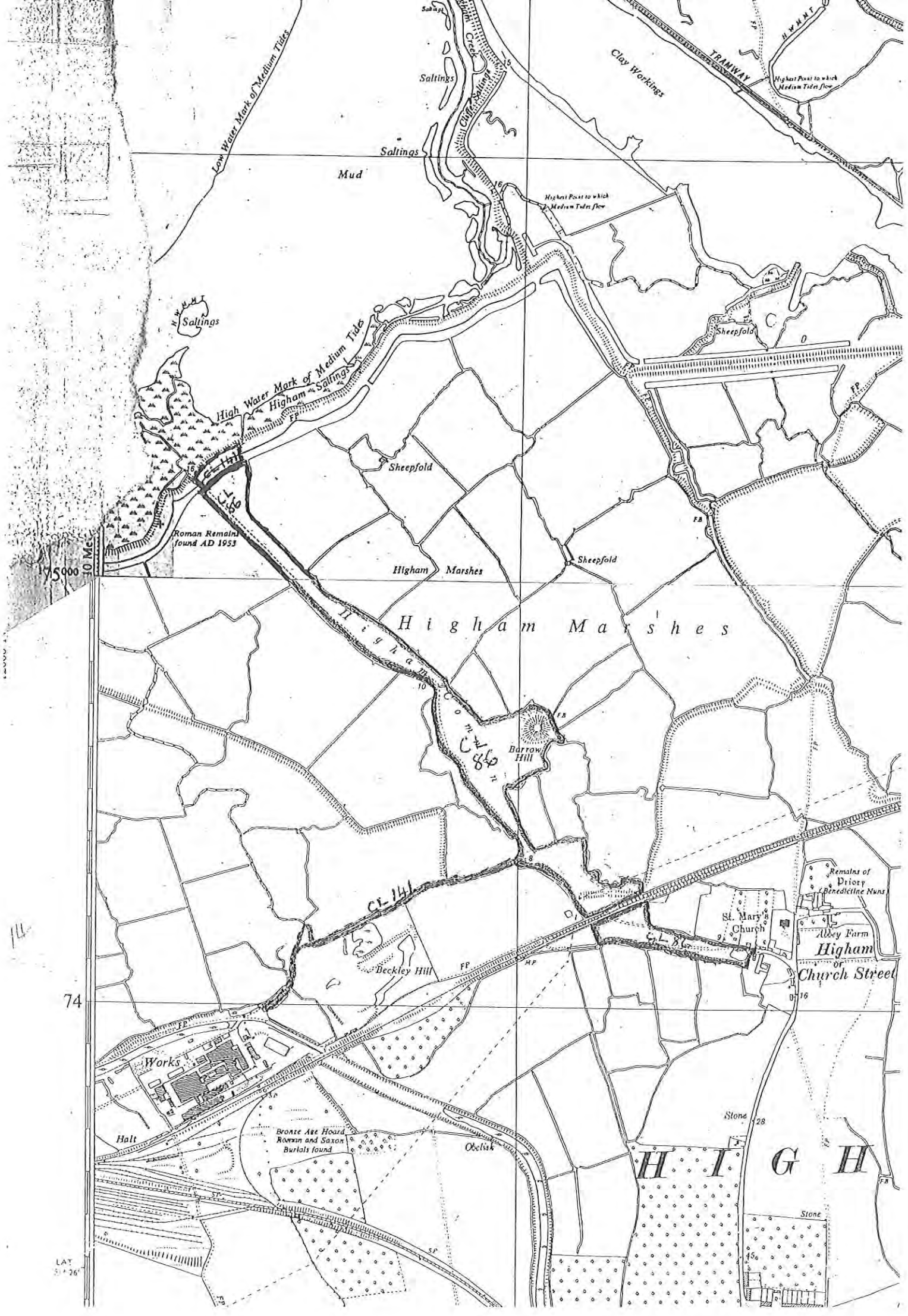
See Overleaf  
for Notes

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.

RIGHTS SECTION—Sheet No.

1	2	3	4	5
No. and date of entry	No. and date of application	Name and address of every applicant for registration, and the capacity in which he applied	Particulars of the right of common, and of the land over which it is exercisable	Particulars of the land (if any) to which the right is attached
1 10.7.68	344 25.6.68	ROY GEORGE BACHELOR, FRANCES BACHELOR, 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.				
3 18.7.78	12.12.77	Registration amendment: entry No.1 above is replaced by entry No.4 below.		
4 18.7.78	12.12.77	R. & F. 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 25 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 Co (Mills & Reeves Francis House, 100 Mill Lane, Cambridge)	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 25 December in each year.	None

The registers at entries Nos.1 and 2 above, being undeposited, became formal on 1st February 1972.



FORM CA6

APPENDIX B:  
Copy of the application form

Commons Act 2006: section 12

Application to transfer a  
Right of Common in gross



*This section is for office use only*

Official stamp of the Registration Authority  
indicating date of receipt:

Application number:

COMMONS ACT 2006  
KENT COUNTY COUNCIL  
REGISTRATION AUTHORITY  
11 APR 2011

CAA12 / 1686

**Note to applicants**

Applicants are advised to read the 'Part 1 of the Commons Act 2006 (changes to the commons registers): Guidance to applicants in the pilot implementation areas' and to note the following:

- All applicants should complete parts 1 – 4 and 6 – 8. Where the applicant is the person to whom the right will be transferred, part 5 should also be completed.
- Only the following can apply under section 12: the registered owner of the right of common in gross or the person to whom the right will be transferred.
- The application must be accompanied by a fee. Ask the Registration Authority for details of the fee

**Note 1**

*Insert name of Commons  
Registration Authority*

**1. Commons Registration Authority**

To the: THE COMMONS REGISTRATION TEAM  
KENT COUNTY COUNCIL, COUNTRYSIDE  
ACCESS SERVICE, INVICTA HOUSE,  
COUNTY HALL, MAIDSTONE  
KENT ME14 1XX

Please tick the box to confirm that you have enclosed the appropriate  
fee for this application:





**Note 2**

If there is more than one applicant, list all names. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or unincorporate. If you supply an email address in the box provided, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email. If part 3 is not completed all correspondence and notices will be sent to the first named applicant.

**2. Name and address of the applicant**

Name: **ET LEDGER & SON LIMITED**  
Full postal address: **WORMDALE FARM**  
(incl. Postcode) **WORMDALE HILL**  
**SITTINGBOURNE**  
**KENT ME9 7PX**  
Telephone number: [REDACTED]  
(incl. national dialling code)  
Fax number:  
(incl. national dialling code)  
E-mail address: [REDACTED]

**Note 3**

This part should be completed if a representative, e.g. a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email.

**3. Name and address of representative, if any**

Name:  
Firm: **KINGSLEY SMITH SOLICITORS LLP**  
Full postal address: **81 HIGH STREET**  
(incl. Postcode) **CHATHAM**  
**KENT**  
**MELLEE**  
Telephone number: [REDACTED]  
(incl. national dialling code)  
Fax number: [REDACTED]  
(incl. national dialling code)  
E-mail address: [REDACTED]

**Note 4**

For further details of the requirements of an application refer to Schedule 4, paragraph 6 to the Commons Registration (England) Regulations 2008.

**4. Basis of application for registration and qualifying criteria**

Please specify the register unit number to which this application relates: **CL86**

Please specify the registered rights entry number to which this application relates:

Please tick one of the following boxes to indicate your capacity to apply.

I am the registered owner of the right:   
(if so, omit part 5 and go to part 6)  
or

I am the person to whom the right will be transferred:

**Note 5**

*This part should be completed only where the applicant is the person to whom the right will be transferred. This can include a written declaration sent to the applicant (i.e. a letter), and also any such declaration made on the form itself.*

**5. Declarations of consent from the registered owner of the right in gross**

NONE

**Note 6**

*List all supporting consents, documents and maps accompanying the application, including evidence of ownership of the dominant tenement. There is no need to submit copies of documents issued by the Registration Authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.*

**6. Supporting documentation**

CONVEYANCE OF COMMON RIGHTS  
DATED 27<sup>th</sup> NOVEMBER 2008  
AND CERTIFIED COPY

**Note 7**

*List any other matters which should be brought to the attention of the Registration Authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.*


**7. Any other information relating to the application**

NONE

**Note 8**

*The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.*

**8. Signature**

Signature(s) of applicant(s):  Director

Date: 7/8/2011

**REMINDER TO APPLICANT**

You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted. You are advised to keep a copy of the application and all associated documentation.

**Please send your completed application form to:**

The Commons Registration Team  
Kent County Council  
Countryside Access Service  
Invicta House  
County Hall  
Maidstone  
Kent ME14 1XX

**Please make the cheque payable to "Kent County Council"**

***Data Protection Act 1998***

*The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the Commons Registration Authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.*

*A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000.*

**APPENDIX C:  
Copy of the deed of transfer**

THIS CONVEYANCE is made on *27 November* 2008 BETWEEN:

- (1) THE MASTER FELLOWS AND SCHOLARS OF THE COLLEGE OF SAINT JOHN THE EVANGELIST IN THE UNIVERSITY OF CAMBRIDGE ("the Vendor")
- (2) E T LEDGER & SON LIMITED incorporated in England with registered number 00493582 and whose registered office is at Wormdale Farm Wormdale Hill Sittingbourne Kent ME9 7PX ("the Purchaser")

WHEREAS

(A) **Title to Right of Common**

The Register of Common Land held by Kent County Council (Register Unit No CL.86) records that 16 rights of common pasture are registered to the Vendor.

(B) **Right of common**

The Vendor is entitled to 16 rights of common of pasture each right being for 16 bullocks, 32 calves, 12 horses, or 80 sheep on Higham Common at Rochester in the County of Kent ('the Common') at all times during the period from 25 March to 25 December in each year in gross

(C) **The Common**

The Common is shown edged red on the plan annexed to this conveyance.

(D) **Agreement**

The Vendor has agreed to sell the 16 rights of common to the Purchaser for the total sum of Sixteen Thousand Pounds (£16,000) (£1,000 per right)

NOW THIS DEED WITNESSES as follows:

**1 Conveyance**

In consideration of the sum of £16,000 paid by the Purchaser to the Vendor (the receipt of which is acknowledged) the Vendor with full title guarantee conveys to the Purchaser the

16 rights of common to which the Vendor is entitled in gross TO HOLD to the Purchaser in fee simple

**2**     Statements

The Property is held by the Transferor which is an exempt charity and transfers in exercise of the powers conferred upon the Transferor by the Universities and College Estates Acts 1925 and 1964.

**3**     Execution

This instrument:

is executed as a deed and by its execution the parties authorise Mills & Reeve LLP to deliver it for them when it is dated

was delivered when it was dated

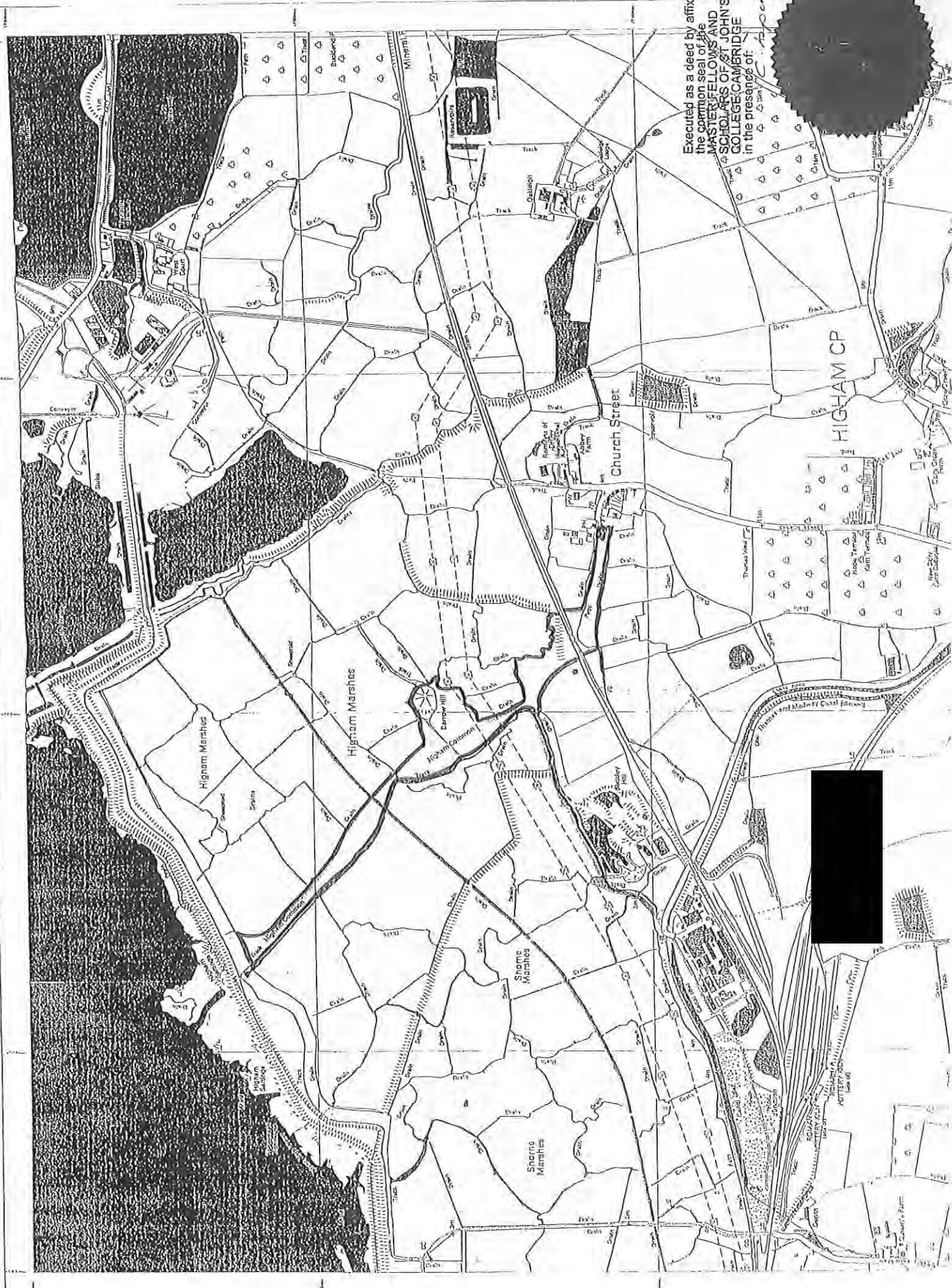
Executed as a deed by affixing the common )  
seal of **THE MASTER FELLOWS AND** )  
**SCHOLARS OF ST JOHN'S COLLEGE** )  
**CAMBRIDGE** in the presence of: )



Signed as a deed by **E T LEDGER & SON** )  
**LIMITED** acting by a director and its secretary/two )  
directors

..... [Redacted] .....  
Director

..... [Redacted] .....  
Director/Secretary



Executed as a deed by affixing  
the common seal of the  
MASTER FELLOWS AND  
SCHOLARS OF ST JOHN'S  
COLLEGE CAMBRIDGE  
in the presence of

