



[2019] UKFTT 0110 (PC)

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
LAND REGISTRATION DIVISION

REF/2017/1149

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

B E T W E E N:

TERENCE BATES

Applicant

and

DALTON PIERCY PARISH COUNCIL

Respondent

Property Address: The Village Green, Dalton Piercy, Hartlepool TS27 3HT
Title Numbers: CE200542, CE200918, CE166753, CE189063

Before: Mr Max Thorowgood sitting as Judge of the First-Tier Tribunal

Sitting at: Teesside Magistrates Court, Albert Road,
Middlesbrough

On: 8th January 2019

Applicant's representation: In person

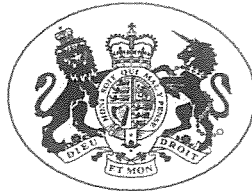
Respondent's representation: Miss Nicola Allan of Counsel instructed pursuant to the Bar's Public Access scheme

1. Introduction

1.1. I had the benefit of viewing the site in the afternoon before the hearing in company with the Applicant and a representative of the Respondent. The findings which I set out below are informed by my observations on that occasion.

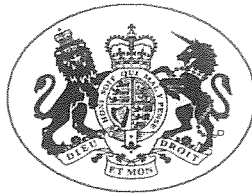
2. The application

2.1. This reference concerns the Applicant's application dated 25th April 2017 the object of which is best understood by comparing the plan which forms part of document



6 within the Applicant's bundle (which I annexe hereto marked 'Plan 1') with the Title Plan to the Respondent's title to the land which forms the vast bulk of the Dalton Piercy Village Green, CE200542, (which I annexe marked 'Plan 2'). The affected areas are shown shaded on the notice plan which I annexe hereto marked 'Plan 3'.

- 2.2. As is quite frequently the case, the Dalton Piercy Village Green ("the Green") extends right up to the external walls of a number of the properties which abut it. Many of those properties can only be accessed over the Green. Hence over many, many years tracks or paths over the Green have been formed and to a greater or lesser extent those tracks have been 'made' by the laying of stone or other basic road making materials upon them. It is apparent from a comparison of Plans 1 and 2 that the Respondent's registered title includes the land over which a number of those paths (to which I shall refer in this decision as "the Paths") pass. It is the main thrust of the application that that land does not and ought not ever to have been held to form part of the Dalton Piercy Village Green and should, consequently, be removed from the Respondent's title. I note, however, that a part of the land which the Applicant seeks to excise from the Respondent's title comprises the bed of Dalton Beck and, as I observed upon my inspection, there is a path over the Green which gives access to the Dalton Piercy Village Hall the removal of which he does not seek.
- 2.3. The Applicant also seeks the cancellation of various entries recording the benefit of easements of way over the Village Green in favour of title numbers CE200918 and CE166753. Title number CE189063 could also be affected by the relief sought although the benefit of its rights is not registered against the Respondent's title. Notice of the application has been served on the registered proprietors of these titles but no other objections have been received. I would observe that if the Applicant is correct, the Paths form part of the public highway and so any and all members of the public would have the right to pass over them.
- 2.4. It is to be noted that the Applicant has no proprietary interest of his own in the outcome of this application, nor does he seek to identify the true owner of the land. He was previously the registered proprietor of a property known as The Grange, Dalton Piercy which is registered under title number CE166753 and in that capacity he had previously sought to establish a right of way over the Green for the purposes of access. However, by the time he made this application the Applicant had transferred his title to the Grange to his brother in law Mr Morfitt who paid a premium £42,500.00 to the Respondent in consideration of a grant by it of a right of way to the Grange over the Green. That does not affect the Applicant's entitlement to apply to have a mistake on the Register corrected but it may possibly be relevant to the question of the justice or otherwise of altering the title should the necessary grounds to do so be established.



3. The Commons Registration process

- 3.1. In order to understand the basis for the application it is essential to consider the process which led to the registration of the Green as a Village Green and the vesting of the title to the Green in Dalton Piercy Parish Council.
- 3.2. The Commons Registration Act 1965 (“the CRA”) established what was intended to be a comprehensive scheme for the registration of all common land and town and village greens in England and Wales. The mandatory regime required applications for provisional registrations to be made by 2nd January 1970 and permitted the Registration Authorities created by the Act to make registrations of their own motion up until 31st July 1970. Failure to register by that date had the effect at a green would be deemed not to be one.
- 3.3. Provisional registration of land as a green was advertised and objections were invited to be made by 31st July 1972. If no objections to the provisional registration were made by that date, the registration became final. Any disputes were referred to the Commons Commissioners for determination.
- 3.4. The register established by the CRA was in two parts: the Land Section; and the Rights Section. The Land Section refers to the Register Plan which the current rules make clear it is the responsibility of the Registration Authority to maintain as the definitive map. The map is definitive because entries on the Register are deemed by section 10 of the CRA to be conclusive as to the matters stated.
- 3.5. It is important to note that registration of land as a Town or Village Green said nothing in itself about the ownership of the land over which the rights claimed were exercisable, although claims of ownership could also be made and registered. In cases where no claim of ownership was made or where the claim was disputed the CRA provided for the matter to be referred to the Commons Commissioners for determination. In the absence of any sustainable claim following an unclaimed ownership hearing, the Commons Commissioner was required to direct that the local authority be registered as the owner of the green.¹ Unlike the aspects of the register concerning the land’s status as a common or as a town or village green, registration as owner following such a hearing is not conclusive, see *Gadsden on Commons and Greens* (2nd Ed.) § 5-21.

4. Registration of the Green

- 4.1. The registration of the Green occurred in this way. A provisional registration was entered on 3rd December 1969 pursuant to an application made by Reginald Manners on 30th May 1968. The entry made in the Land Section of the register was in these terms:

“1. Those pieces of land called Dalton Piercy Village Green containing 2.92 acres or thereabouts in the Parish of Dalton Piercy in the

¹ See ss. 1(3) and 8 Commons Registration Act 1965



Rural District of Stockton as marked with a green verge line inside the boundary on sheet 4631 of the register map and distinguished by the number of this register unit. ...”

According to the Applicant, the register map referred to is document 5 in his bundle (“Plan 4”). That document is stamped, “Commons Registration Act 1965. Durham County Council Registration Authority. 3rd December 1969.” The Applicant says that stamp and the absence of any subsequent stamp prove that it was the plan prepared for the purpose of the provisional registration entered on 3rd December 1969 and that it has not subsequently been altered. The plan certainly reflects the entry made on the Register insofar as it shows the land affected by the registration by means of green verge lines but, although the copy is not terribly good, it is also possible to discern some small areas bordering the main public highway which passes through Dalton Piercy (which is not within the green verge lines) on it which appear to be shaded purple or violet and which are apparently defined by pairs of lettered arrows.

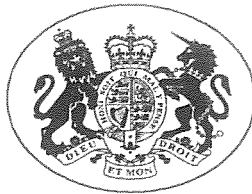
- 4.2. Following the initial, provisional registration, an objection was apparently made by Durham County Council on 1st December 1972. Although no copy of the Notice of Objection survives a letter apparently addressed to the Chairman of Dalton Piercy Parish Council from Durham County Council referring to it does. By that letter, Durham County Council, which was at that time apparently both the Registration Authority and the Objector, invited the Parish Council to agree to the amendment of the register in accordance with the plan attached, that is Plan 1.
- 4.3. The invitation contained in Durham County Council’s letter, which was apparently in a standard form but subject to some slight typed amendments designed to identify the Specific case of the Green and which include the reference to Plan 1, was in the following terms upon which the Applicant relies heavily:

“... I now enclose copy of the plan which has been prepared by the County Surveyor showing the highway(s) crossing the Green which is the subject of the application.

If you agree to the modification of the registration so as to exclude the line of the highway(s), I would be grateful if you would signify your agreement by signing the attached copy of this letter and plan and returning it to me at your earliest convenience. ...

I would re-affirm that such a modification is sought merely to protect the public rights in the highway(s) and the registration will otherwise be unaffected.”

Plan 1 to which the Respondent admits that letter refers differs from the register map in the following important respects:



- The grassed areas of the Green are shaded green but the Paths are not;
- There is on it a manuscript note which is not altogether easy to read but which the parties agreed says the following:

“N.B. The areas referred to as being coloured violet on the Register – Land Section are coloured black on this plan and marked A, B, C, D, E, F and G. This plan is substituted for the plan appended to the Register and marked VG 75 – See attached correspondence.”

- It does not bear the stamp of the Commons Registration Authority.

The Applicant reasons from:

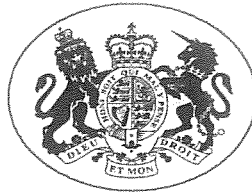
- The fact that Durham County Council’s letter refers to the exclusion of the line of the highways crossing the Green from the registration;
- The fact that Plan 1 seemingly deliberately does not colour the Paths green; and
- The fact that the manuscript note refers to Plan 1 being substituted for the register map,

that it was a part of the agreed resolution of Durham County Council’s objection that the Paths should be excluded from the land registered as the Green and that Plan 1 is, or should have been substituted for, the register map as the manuscript note indicates.

- 4.4. It is the Respondent’s case that the Applicant ignores the entries which were actually made on the register in response to the objection. Thus, further apparently to the correspondence which I have just recited, on 1st June 1973 a second entry was made on the Land Section of the Register:

“2. The registration at entry no. 1 above, which was disputed, became final on the 1st June 1973. With the following modification:- that the words “but excluding the areas coloured violet and marked with the letters, A, B, C, D, E, F and G” follow immediately after the words “of the register map” in entry No. 1 above.”

- 4.5. It follows that the relevant part of the Land Section of the register then read as follows:



“Those pieces of land called Dalton Piercy Village Green containing 2.92 acres or thereabouts in the Parish of Dalton Piercy in the Rural District of Stockton as marked with a green verge line inside the boundary on sheet 4631 of the register map but excluding the areas coloured violet and marked with the letters, A, B, C, D, E, F and G and distinguished by the number of this register unit. ...”

Taken together with the fact that the version of the register map which appears as document 5 in the Applicant’s bundle apparently has areas coloured violet on it and certainly is marked with the letters A-G in the manner which I have described, the Respondent says it is clear that whatever may possibly appear from the incomplete set of correspondence in relation to the objection made by Durham County Council and the apparent resolution of it by virtue of the Parish Council’s consent, it is clear that both the register and the register map were amended in response to an objection in a manner which relates to the precise extent of the public highway passing over the Green but to a much more limited extent than that for which the Applicant contends. Further, the Respondent says, s. 10 of the CRA is absolutely clear, it is the register established pursuant to the Act which is conclusive rather than any of the ancillary documents relating to the entries made on that register.

- 4.6. Following the conclusion of the registration process, the Respondent claimed ownership of the Green and the question was referred to the Commons Commissioners for resolution. On 24th June 1977 the Commons Commissioner issued his decision following a hearing on 25th May 1977 attended by a representative of Hartlepool Borough Council who said that it had no evidence as to the ownership of the Green and that it had no objection to the title being vested in the Respondent.
- 4.7. There is no dispute that, as from the moment of the Commons Commissioner’s decision, title to the Green was vested in the Respondent, if it was not before. The question is, what was the precise extent of the land which so vested ? In other words, did that land include the Paths ?
- 4.8. There is one further relevant development which it is necessary to consider. On 26th May 2005 the Secretary of State for the Environment, Food and Rural Affairs approved an application made by or on behalf of the Respondent for an exchange of land which then formed part of the Green for land which did not at that time form part of it. The parts of the registered Green affected by that exchange are shown on the plan annexed to the Secretary of State’s approval and, more clearly (shown hatched red) on the plan which is document 3 in the Applicant’s bundle. The purpose of the exchange was to regularise the use of the Green for parking by residents of properties abutting the Green. The land to be given in exchange for those areas to be taken out of the Green was land within title number CE97355 of which the Respondent had been the registered proprietor since 1988. Thus, although, as the Applicant rightly said and the Respondent initially disputed, this exchange in 2005 did apparently entail a transfer of title to the affected areas of land, because the Respondent was the owner of both areas of land, there was in fact no change of ownership, only a change in the areas which formed part of the Green.



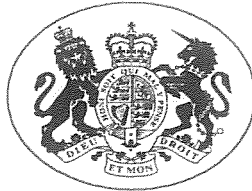
- 4.9. On 10th June 2008 title to the Green was first registered under title number CE200542 in the name of the Respondent. That application was the subject of some controversy and I dealt previously with an application by Mrs Thelma Peppert claiming, by reason of her adverse possession, to be entitled to be registered as the proprietor of both the track leading to her property, Rose Cottage, and its front garden both of which formed part of the Green.
- 4.10. Needless to say, the Respondent's application for first registration was based not upon Plan 1 but upon Plan 4, hence the discrepancy between Plan 1 and Plan 2.
- 4.11. The final point upon which the Applicant relies is this. He says that the plan with which he was provided by Hartlepool Borough Council showing the areas exchanged in 2005, document 3 in his bundle, reflected Plan 1 upon which he relies and not either Plan 2, the title plan, or Plan 4, the register map. He says that this supports his view that it is Plan 1 which is, or should be regarded as, the true register map.

5. Reference to the Registration Authority

- 5.1. Although it is not entirely clear precisely how the question of the extent of the Respondent's title to the Green came to be referred for consideration by Hartlepool Borough Council, as the Commons Registration Authority, on 22nd July 2015 Mr PJ Devlin wrote (I assume to both parties as well as HM Land Registry) setting out what Miss Allan for the Respondent agreed was an avowedly informal view as to the correct interpretation of the register in this respect.
- 5.2. It is apparent from Mr Devlin's letter that the parties set out their respective cases fairly fully in correspondence from their solicitors to him. His conclusion was that the extent of the Green was as it appeared from Plan 4 and that the only modifications made following Durham County Council's objection related to the land coloured violet and lettered. There was no intention to exclude the Paths from registration, although he accepted that Plan 1 and its associated correspondence created an element of doubt in that regard.
- 5.3. Mr Devlin closed his letter by inviting the parties to apply formally for the correction of the entries on the register if they wished to pursue the matter further. Despite that invitation, the Applicant informed me that he had not made any such application. Instead he has made two applications to HM Land Registry, both to the same effect. The first was dismissed as groundless by the Registrar. The second is the application which forms the subject of this reference.

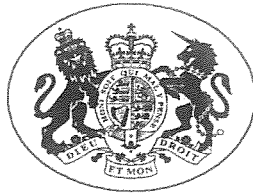
6. Discussion

- 6.1. This reference illustrates the complex and at times apparently circular relationship between registration of land as a Town or Village Green pursuant to the CRA and registration of title pursuant to the Land Registration Act 2002. It appeared to me that the distinction between the two registers and the significance of it eluded the



Applicant who appeared to equate registration of land as a village green with ownership.

- 6.2. The first question which I must consider is, what was extent of the land which was the subject of the final registration of the Green pursuant to the CRA in 1973 ? That was the land in respect of which the Commons Commissioner made a vesting order following the hearing on 25th May 1977 and it was not suggested by the Applicant that he or any other person had established any alternative title since whether by possession or otherwise. It must follow that that was the land which was vested in the Respondent when it came to apply for first registration of the Green in 2008.
- 6.3. Once I have formed a view as to the meaning of the entries made in relation to the Green on the register of Town and Village Greens any view which I may have as to the correctness of those entries is completely irrelevant to the matter which I have determine. It is a matter beyond my jurisdiction which can be remedied, if at all, only by an application to the Commons Registration Authority as recommended by Mr Devlin or such other application as may be appropriate.
- 6.4. It follows from these uncontentious propositions that Miss Allan must be correct when she says that in order to determine the state of the Register of Town and Village Greens at any material time, I must look at the Register itself and not any ancillary document generated in the course of the preparation of the entries on the Register.
- 6.5. It is clear in my view, that the ‘document’ which I must regard as ‘the Register’ is document 8 in the Applicant’s bundle. It is also clear to me that the ‘register map’ to which the Register refers is document 5 in the Applicant’s bundle. I reach those conclusions for the following reasons. My view that document 8 is ‘the Register’ was not really contentious, the Applicant seemed simply to suggest that, the Register must be read in the light of the manuscript note on Plan 1 and the associated correspondence to which that note refers. He did not suggest that document 8 was not a true copy of the register of Town and Village Greens kept by the relevant Commons Registration Authority for the purposes of the CRA and subsequent legislation. If document 8 is, ‘the Register,’ as the Applicant seemed to accept and as I find, then I must determine which is the ‘register map’ to which it refers in order to determine the extent of the land subject to the registration.
- 6.6. The Applicant contends either that Plan 1 is, or should be, the register map or perhaps that the register is ambiguous in this respect by virtue of the annotation on Plan 1 and that I should therefore have regard to the ancillary correspondence upon which he relies in order to resolve that ambiguity. However, I note the following:
 - 6.6.1. Plan 1 is not stamped as the rules require the register map to be, whereas Plan 4 is;
 - 6.6.2. Whatever the annotation on Plan 1 may say about it being substituted for the register map, the colouring of it does not reflect the second modifying entry made on the Register which refers specifically to the violet colouring on the register map. Further, the reference to green verge lines on the



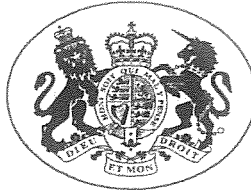
register map must, it seems to me be a reference to the green verge lines shown on Plan 4 not to the green shading of the grassed areas on Plan 1;

- 6.6.3. The provenance of the manuscript annotation is uncertain. I suggested that it might be in the handwriting of Mr Hall who apparently signed the agreement to Durham County Council's proposed resolution on behalf of the Respondent but that was pure speculation on my part. There is in fact no evidence to suggest that the manuscript annotation on Plan 1 has any authoritative status;
- 6.6.4. It is impossible to construe Plan 4 simply as the plan prepared for the purpose of the initial provision registration, as the Applicant contended, because it has been amended to include both the violet colouring and the lettering referred to in the second entry;
- 6.6.5. It is a crucial element of the Applicant's reasoning that it was the intention of the Durham County Council in making its proposal for the resolution of its objection to remove the public highways which cross the Green from the scope of the registration. The Applicant's case assumed, on the basis of the colouring of Plan 1, that the Paths were public highways but he led no evidence that the Paths had been adopted and there is no evidence to suggest that that is or was the case. Indeed, in the case of the bed of Dalton Beck, the evidence is very much to the contrary; and
- 6.6.6. So far as the Applicant's reliance upon document 3 in his bundle is concerned, in my view it is impossible to place any substantial reliance upon it in the absence of any evidence about the circumstances and purposes for which it was created and the purposes for which it was created.

For all these reasons, I hold that the register map to which the Register refers is document 5 in the Applicant's bundle.

7. Alteration or rectification

- 7.1. Miss Allan addressed a number of detailed submissions to me as to the position if I were minded to conclude that there was a mistake on the register.
- 7.2. In light of my conclusions above as to the identity of the register map, these questions do not arise because, whether or not there is a mistake on the register of Town and Village Greens, the land which was vested in the Respondent in 1977 by virtue of the Commons Commissioner's decision included the Paths. Thus, as I have said, unless and until the register of Town and Village Greens is altered there can be no possible basis (even on the Applicant's case as I understand it) for rectifying the title plan to CE200542. Even assuming such an alteration, I would regard it as an open question (at best so far as the Applicant was concerned) whether any residual right to amend the register of Town and Village Greens and consequently to set aside an order of the Commons Commissioner could have



survived the Respondent's first registration of its title to the Green in 2008. Certainly such a claim is not obviously one of those mentioned in Schedule 1 to the Land Registration Act 2002 to which, by virtue of section 11, the first registration was subject.

- 7.3. In such circumstances, it is plain that alteration of the title which the Respondent registered in 2008 would adversely affect that title and so amount to rectification. Therefore, because the Respondent is in possession of the land (as evidenced by its practice of extracting payments for easements of way over the Green, amongst other things), because it is not and could not (on the evidence before me) be said that the Respondent either caused or contributed to any mistake on the register and because there are no other good reasons to order that the register be rectified I would refuse rectification of the register in response to the Applicant's application. On the evidence before me the Respondent does a good job of managing the Green with limited resources for the benefit of the amenity of the residents of Dalton Piercy as a whole. In the absence of any other claim of ownership I can see no good reason to alter the title which was first registered in 2008.

8. Conclusions

- 8.1. My conclusions are therefore as follows:

- 8.1.1. The Applicant's document 8 comprises the relevant section of the register of Town and Village Greens held by the competent Commons Registration Authority and the register map to which it refers is the Applicant's document 5 which I have designated Plan 4.
- 8.1.2. Plan 4 shows the areas excised as a consequence of Durham County Council's objection to the provisional registration coloured violet and lettered A-G.
- 8.1.3. Once those matters are resolved the proper meaning of the register as to the extent of the Green is clear and the register is conclusive in that regard.
- 8.1.4. It follows likewise that the extent of the land subject to the vesting order made by the Commons Commissioner in 1977 is clear and that it included the Paths.
- 8.1.5. I have no jurisdiction to determine whether there is or is not a mistake on the Register of Town and Village Greens in respect of the entry concerning the Green but, on the evidence before me, I am far from persuaded that there is. It seems to me that the fundamental flaw in the Applicant's reasoning lies in his assumption, based on the colouring of Plan 1, that the Paths form part of the public highway which it was Durham County Council's purpose to exclude from the registration. There is no evidence to support that view.



- 8.2. It follows that I propose to direct the Chief Land Registrar to cancel Applicant's application dated 25th April 2017.
- 8.3. It would ordinarily follow, because I have upheld the Respondent's objection to the Applicant's application in its entirety, that I would make an order that the Applicant should pay the Respondent's costs of the reference but I shall invite the parties to make submissions in that regard.

ORDER

UPON hearing the Applicant and counsel for the Respondent

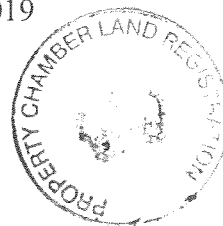
IT IS ORDERED THAT:

1. The Chief Land Registrar cancel the Applicant's application dated 25th April 2017.
2. If the Applicant wishes to contend that he should not be ordered to pay the Respondent's costs of this reference he must file and serve a detailed statement of his reasons by 5 pm on 31 January 2019.
3. If the Applicant files and serves a statement of reasons why he should not pay the Respondent's costs in accordance with paragraph 2 above, the Respondent has permission to file and serve submissions in response, if so advised, and, **in any event**, shall file and serve a statement of its costs in form N260 by 5 pm on 14 February 2019.

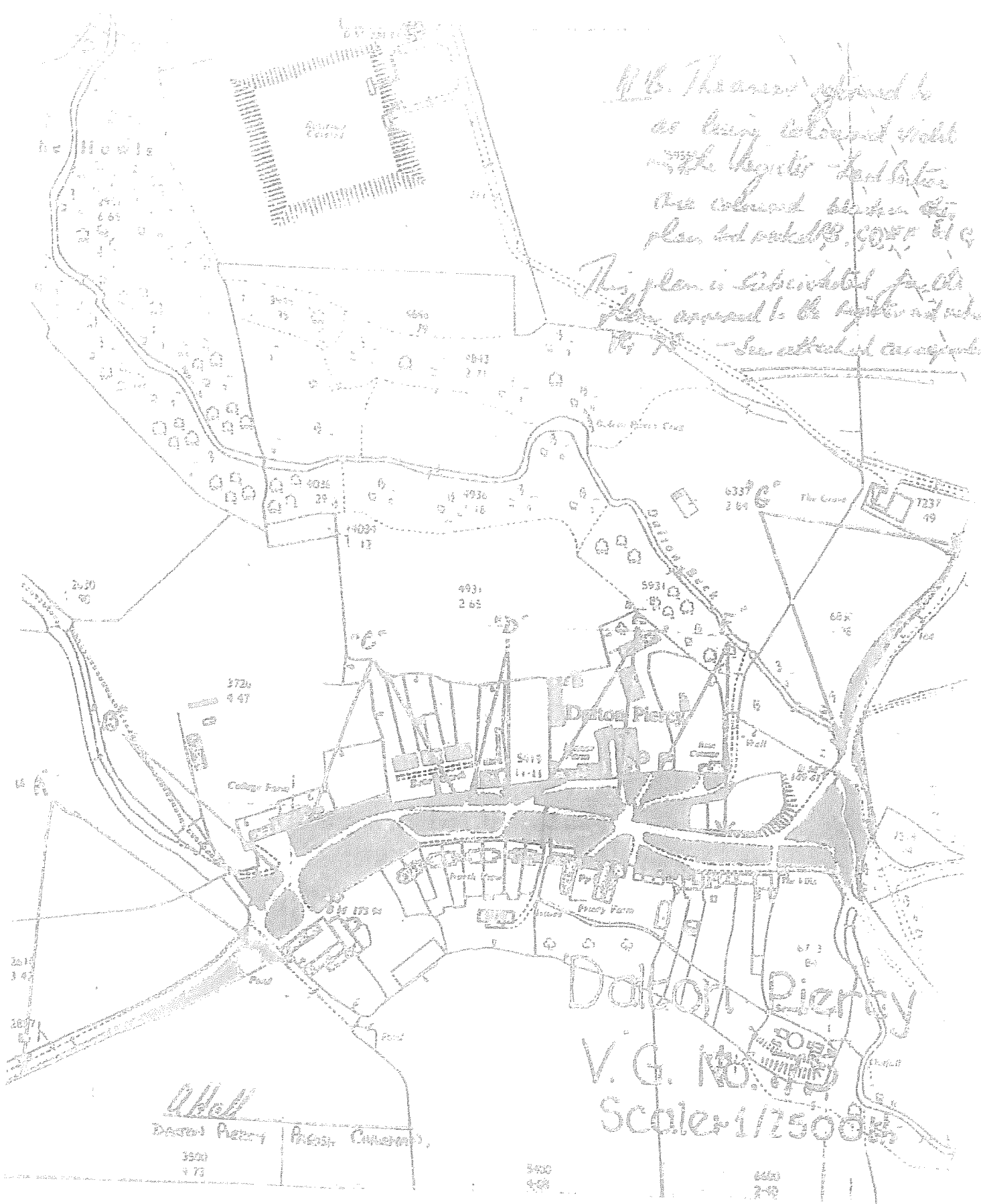
Dated this Thursday 17 January 2019

Max Thorowgood

BY ORDER OF THE TRIBUNAL



PLAN 1



U.C. The area proposed to
 be being developed is
 the lighter shaded area
 are colored black in
 plan and marked B, C, D, E
 This plan is submitted for
 plan approval to the Lighter area
 See attached concept

U. Hall
 Dalton Piercy (Prest. Curator)
 173
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Dalton Piercy
 V.G. No. 173
 Scale 1/2500

PLAN 3

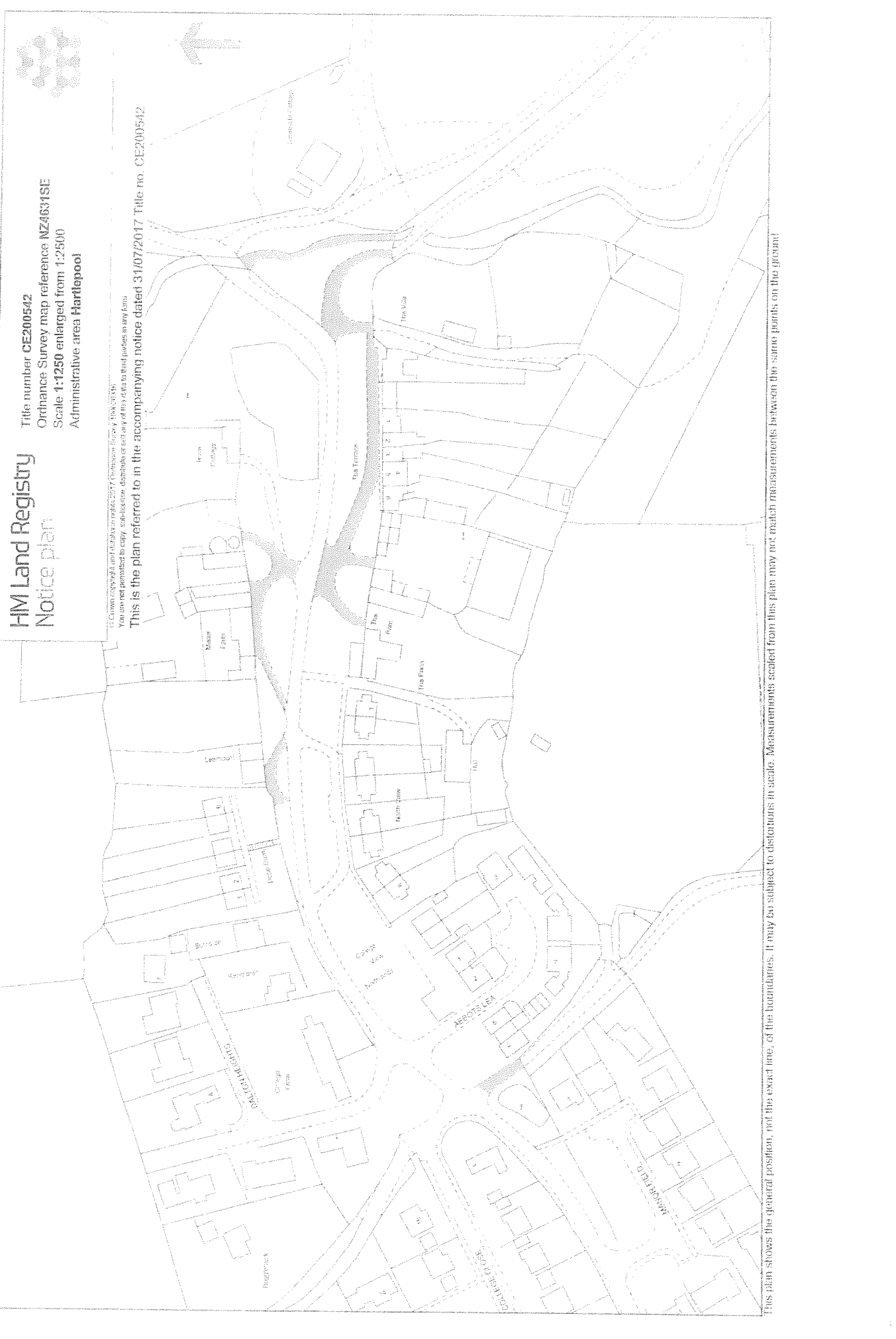
HIM Land Registry Notice plan

Title number CE200542
Ordnance Survey map reference NZ4631SE
Scale 1:1250 enlarged from 1:2500
Administrative area Hartlepool

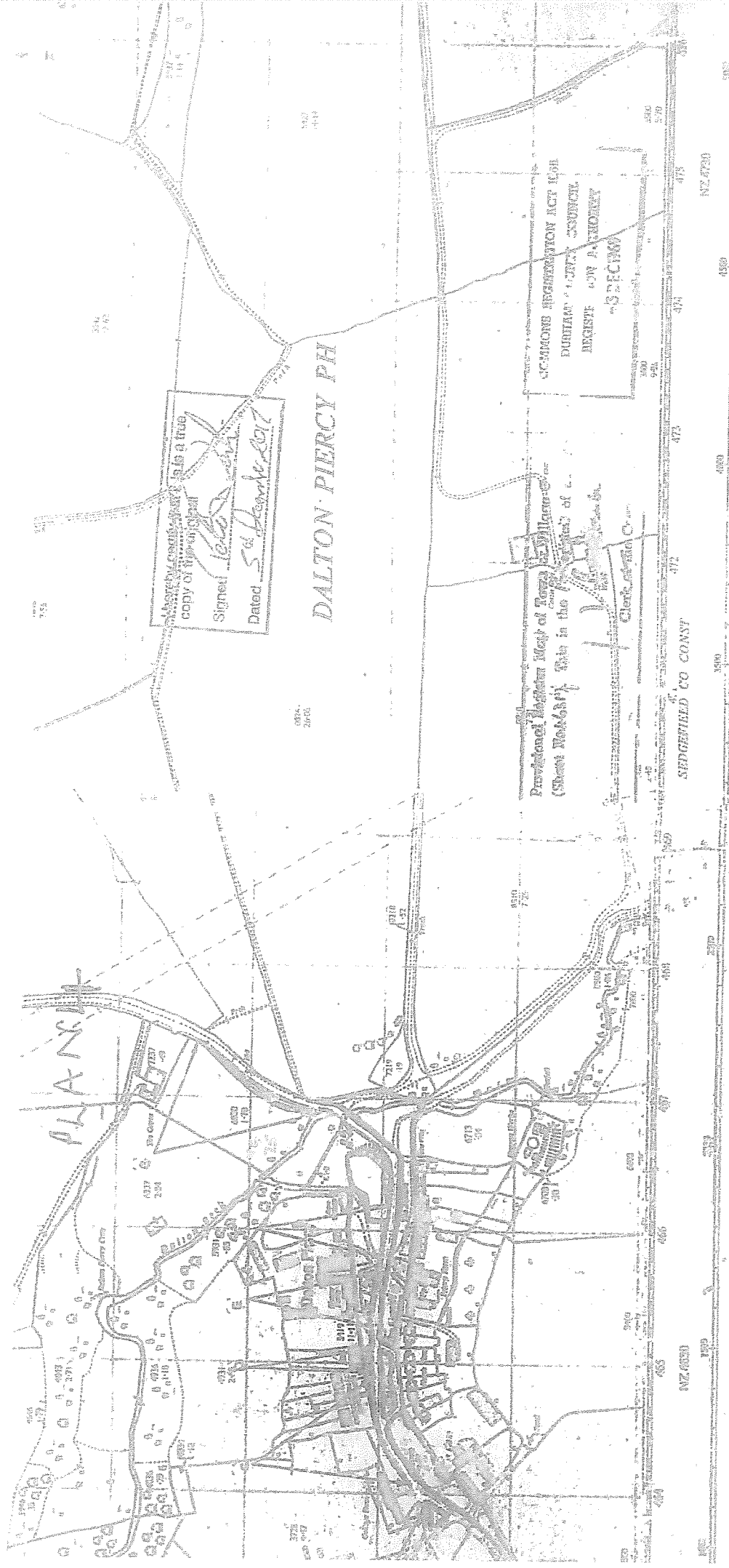


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This is the plan referred to in the accompanying notice dated 31/07/2017 Title no. CE200542



This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.



I hereby certify that this is a true copy of the original
 Signed [Signature]
 Dated 5th January 1917

DALTON PIERCY PH

SCIMONS REPRESENTATION ACT UOR
 DURHAM & COY. ENGINEERS
 REGISTERED CIVIL ENGINEERS
 13, CECILIA STREET

Provisional Engineer Map of Town of Dalton
 (SHEET NO. 100) This is the Plan of the
 Clerk of the Peace

SHERGHEID CO CONST

SEE
 To be read published separately
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 The plan on this sheet is a true copy of the original
 as shown on the original plan on which this sheet is based
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