

# HORTON-IN-RIBBLESDALE PARISH COUNCIL

Clerk  
HELEN

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NORTH YORKSHIRE COUNTY COUNCIL  
C. SERGEANT, B.Sc., M.Sc.  
COUNTY SECRETARY'S  
DEPARTMENT  
- 8 MAR 1994

Borrins, Selside, Settle, North Yorkshire BD24 0HX  
Telephone Horton-in-Ribblesdale (072 96) ~~860~~ 860379  
Your Ref.

March 7th 1994

Dear Mr Pennell,

I enclose a copy of form CR FORM 30,  
duly completed for the purpose of registering the piece of  
land known as "The Green" at Selside in this parish as Village  
Green, together with the accompanying dep sitions.

The residents of Selside who have made the  
depositions have requested the Parish Council to point out that  
this application is made WITHOUT PREJUDICE to the fact that the  
Green has been used as common land since beyond the time of  
recollection.

Yours sincerely,

*Helen C. Sergeant*

Parish Clerk

Parish Council  
application to  
register  
Selside Green

NOT FOR PUBLICATION

NORTH YORKSHIRE COUNTY COUNCIL

ENVIRONMENTAL SERVICES COMMITTEE

ECONOMIC DEVELOPMENT AND ENVIRONMENTAL ISSUES SUB-COMMITTEE

7 January 1997

Commons Registration Act 1965

Application for Land at Selside to be Registered as Village Green

This report contains exempt information of the description contained in paragraph 12 of Part 1 of Schedule 12A to the Local Government Act 1972.

1.0 BACKGROUND

- 1.1 The County Council, as Registration Authority, administers the Register of Common Land and Village Greens for North Yorkshire.
- 1.2 An application has been received in respect of land at Selside alleging that land has become village green and should be included on the Register as such.
- 1.3 On 19 September 1995 the Property and General Purposes Sub-Committee gave preliminary consideration to the application. The procedures for registration have now been underway for some time. The application has been given publicity and objections have been received. In addition, Counsel has been instructed to advise on the law and the merits of the application. Counsel's advice has now been received.
- 1.4 On 15 March 1996 the Environmental Services Committee delegated power to this Sub-Committee to consider the merits of this application and to determine whether or not it should be acceded to.
- 1.5 On 6 June 1996 this Sub-Committee considered the matter - copy report attached - and resolved to defer dealing with it pending clarification of the legal position.

2.0 THE LEGAL POSITION

- 2.1 Land is eligible for registration as a village green under the Commons Registration (New Land) Regulations 1969 "where, after 2 January 1970, it has become village green. The question is whether the Selside "Green" comes within that part of the definition of "Town or Village Green" in Section 22(1) of the Commons Registration Act 1965 which includes:-  
  
"... land ... on which the inhabitants of any locality have indulged in ... (lawful) sports and pastimes as of right for not less than 20 years."
- 2.2 Section 13 Commons Registration Act 1965 enables the Register of Village Greens to be amended where land has become a town or village green.

## 5.2 "Use by the Inhabitants of a Locality"

Selside is a rural hamlet containing only a small number of residents. It forms part of the Parish of Horton in Ribblesdale in North Yorkshire though Counsel has advised that it would comprise an identifiable "locality" for the purposes of the above legislation. It further appears that, whatever use was made of the land, it was made by the inhabitants of the "locality", to some extent by adults, but principally by children and teenagers. Having said this, there is some doubt about whether the whole area of the claimed land has in fact been physically available for use for the required period. In this respect I refer Members to a photograph provided by Mr Morphet taken, he says, in about 1970 which shows clearly two corrugated iron nissan huts on the area of land in question. There are also walls and other physical structures on the site. The blue bags shown on the photograph are, apparently, fertiliser bags on top of railway sleepers. The Parish Council, in their submissions, have commented that these bags came and went. However, the photograph confirms that structures of some substance were on the site in 1970.

The relevant period is, of course, 20 years prior to the date of the application which was 2 March 1994. In his letter dated 7 November 1995, Mr Morphet confirms that the nissan huts were removed when Penyghent Cottage was converted into a home for letting. This, he says, took place after 1979. As Counsel has pointed out, this is well into the 20 year period and would mean that the nissan huts and possibly the other various unidentified items occupying space would have had an impact on the availability of the land in question for use. It has been pointed out by the Parish Council that the nissan huts were open and therefore available for use. Of course, the law demands use for lawful sports and pastimes with some social focus. The presence of the nissan huts and other structures on this small site is evidence against the application as it indicates that the land is unlikely to have been physically available for such use.

Aerial photographs taken show that the nissan huts were on site in 1968 but had gone in 1980. They also show that most of the land in question was bare ground and not grass covered. Mr Morphet states that the land was used for agricultural purposes and the photographs support this type of use rather than use as a village green.

## 5.3 "Lawful Sport and Pastimes"

Given its normal meaning, this phrase could be interpreted very widely. However, a series of judicial decisions have clarified what can constitute lawful sports and pastimes.

The use must be capable of involving the local community as a whole or at least a wide cross-section of it, whether as participants or spectators, eg, Maypole dancing, village cricket, horse racing, village dancing. There must be some social focus for the activities which must involve the inhabitants of the locality.

From the evidence submitted in support of this application there appears to be a good deal of use of the land by inhabitants of the locality for various purposes but little indication of much activity which involved the local community as a whole. Organised events held on the land appear to be restricted to the brief reference to a village bonfire. The evidence submitted indicates that the land has been used by villagers primarily for informal recreation and as a communal meeting place for small groups and for agricultural purposes.

As stated above, the limited size of the land is once again relevant when considering whether lawful sports and pastimes have taken place over the required period.

2.3 The legal position in relation to claims made under the 1969 Regulations has changed in consequence of the decision of the Court of Appeal in R -v- Suffolk County Council Ex P Steed (11 July 1996). The fact that land might have been claimed as a Green under the principal provisions of the Commons Registration Act 1965, but was not so claimed, was held by the Court not to be a bar to a claim under the new Land Regulations. Therefore, Selside Green could have been registered immediately pursuant to the 1965 legislation, the fact that it wasn't does not prevent the County Council considering this fresh claim.

2.4 The essential criteria are as follows:-

- used by the inhabitants of the locality;
- for lawful sports and pastimes;
- as of right;
- for not less than 20 years since 2 January 1970.

The task of this Sub-Committee is to consider the evidence and determine whether the requirements for registration have been satisfied.

### 3.0 THE APPLICATION

3.1 The application has been made by the Horton-in-Ribblesdale Parish Council in respect of an area of land known as "The Green" at Selside shown hatched black on the attached plan accompanying this report.

3.2 It is claimed that the land at Selside became a village green on 1 February 1994 by virtue of it having been used by local habitants for lawful sports and pastimes as of right for more than 20 years.

3.3 The application was accompanied by 17 statements/letters of support from residents and former residents of Selside giving evidence of activities on the land.

3.4 The land is believed to be owned by the local Lord of the Manor, Dr J A Garrer of the Ingieborough Estate Office, Clapham, Lancaster.

3.5 An objection to the application has been made by Mr J H Morphet of Acre Lands Farm, Grindalton, Lancashire, who has included the Green in the particulars of sale of the neighbouring house known as "Penyghent Cottage".

### 4.0 THE EVIDENCE

4.1 The application itself and representations in support of the application are attached to this report at Appendix A.

4.2 Representations objecting to the application by Mr J H Morphet are attached at Appendix B.

### 5.0 ASSESSMENT OF THE EVIDENCE

5.1 In order to advise Members, with the benefit of Counsel's Opinion, I have commented on the submissions both in support of and objecting to the application with reference to the criteria to be met before the application can succeed.

Although the land does not appear to have been totally enclosed, the photographs indicate the presence of structures on it and, in view of its size, as Counsel confirms, "... the presence of various enclosures on the small piece of land is ... an indication that the land was not generally available for lawful sports and pastimes."

Mr Morphet has stated that the land was used for farming activities. The aerial photographs and the 1970 photograph referred to above appear to confirm that it was used by farm machinery.

Counsel bears in mind these physical features and notes that the evidence in support of the application does not reveal any substantial indication of sports having been pursued on this land and the pastimes recorded are mainly for general play of children or individual activities of adults on or around it. He points out that inhabitants may well have stopped on the land to have a chat or wait for a bus or may have crossed the land and generally used part of it as open ground in the middle of the hamlet. However, such uses do not, in his opinion, comprise lawful sports and pastimes in view of the judicial interpretation of this criteria.

#### 5.4 "As of Right"

The recent case of R -v- Suffolk County Council Ex P Stead attached a degree of significance to the words "as of right". It means use which is neither with permission, nor in secret, nor achieved through force, ie, people must have used the land in the manner described by believing they had a right to do so.

Representations have been received by Mr Morphet indicating that he has granted permission for certain types of use on the land. The Parish Council and the Selside Residents Association have consistently stated that users have done so in the belief that they had a right to do so.

Evidence in support of this application indicates that the activities described have taken place freely and without hindrance. Mention has been made that permission was granted for activities on the land rather than it being used as of right. However, as Counsel has said, it appears clear that those who support the claim almost certainly do so by virtue of living near or having lived in Selside and that, were any of them interviewed, they would each claim to have used the land as of right as a local inhabitant.

In the circumstances, this part of the test appears to have been satisfied.

#### 5.5 "More than 20 Years"

It is established that generally the relevant period for consideration is the 20 years immediately preceding the application.

Evidence submitted in respect of this application relates to years preceding the 20 year period. However, the only relevant evidence is that which indicates whether the relevant criteria have been met during the 20 year period.

The reason why this application has yet to be determined was the fact that decision in the R -v- Suffolk County Council Ex Parte Stead case was awaited. As I have already said, this decision clarified that, notwithstanding the fact that use had been made of the Green for a far longer period than the required 20 years does not prevent a claim such as this.

When tying in the physical circumstances of the land, together with the alleged exercise of lawful sports and pastimes, one does so with reference to the 20 year period. Aerial photographs available are dated 14 June 1968, 12 May 1980 and 16 May 1988. We also have the 1970 photograph provided by Mr Morphet. The aerial photographs are on a small scale but show the existence of the nissan huts and other physical structures in 1968. They continued to exist in 1970 when Mr Morphet's colour photograph was taken. The nissan huts had gone by 1980 but some structures remain. In accordance with Counsel's advice, objectors and supporters have been requested to clarify when they believe the nissan huts and other physical structures were removed. The best evidence presently available is Mr Morphet's statement that the huts still existed in 1979 which means that sizeable structures co-existed with alleged use as a village green. At all times covered by the less recent photographs the area does not appear to have been grassed to any large extent. Photographs taken recently of the claimed land are self explanatory.

6.0 **COMMENT**

- 6.6 The decision whether to accede to this application for registration of land as a village green is one for Members to take.
- 6.7 Counsel's advice is that this application does not justify registration of the land in question. He does not consider that the decision whether or not to register the land turns on whether or not use was made prior to 1970 or whether or not users did so "as of right". He confirms that it does turn on the nature of the land, in particular it's potential to have accommodated "lawful sports and pastimes" for the 20 years ending on 1 February 1994 (the date stated in the application), and on the nature and extent of the sports and pastimes claimed to have been exercised.
- 6.8 It has been suggested that Members of the County Council ought to view the land. Counsel has advised that there is no obligation for such a site visit to take place. More recent photographs of the site will be available for Members to view at this meeting.
- 6.9 In order to seek finality on the aspects of whether or not the nissan huts existed during the 20 year period, Counsel advises that objectors and supporters be requested to clarify this point. A letter was sent on 20 December 1996 and responses received will be reported to Members at the meeting on 7 January. If it remains the case that the physical circumstances during the 20 year period were as shown in the 1970 photograph submitted by Mr Morphet, Counsel advises "it is hardly sensible to conceive of the land shown in the photograph as a "village green" ".
- 6.10 Counsel advised in March and December 1996. His Opinion has not changed. Further evidence has been received from both objectors to and supporters of the application. He remains of the firm opinion that this application does not justify registration of the land in question.

7.0 **RECOMMENDATION**

7.1 Members are requested to determine whether to accede to this application for the registration of land at Selside as village green.

RICHARD DALY

Head of Legal Services

County Hall  
NORTHALLERTON  
31 December 1996  
IPR/ALS

ENVIRONMENTAL SERVICES COMMITTEEECONOMIC DEVELOPMENT AND ENVIRONMENTAL ISSUES SUB-COMMITTEE

6 June 1996

Application for Registration of Land at Selside as Village GreenReport of the Head of Legal Services

This document contains exempt information of the description contained in paragraph 12 of Part 1 of Schedule 12A to the Local Government Act 1972.

**1.0 PURPOSE OF THE REPORT**

- 1.1 To enable Members to give further consideration to an application under the Commons Registration Act 1965 for the registration of an area of land at Selside as Village Green.

**2.0 THE LAW RELATING TO APPLICATIONS FOR THE REGISTRATION OF LAND AS VILLAGE GREEN**

2.1 The Commons Registration (New Land) Regulations 1969 state that where, after 2 January 1970, any land becomes Village Green, an application may be made in accordance with the Regulations for the inclusion of that land in the appropriate Register of Village Greens.

2.2 In this application it is alleged that land has become Village Green by the actual use of the land by the local inhabitants for lawful sports and pastimes as of right for not less than 20 years. With this being the basis of the application the land can only become Village Green where certain criteria are satisfied. These criteria can be usefully set out as follows:

- used by the inhabitants of the locality;
- for lawful sports or pastimes;
- as of right;
- for not less than 20 years.

In addition, the land must have become Village Green since 2 January 1970 which was the date upon which all Register of Village Greens had to have been registered.

**3.0 THE ROLE OF THE REGISTRATION AUTHORITY**

3.1 Pursuant to the 1969 Regulations, unless the application is to be rejected after a preliminary consideration, the County Council must consider it further in the light of any objections which may have been received after public notice of the application has been issued. The applicant will be supplied with copies of all objections which are to be considered and will have an opportunity of answering. The applicant will be given all reasonable opportunity to put his application in order should such be necessary. If it is accepted, the land will be registered as Village Green. If it is rejected, then the applicant will be notified of the reasons for the rejection.

3.2 The Head of Legal Services has delegated power to reject applications for the registration of Village Greens if appropriate after preliminary consideration. However, in view of the nature of the application on 19 September 1995, it was reported to the Policy and Resources Committee's Property and General Purposes Sub-Committee where the application was given preliminary consideration.

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#### 4.0 THE APPLICATION

- 4.1 This application has been made by Horton in Ribblesdale Parish Council in respect of an area of land known as "The Green" at Selside shown hatched black on the plan accompanying this report.
- 4.2 It is claimed that the land at Selside became a Village Green on 1 February 1994 by virtue of it having been used by local inhabitants for lawful sports and pastimes as of right for more than 20 years.
- 4.3 The application was accompanied by 17 statements/letters of support from residents and former residents of Selside giving evidence of activities on the land.
- 4.4 The land is believed to be owned by the local Lord of the Manor, Dr J A G<sup>F</sup>arrer of the Ingleborough Estate Office, Clapham, Lancaster. However, a Mr J H Morphet of Acre Lands Farm, Grindleton, Lancashire has included the Green in the particulars of sale of a neighbouring house known as "Penyghent Cottage".

#### 5.0 THE PROCEDURE

- 5.1 On 19 September 1995 after giving the application preliminary consideration, the Property and General Purposes Sub-Committee resolved as follows:
- (i) That the County Secretary's intention to obtain Counsel's Opinion on the legal position relating to such applications for registration of land which may have become Village Green and to advise the Council on the merits of this application be noted.
  - (ii) That the applications for registration of land at Selside be given publicity in accordance with the Commons Registration (New Land) Regulations 1969.
  - (iii) That the applicant be invited to submit further representations in support of the application.
  - (iv) That this application be the subject of a further report to this Sub-Committee.
- 5.2 On 21 September 1995 notice of the application was published in a local newspaper and served on appropriate parties in accordance with the 1969 Regulations. In response, an objection was received by Mr J H Morphet of Acre Lands Farm, Grindleton, Lancashire. This objection took the form of a letter accompanied by photographs.
- 5.3 Gerard Ryan QC was instructed to advise the County Council. He was forwarded copies of both the application and the objection.

#### 6.0 DELEGATED POWER

- 6.1 On 15 March 1996 the Environmental Services Committee resolved that the Economic Development and Environmental Issues Sub-Committee be delegated with power to consider the merits of, and determine, this application under the Commons Registration Act 1965 for the registration of land at Selside as Village Green.

#### 7.0 CONSULTATIONS

- 7.1 Gerard Ryan QC, advising the County Council, has taken into account Mr Morphet's submissions when drawing his conclusions. As in the Saxton case, he feels that the Selside application is vulnerable to falling foul of the Suffolk County Council principle. However, he concludes his opinion as follows:

"... I would recommend the County Council not to accept the claim to register this piece of land. In essence, I consider the claimed activities inadequate to constitute "lawful sports and pastimes" of the inhabitants of the locality and I have some doubt whether 20 years use "as of right" can be claimed. There is in addition, the difficulty generated by the R -v- Suffolk decision to which I have referred. My

principal reason for so advising is, however, the inadequacy of the "lawful sports and pastimes" claimed both as to their nature and having regard to the physical condition of the land."

#### 8.0 FURTHER CONSULTATION

8.1 On 8 March 1996 the applicant was sent a copy of the objection, together with documentation.

8.2 On 9 May 1996 both the applicant and the objector were sent a copy of Gerard Ryan QC's Opinion and their comments invited.

#### 9.0 APPEAL AGAINST SUFFOLK COUNTY COUNCIL CASE DECISION

9.1 Gerard Ryan QC confirms that the Suffolk County Council case is now under appeal which is scheduled for hearing before the Court of Appeal at the end of June 1996. The County Council could defer determination of this application for registration of the land as Village Green pending the outcome of the Court of Appeal's determination.

#### 10.0 OFFICER COMMENT

10.1 The spirit of the legislation appears to be one of encouraging registration authorities such as North Yorkshire County Council to give applicants opportunity to put their applications in order should it be appropriate to do so. In view of the evidence and the legal advice it is unlikely that, at this stage, Members would be inclined to accede to this application. However, in all the circumstances, it is considered appropriate to defer final determination of this application pending further consultation with the applicant: the Horton in Ribblesdale Parish Council. In particular, it appears that the Parish Council must obtain further evidence in support of their assertion that "lawful sports and pastimes" as defined have in fact taken place on this site.

10.2 Such a deferral referred to above would also enable your advisors to have the benefit of the Court of Appeal Judgment in respect of the Suffolk County Council case which is due at the end of June 1996. At a future meeting, Members will be presented with all the evidence and legal argument to decide whether to accede to this application.

#### 11.0 RECOMMENDATION

11.1 It is recommended that Members resolve as follows:

- (i) To note that the Head of Legal Services will bring the consultation process to an end with a view to gathering together available evidence and legal argument for presentation to Members at a future meeting of this Sub-Committee at which this application shall be determined.
- (ii) Members to note that deferral of determination of this application will hopefully leave Members with the benefit of the Court of Appeal Judgment in the case of R -v- Suffolk County Council Ex Parte Steed due to be decided at the end of June 1996.

RICHARD DALY

Head of Legal Services

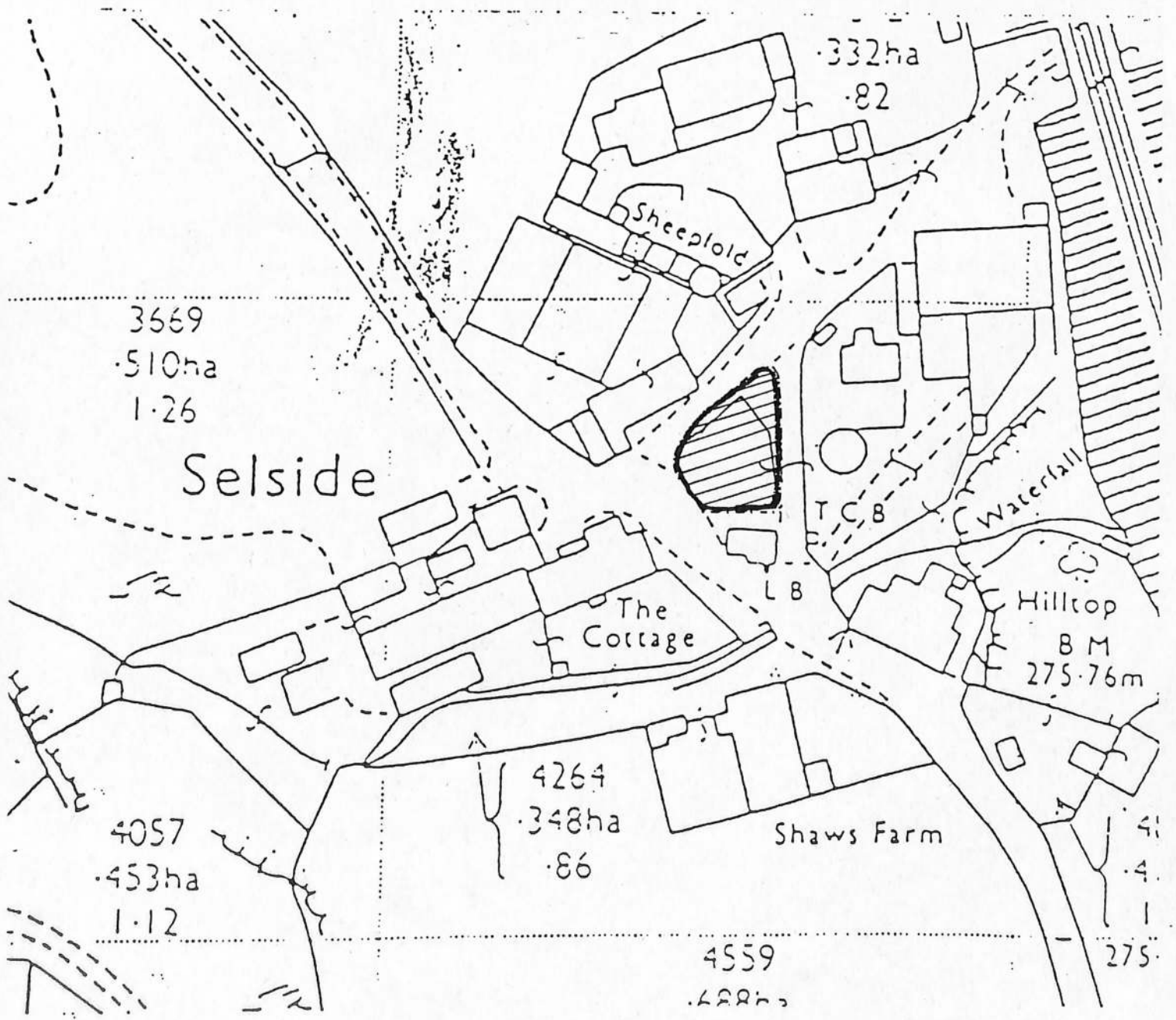
County Hall  
NORTHALLERTON  
30 May 1996  
IPR/ALS

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Village Green  
marked



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NORTH YORKSHIRE COUNTY COUNCIL  
CORPORATE SERVICES  
08 OCT 1996

K. Jowett Esq.  
Vice-Chairman  
Horton Parish Council  
Horton-in-Ribblesdale  
Stable Cottage  
Horton-in-Ribblesdale  
BD24 OEX

Ian Ross  
Legal Services  
County Hall  
North Allerton  
North Yorkshire  
DL7 8AD

Dear Mr Ross

Selside Village Green

Re your letter dated 25th September 1996, in response to comments made by Mr J Morphet regarding the Clerk to Horton Parish Council. All correspondence reflect the views of the Parish Council not the Parish Clerk.

The suggestion that the views made by Mr J Morphet are endorsed by our Chairman Mr D Morphet are misguided as Mr D Morphet has at all times remained totally neutral in this matter.

A copy of this letter has been sent to Mr J Morphet.

Yours sincerely

Vice-Chairman *K Jowett*

Chairman *David A Morphet*

Copy to Mr J Morphet

Mr Richard T. Daly MA (Oxon)  
Head of Legal Services  
County Hall  
Northallerton  
North Yorkshire  
DL7 8AD

NORTH YORKSHIRE COUNTY COUNCIL  
CORPORATE SERVICES

- 4 SEP 1996

The Shaws  
Selside nr. SETTLE  
North Yorkshire  
BD24 0HZ

Tel.: 01 729 860 313  
Fax: 01 729 860 350

29th August 1996

Dear Mr Daly,

### Selside Village Green

At a recent meeting of Horton-in-Ribblesdale Parish Council (19/8/96) a letter which you received from Mr J. H. Morphet regarding Selside Village Green was discussed. As Mr Morphet did not raise any new arguments the Parish Council decided to reply only to Mr J. H. Morphet's remarks questioning unfairly the role of the Clerk to the Parish Council in this matter.

However, I have been asked by Selside residents to reply a little bit more fully to his letters and to recent incidents mentioned by Mr Morphet.

1. All the current and former Selside residents who supplied the original depositions regarding the Village Green stand by their comments which are as true now as they were then.
2. We still feel that the case of R. v. Suffolk County Council has no bearing on the Parish Council request for registration. The rights we claim are based on our use of the Village Green since the early 70's.
3. In their letter of 16th May 1996 the Selside Resident Association underlined that Mr Morphet holds no legal title to the Green and only began to object to our use of the land after he had decided to put a house near the Green on the market. It is this change of attitude which has led to a lot of tension between Selside residents on the one hand and Mr Morphet on the other.

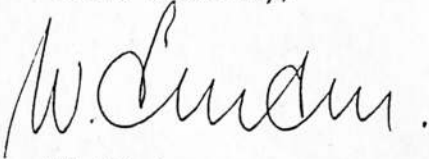
A good example of this tension were the recent events to which Mr Morphet alludes in one of the letters you sent to Horton Parish Council. Residents had planned a party on the Village Green in early June. A day before the event Mr Morphet placed an old tractor, a slurry wagon and a trailer on the Village Green blocking our way across it and making it difficult to hold a party which was to be followed by a barbecue the next day. Nevertheless, the party went ahead and was joined by a good number of people from Horton village, some 2 1/2 miles from Selside. During the party somebody (not a Selside resident) discovered a key which fitted Mr Morphet's tractor and drove it away, without any damage, back into Mr Morphet's. As far as we are aware, nobody let down any tires. Whilst we are very keen to keep the Village Green open to all we will not agree to any vandalism.

A few days later the Village Green was obstructed again. It was then when the skeleton of another old trailer was dragged away from the main crossing point of the Green and turned on its side. Since then the above mentioned items have been cleared from the Green by Mr Morphet and is now accessible again. Although we continue to use it we cannot say that we enjoy it as we are aware of the tension caused.

4. Finally, we want to repeat that we are only interested in keeping the Village Green in perpetuity open for all, without personal or financial gain to any of the residents.

We therefore ask the Subcommittee to support the Parish Council's registration in the interest of the whole Parish.

Yours sincerely,



W. Fenten

# HORTON-IN-RIBBLESDALE ARISH COUNCIL

Clerk HELEN C. SERGEANT B.Sc., M.Sc.

Borrins, Selside, Settle, North Yorkshire BD24 OHX  
Telephone Horton-in-Ribblesdale (01729) 860379

Your Ref. 1876

August 27th 1996

Dear Mr Daly,

Selside Village Green

Thank you for your letter of August 16th with  
enclosures.

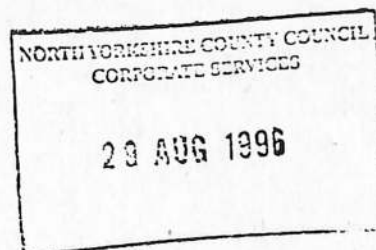
The matter was discussed at the recent meeting of  
the Parish Council, where it was agreed that the Council had nothing new  
to add to the points it had made in previous letters to your department.

The only comment the Council would make regarding  
J H Morphet's letters to you is that the Clerk to the Parish Council  
has acted solely on the instructions of the Parish Council. Any comments  
made are not by the clerk, but by the majority of councillors, on behalf  
of its parishioners. The draft of any letter to you written by the  
clerk of a serious or complicated nature in connection with Selside  
village green has always been approved by the Chairman of the Parish  
Council before being posted to you.

Yours sincerely,

*Helen C. Sergeant*

Parish Clerk



Richard T Daly MA  
Head of Legal Services  
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