

## **NORTH YORKSHIRE COUNCIL**

### **COMMONS ACT 2006 — SCHEDULE 2, PARAGRAPH 2**

#### **Notice of an application to register land as common land**

#### **Application Reference Number: CA13 027**

#### **The Stray, Harrogate**

Application has been made to the North Yorkshire Council by The Open Spaces Society under Schedule 2(2) of the Commons Act 2006 and in accordance with Schedule 4(14) of the Commons Registration (England) Regulations 2014.

The application, which includes documentary evidence, can be viewed at:

<https://www.northyorks.gov.uk/environment-and-neighbourhoods/land-and-waterways/common-land-and-village-greens/common-land-applications-and-decision-notice>

or you can request a copy by contacting the Commons Registration Officer: -

email: [commons.registration@northyorks.gov.uk](mailto:commons.registration@northyorks.gov.uk) , telephone: 01609 534753

or write to: North Yorkshire Council, Commons Registration, County Hall, Northallerton, North Yorkshire DL7 8AD

Please note that larger scale copies of the maps showing the extent of the land affected by this notice can be viewed at Harrogate Library, Victoria Avenue, Harrogate HG1 1EG

Any person wishing to make a representation regarding this amendment:

- should quote the Application No. CA13 027
- must state the name and postal address of the person making the representation and the nature of that person's interest (if any) in any land affected by the application.
- may include an e-mail address of the person making the representation
- must be signed by the person making the representation
- must state the grounds on which the representation is made
- should send the representation to: Commons Registration Officer, Commons Registration North Yorkshire Council, County Hall, Northallerton, North Yorkshire DL7 8AD or e-mail to [commons.registration@northyorks.gov.uk](mailto:commons.registration@northyorks.gov.uk) on or before 26 July 2023

Representations cannot be treated as confidential, and a copy will be sent to the applicant in accordance with Regulation 25 of the 2014 Regulations. Should the application be referred to the Planning Inspectorate for determination, in accordance with Regulation 26 of the 2014 Regulations, any representations will be forwarded to the Planning Inspectorate.

A summary of the effect of the application (if granted) is as follows: the Registration Authority will register the application land as common land.

Dated: 6 June 2023

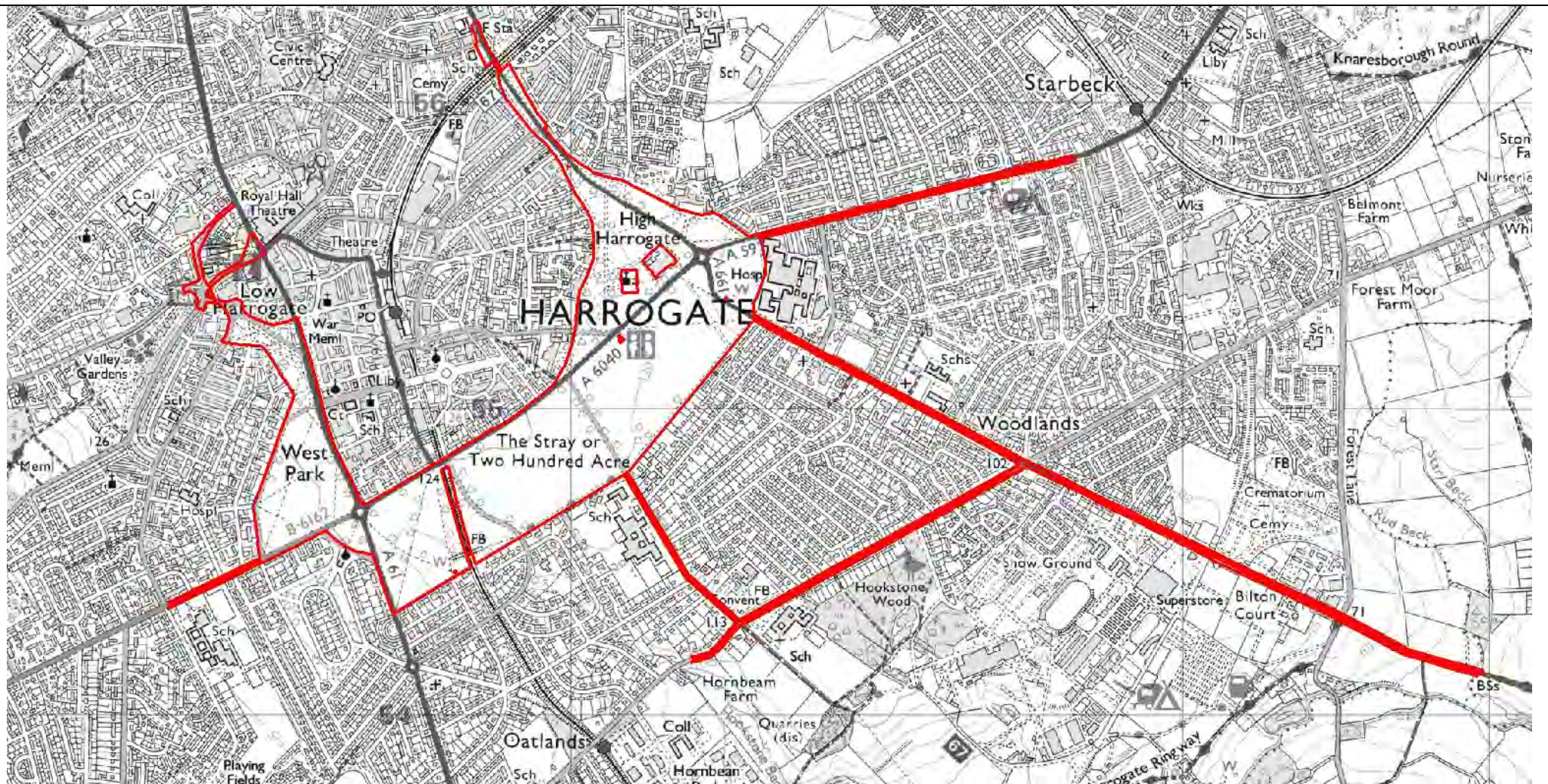
Karl Battersby

Corporate Director – Environment Directorate  
North Yorkshire Council

#### **Schedule**

#### **Description of the land seeking to be registered as common land**

**The Stray, Harrogate, as edged red on the notice plan.**



**COMMONS ACT 2006**

**CA13 APPLICATION (Ref. No. CA13 027) SEEKING TO REGISTER LAND AS COMMON LAND AT THE STRAY, HARROGATE  
LOCATION PLAN**

**NOTICE PLAN**



Application site

# The Harrogate Stray

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## Commons Act 2006: Schedule 2

# Application to correct non-registration or mistaken registration

This section is for office use only

Official stamp

<p>COMMONS ACT 2006</p> <p>NORTH YORKSHIRE COUNTY COUNCIL</p> <p>REGISTRATION AUTHORITY</p> <p>DATE <u>19 JAN 2023</u></p>
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Application number

CA13 027
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Register unit number  
allocated at registration  
(for missed commons  
only)

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Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

- Any person can apply under Schedule 2 to the Commons Act 2006.
- All applicants should complete boxes 1-10.
- Applications must be submitted by a prescribed deadline. From that date onwards no further applications can be submitted. Ask the registration authority for details.
- You will be required to pay a fee unless your application is submitted under paragraph 2, 3, 4 or 5 of Schedule 2. Ask the registration authority for details. You would have to pay a separate fee should your application relate to any of paragraphs 6 to 9 of Schedule 2 and be referred to the Planning Inspectorate.

### Note 1

*Insert name  
of commons  
registration  
authority.*

### 1. Commons Registration Authority

To the: North Yorkshire County Council

Tick the box to confirm that you have:

enclosed the appropriate fee for this application:

or

have applied under paragraph 2, 3, 4 or 5, so no fee has been enclosed:

**Note 2**

*If there is more than one applicant, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or an unincorporated association. 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 box 3 is not completed all correspondence and notices will be sent to the first named applicant.*

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

Name:

The Open Spaces Society

Postal address:

c/o Frances Kerner  
The Open Spaces Society  
25a Bell Street  
Henley-on-Thames  
Oxfordshire

Postcode RG9 2BA

Telephone number:

Fax number:

E-mail address:

**Note 3**

*This box 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, the representative 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:

Postal address:

Postcode

Telephone number:

Fax number:

E-mail address:

**Note 4**

For further details of the requirements of an application refer to Schedule 4, paragraph 14 to the Commons Registration (England) Regulations 2014.

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

Tick one of the following boxes to indicate the purpose for which you are applying under Schedule 2 of the Commons Act 2006.

- To register land as common land (paragraph 2):
- To register land as a town or village green (paragraph 3):
- To register waste land of a manor as common land (paragraph 4):
- To deregister common land as a town or village green (paragraph 5):
- To deregister a building wrongly registered as common land (paragraph 6):
- To deregister any other land wrongly registered as common land (paragraph 7):
- To deregister a building wrongly registered as town or village green (paragraph 8):
- To deregister any other land wrongly registered as town or village green (paragraph 9):

For waste land of a manor (paragraph 4), tick one of the following boxes to indicate why the provisional registration was cancelled.

- The Commons Commissioner refused to confirm the registration having determined that the land was no longer part of a manor (paragraph 4(3)):
- The Commons Commissioner had determined that the land was not subject to rights of common but did not consider whether it was waste land of a manor (paragraph 4(4)):
- The applicant requested or agreed to cancel the application (whether before or after its referral to a Commons Commissioner) (paragraph 4(5)):

Please specify the register unit number(s) (if any) to which this application relates:

The application land does not have a unit number.

**Note 5**

Explain why the land should be registered or, as the case may be, deregistered.

**5. Description of the reason for applying to correct the register:**

Under s.11 of the Commons Registration Act 1965, the land was exempt from registration by order of the Minister of Land and Natural Resources. This application for re-registration is made under paragraph 2(2)(b)(iii) of Schedule 2 to the Commons Act 2006, i.e., the land is 'regulated as common land under a local or personal Act'. Please see Continuation Sheet to Q5.

**Note 6**

*You must provide an Ordnance map of the land relevant to your application. The relevant area must be hatched in blue. The map must be at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland. Give a grid reference or other identifying detail.*

**Note 7**

*This can include any written declarations sent to the applicant (i.e. a letter), and any such declaration made on the form itself.*

*If your application is to register common land or a town or village green and part of the land is covered by a building or is within the curtilage of a building, you will need to obtain the consent of the landowner.*

**6. Description of land**

Name by which the land is usually known:

The Harrogate Stray

Location:

In the centre of the town of Harrogate

Tick the box to confirm that you have attached an Ordnance map of the land: (please see Continuation Sheet to Q5)

**7. Declarations of consent**

None. This application excludes every building on the Harrogate Stray which would require the consent of the owner if included in the application, by virtue of paragraph 14(3) of Schedule 4 to the 2006 Act.

**Note 8**

*List all supporting documents and maps accompanying the application, including if relevant any written consents. This will include a copy of any relevant enactment referred to in paragraphs 2(2)(b) or 3(2) (a) of Schedule 2 to the Commons Act 2006 or, in relation to paragraph 4 (waste land of a manor) evidence which shows why the provisional registration was cancelled. 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.*

**8. Supporting documentation****1. Supporting documents and plans:**

An application map in two parts showing the extent of the Harrogate Stray, the subject of the application

Wetherby Road (Area 8) application plan modifying the extent of the application plan in the vicinity of Wetherby Road

Excluded buildings application plan modifying the extent of the application map in respect of certain buildings.

**2. Documents relating to the Commons Registration Act 1965 on which we rely are not included pursuant to r.16(3):**

Maps showing exempted land outlined in yellow (Harrogate Stray Maps 93, 155 and 190) under s.11 of the Commons Registration Act 1965.

Harrogate Corporation Act 1893

Harrogate Stray Act 1985



**Note 9**

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.

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

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**Note 10**


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

**10. Signature**

Date:

19 January 2023

Signatures:


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**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.**

**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 or the Freedom of Information Act 2000.*

## Continuation Sheet to Q5

### The Harrogate Stray

Land which came to be known as the Harrogate Stray (hereafter ‘the Stray’) owes its origins to the provisions of *An Act for dividing and inclosing such of the Open Parts of the District called the Forest of Knaresborough, in the County of York, as lie within the Eleven Constaberies thereof; and for other Purposes therein mentioned* (Private Act, 10 Geo. III, c.94), hereafter the Act of 1770. The Forest of Knaresborough was held by the Duchy of Lancaster.<sup>1</sup>

A summary of the provisions of the Act of 1770 are reproduced, followed by a description of the grounds for applying to register the land.

#### **Extracts from the Act of 1770**

s.44 ‘two hundred acres of land adjoining or near to the said springs of water and to be ascertained and set out by the said Commissioners...shall be left open for the purposes hereinafter mentioned and declared concerning the same’

s.52 ‘that the said two hundred acres of land herein before directed to be set out and ascertained near unto the said springs of water shall be and they are hereby directed to be converted into a stinted Pasture upon which such number of Cattle of and belonging to each of the said Freeholders and Copyholders having messuages or lands within the said Constaberies of Bilton with Harrowgate and Beckwith with Rosser or either of them as shall be deemed to be in proportion to their respective messuages lands and tenements’

s.53 ‘and the said two hundred acres of land shall for ever hereafter remain open and uninclosed’

The Inclosure Award of 1778 confirmed and put into effect the Act of 1770. An enrolled copy of the award is held at North Yorkshire Record Office.<sup>2</sup>

#### **Harrogate Corporation Act 1893**

Under the Harrogate Corporation Act 1893 [56 & 57 Vict., c.ccix], the Duchy of Lancaster continued to hold the freehold of the Stray but management was placed in the hands of the Corporation of Harrogate. Pasture gates (rights of common) were extinguished but the Act went on to state that ‘the sole pasturage and herbage upon the Stray shall vest in the Corporation’.<sup>3</sup> Furthermore, the Corporation was to ‘keep the Stray uninclosed and unbuilt on as an open space for the recreation and enjoyment of the public’. Since 1893, further acts have been passed regarding regulation of the Stray, the most recent being the Harrogate Stray Act 1985, which repealed the Act of 1770.

<sup>1</sup> The Duchy of Lancaster held the Honor of Knaresborough in which the Forest of Knaresborough was situated.

<sup>2</sup> WRRD Roll 8 [MIC 603 & 604]0).

<sup>3</sup> S.9(a).

## Commons Registration Act 1965

Under the Commons Registration Act 1965, all common land was required to be registered. Common land was defined in s.22(1) as:

- (a) land subject to rights of common (as defined in this Act) whether those rights are exercisable at all times or only during limited periods
- (b) waste land of a manor not subject to rights of common[.]

Rights of common were defined in s.22(1) so that it:

includes cattlegates or beastgates (by whatever name known) and rights of sole or several vesture or herbage or of sole or several pasture, but does not include rights held for a term of years or from year to year[.]

The Stray therefore was land eligible to be registered as common land, being land owned by the Duchy of Lancaster and subject to a right of common vested in the Corporation of Harrogate.

Exceptionally, the New Forest, Epping Forest and the Forest of Dean were exempted from the requirement for registration under s.11 of the 1965 Act, and other land could be exempted from registration by order if it satisfied certain criteria set out in s.11. The principle of exemption was first considered by the Royal Commission on Common Land (see Figures 1 and 2).

Figure 1: Extract from the Royal Commission on Common Land (1958).

266. Where the Minister<sup>4</sup> was satisfied that an adequate record of a common (or group of commons), its ownership and common rights exercisable over it, already existed under statute, he should have power to make an order exempting the land and the rights relating to it from the provisions for registration. Thus we would not expect that the authorities responsible for the administration of common land in the New Forest or the occupiers of properties to which rights in the Forest attach would be required to register the land or rights with the Hampshire County Council. The Clerk to the Verderers already keeps a full record in the 'Statutory Atlas', prepared under the New Forest Act, 1949, of the areas to which Forest rights attach and the nature of those rights. The atlas is open to inspection by the public. In cases such as this, the body in possession of the existing statutory records and maps would apply to the Minister as early as possible for exemption from registration, and, if its request was granted, would inform the Commons Registration Authority which would note the fact in its Register and decline to accept for registration any claims in respect of the area exempted.<sup>5</sup>

Figure 2: Extract from the Commons Registration Act 1965, s.11.

**11 Exemption from registration**

- (1) The foregoing provisions of this Act shall not apply to the New Forest or Epping Forest nor to any land exempted from those provisions by an order of the Minister, and shall not be taken to apply to the Forest of Dean.
- (2) The Minister shall not make an order under this section except on an application made to him before such date as may be prescribed.
- (3) The Minister shall not make an order under this section with respect to any land unless it appears to him—
  - (a) that the land is regulated by a scheme under the Commons Act 1899 or the Metropolitan Commons Acts 1866 to 1898 or is regulated under a local Act or under an Act confirming a provisional order made under the Commons Act 1876; and
  - (b) that no rights of common have been exercised over the land for at least thirty years and that the owner of the land is known.

The Mayor, Alderman and Burgesses of the Borough of Harrogate applied on the prescribed form (Form A) to the Minister of Land and Natural Resources for exemption from registration of the Harrogate Stray. The applicant was required to confirm that the land was common land, to provide details of its regulation and to confirm its ownership. Owing to the sole pasturage and herbage upon the Stray being vested in the Corporation, and the land being held by the Duchy of Lancaster, the Stray met the first element of the definition of common land as specified in s.22(1) of the Commons Registration Act 1965, *i.e.* that it was land subject to rights of common (see Figure 3 for extract of prescribed Form A showing form of declaration).

Figure 3: Extract from Form A (Schedule to the Commons Registration (Exempted Land) Regulations 1965) showing form of declaration.

**DECLARATION**

**(See Note 7)**

I have studied the Notes printed below.

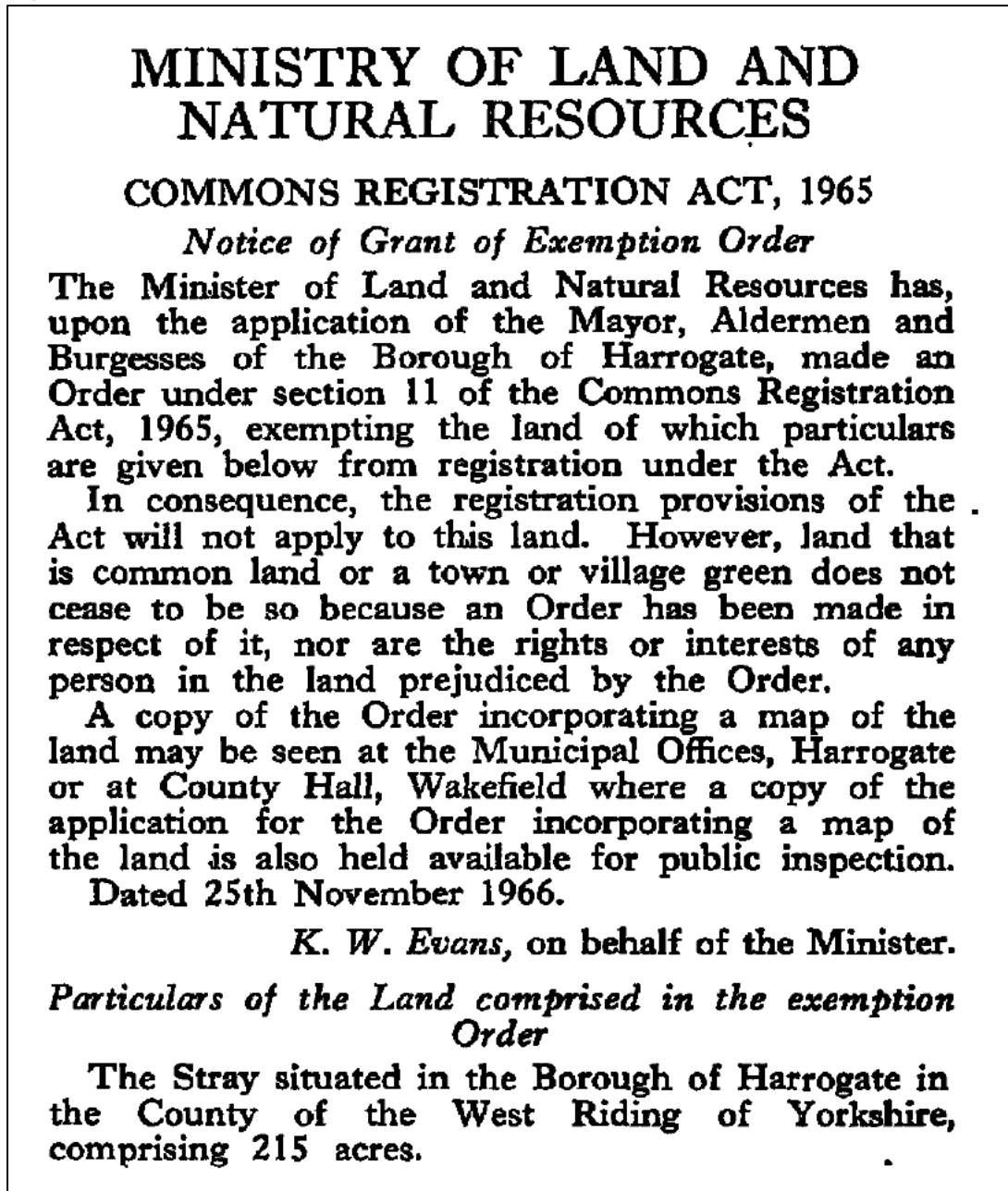
The statements contained in this application are true to the best of my knowledge and belief, and I have no information which would lead me to suppose that rights of common have been exercised over the land which is the subject of this application at any time during the last thirty years.

<p>*Strike out this portion where the declaration is made by the applicant personally.</p>	<p>*I am duly authorised by the applicant to make this declaration.  Dated.. . . . . 19.. . . . .  Signature of applicant or of person on applicant's behalf  . . . . .</p>
--	---

Where the declaration is not signed by the applicant personally, the person signing must here give his full name and state the capacity in which he is acting

.....

The Minister of Land and Natural Resources agreed that the land was common land and made an order, on or shortly before 25 November 1966, confirming exemption, having regard to the criteria in s.11(3) i.e., that the land was 'regulated under a local act' and 'that no rights of common have been exercised over the land for at least thirty years and that the owner of the land is known.' A notice was placed in *The London Gazette* to advertise the exemption (see Figure 4).

Figure 4: Extract from *The London Gazette*, 2 December 1966.

Source: [www.thegazette.co.uk/London/issue/44190/page/13094](http://www.thegazette.co.uk/London/issue/44190/page/13094).

#### Paragraph 2 of Schedule 2 to the Commons Act 2006

Paragraph 2(2)(b)(iii) of Schedule 2 to the Commons Act 2006 permits registration of land that was not finally registered as common land under the Commons Registration Act 1965 and which is 'regulated as common land under a local or personal Act'.

The Stray is owned by the Duchy of Lancaster and over time has been subject to several local Acts. Initially, it was regulated as a stinted pasture (i.e., common land subject to quantified rights of common). Subsequently, although stinted rights were extinguished, the sole right of pasture and herbage was vested in the Corporation, thus confirming that the land remained common land. Since the late eighteenth century, the land has been regulated

and remains so today under the Harrogate Stray Act 1985 which under s.4(4)(c) permits the letting of 'the pasturage of the Stray other than for feeding swine or geese'.

The Minister of Land and Natural Resources confirmed that the land was common land and by his order it was exempted from registration under the Commons Registration Act 1965; consequently, it was not provisionally or finally registered. Under Schedule 2 to the Commons Act 2006, the land meets the specified criteria of paragraph 2(2)(b)(iii) and is eligible for registration.

The Explanatory Notes to the Commons Act 2006 state (para.117) that:

'It may be possible for commons exempted from registration under section 11(3) of the 1965 Act (a list of which appears in annex B) to be registered under paragraph 2,'.

The Stray is among the commons listed in annex B. It is submitted that the use of the conditional 'may' in para.117 is because not all such exempted commons may now satisfy the requirements of para.2 of Sch.2 to the 2006 Act. However, the Stray plainly does.

### **Application Map (Question 6 of Form CA13 refers)**

The application map, in two parts, shows the extent of the land to which the Harrogate Stray Act 1985 applies. The application map is derived from the Stray Plan deposited in connection with the 1985 Act, for the purposes of that Act (see s.1). The application map has been provided by Harrogate Borough Council and purports to represent a digitised copy of the Stray Plan.

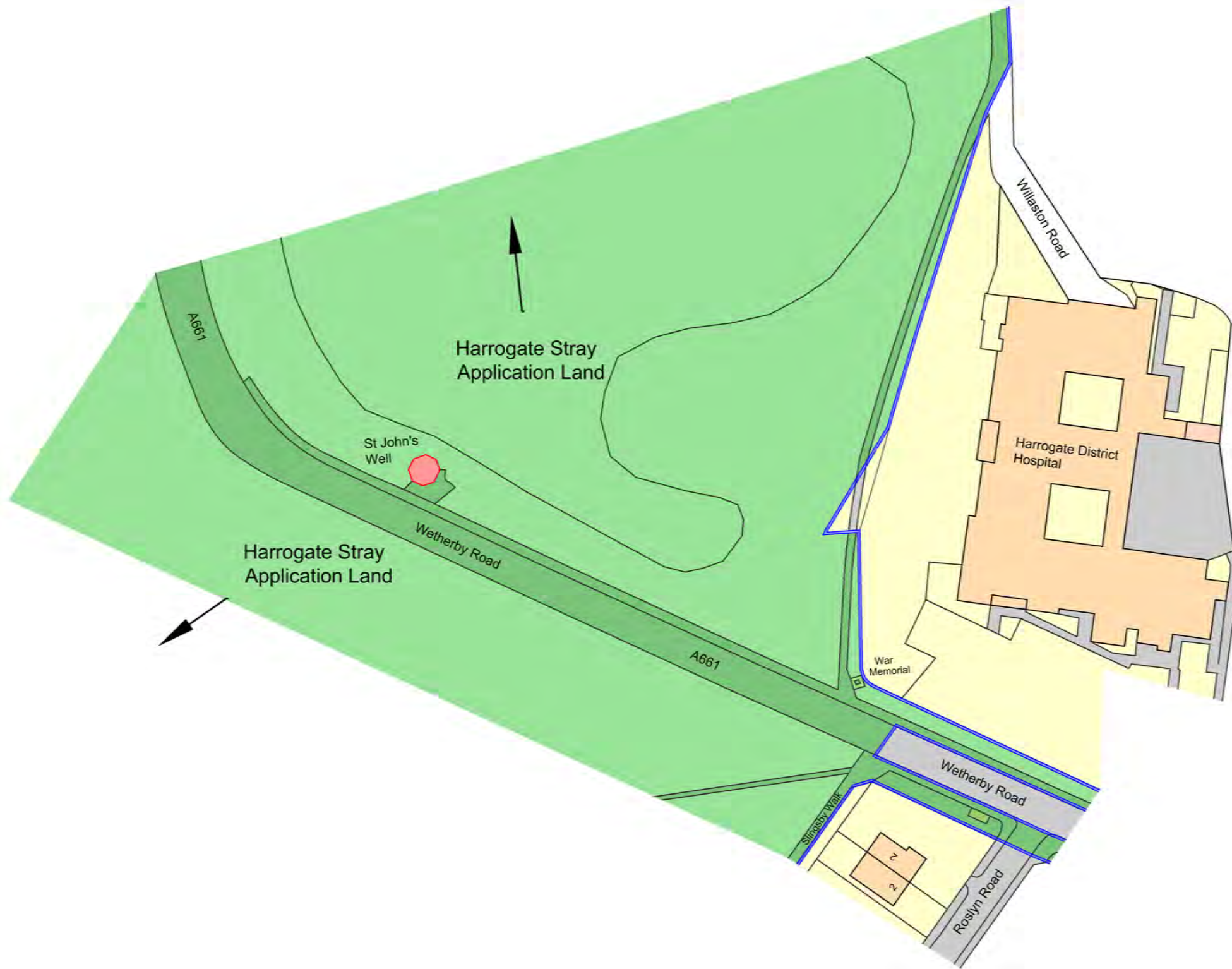
The Wetherby Road (Area 8) application plan modifies the extent of the application map in the vicinity of Wetherby Road. Under the 1893 Act, the grounds of The Hollies protruded into the Stray towards St John's Well, and those grounds were not part of the Stray. The application map is modified so as to exclude land that is neither subject to the 1893 Act nor included in the Stray Plan.

However, certain buildings are part of the Stray and included in the Stray Plan and the application map. Under paragraph 14(3) of Schedule 4 to the Commons Registration (England) Regulations 2014, a building, or the curtilage of a building, may be included in an application only with the consent of the owner. The Society therefore wishes to exclude such buildings from the scope of the application. These buildings are identified in the excluded buildings application plan modifying the extent of the application map in respect of the buildings. The buildings are considered not to have any curtilage to which paragraph 14(3) would apply. In addition, the Wetherby Road (Area 8) application plan shows St John's Well as an excluded building.









Buildings to be excluded from the application area.



Blue line shows the boundary of the land referred to in the application.



The land shaded green is the land referred to in the application.



*Landman LLP*

ON BEHALF OF



1B Oaklands Court, Tiverton Business Park,  
Tiverton, Devon, EX16 6TG  
T: 01884 214052

Client  
Open Spaces Society

Site: Grid Ref. SE 3158 5535  
The Stray  
A661, Wetherby Road  
Harrogate,  
HS2 7SB

Project  
Commons Act 2006,  
Schedule 2, Paragraph 2

Title Application Plan:  
Harrogate Stray Area 8

Drawing No. 1 Issue: 7

Scale 1:1000 when printed at A3

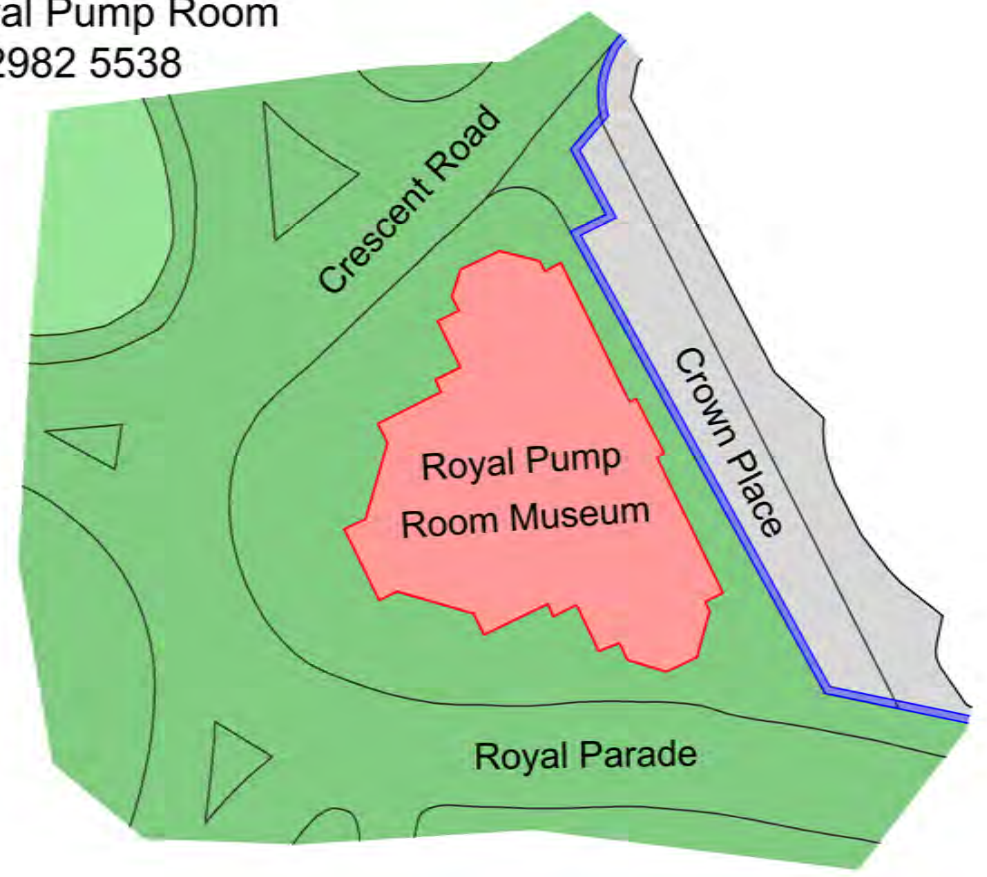
Date 17 January 2023

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E&O.E

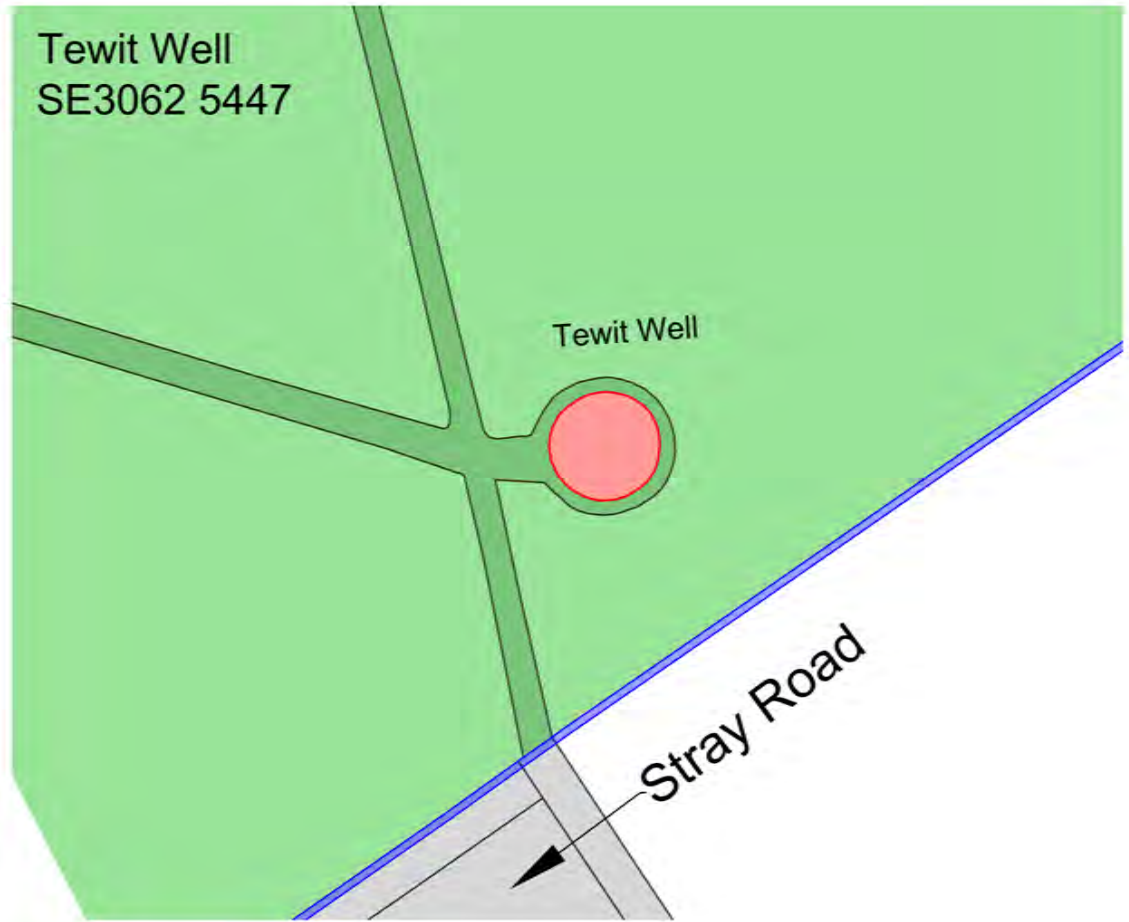
For submission with CA13 registration application.



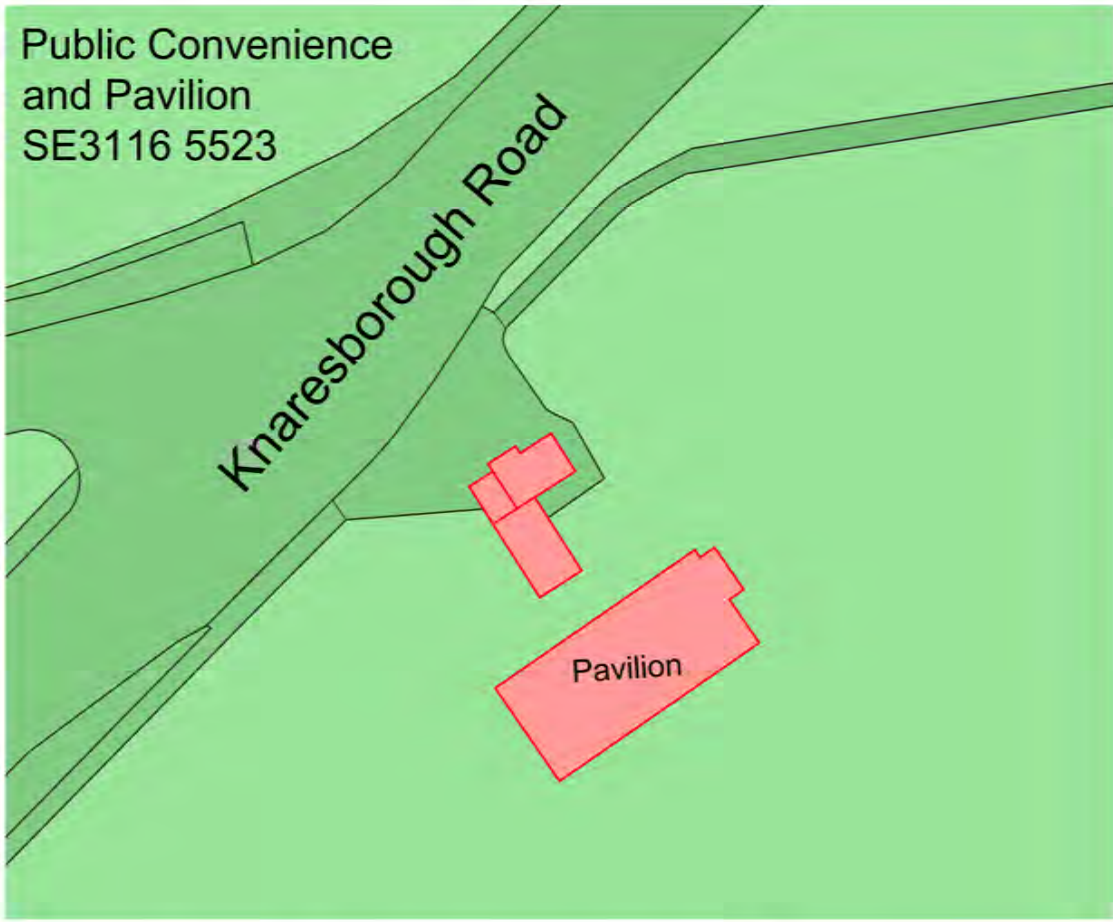
Royal Pump Room  
SE2982 5538



Tewit Well  
SE3062 5447



Public Convenience  
and Pavilion  
SE3116 5523



Sub-station  
SE3098 5581



Buildings to be excluded from the application area.



Blue line shows the boundary of the land referred to in the application.



The land shaded green is the land referred to in the application.



**Landman LLP**

ON BEHALF OF



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Client  
Open Spaces Society

Site:  
The Stray  
Harrogate,  
HS2 7SB

Project  
Commons Act 2006,  
Schedule 2, Paragraph 2

Title Application Plan:  
Harrogate Stray Excluded Buildings

Drawing No. 2 Issue: 4

Scale 1:500 when printed at A3

Date 17 January 2023

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For submission with CA13 registration application.

