

# **BURNHAM OVERY STAITHE – LAND, FORESHORES, CREEKS AND SEABED - WHO OWNS WHAT?**

## **The issue:**

There have been a number of controversies at Overy Staithe for the past many years:

- Common Rights, a situation still not resolved;
- Shooting Rights, spawned from the Common Rights situation and still subject of much concern over shooting clubs using the rights to shoot;
- Moorings Rights which have been usurped, if this is not too strong a word, by Burnham Overy Harbour Trust. Common rightholders being pushed into unsatisfactory moorings.

It is the latter concern, Mooring Rights, that will be addressed in what follows but, the nature of the findings will also apply to both Common Rights and Shooting Rights.

## **Introduction:**

The Burnham Overy Harbour Trust (BOHT) came into existence as a charity in 1982 and records on its website as follows:

- *The harbour and creek at Burnham Overy are owned by and form part of the Holkham Estate. Burnham Overy Harbour Trust is a local charity established in 1982 whose purposes are...*

There is an acceptance here that Holkham Estate owns the *harbour and creek* at Burnham Overy

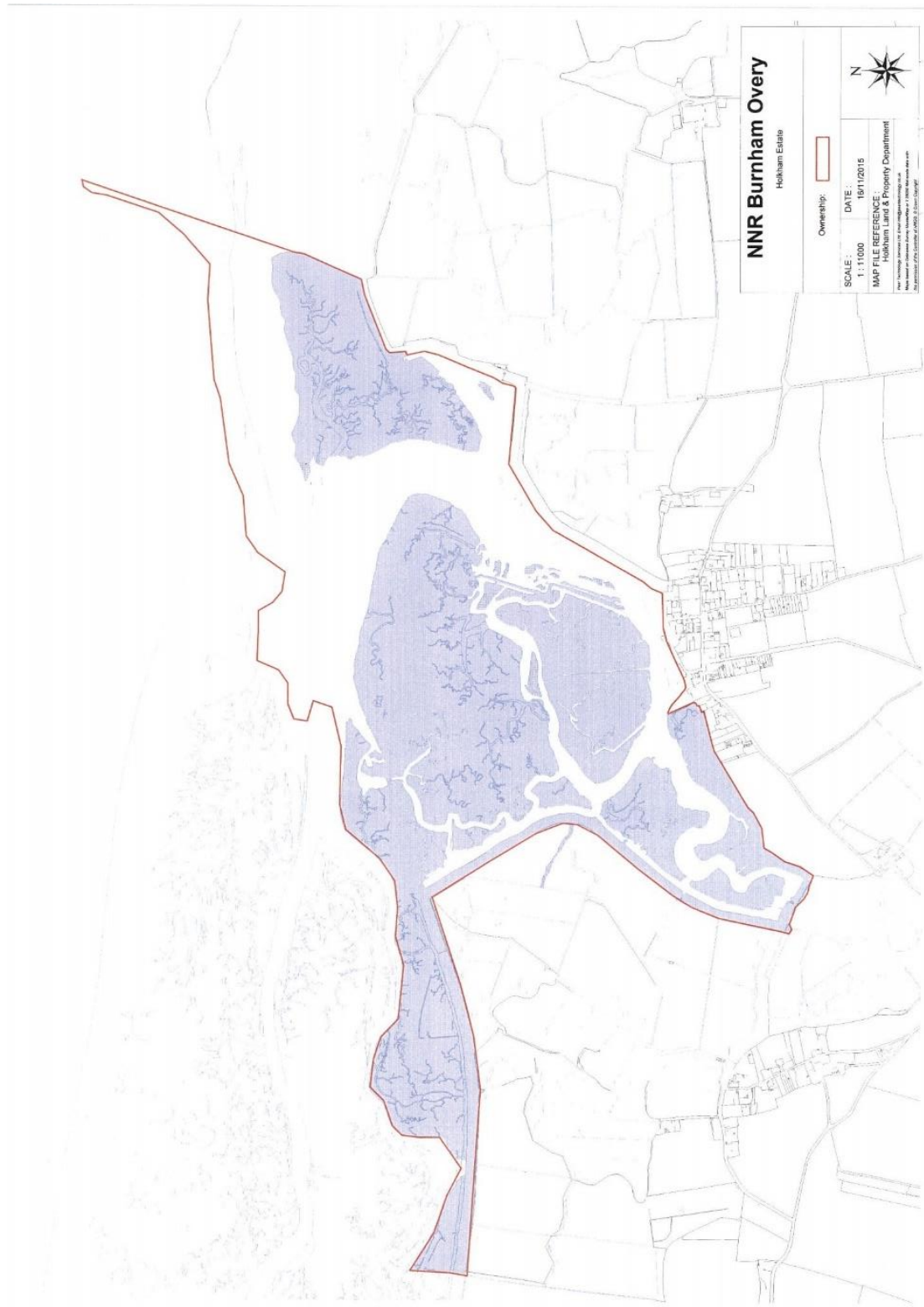
A lease drawn up in 2014 between the BOHT and the Earl of Leicester shows again an acceptance that Holkham Estate owns the property in question:

- *Lease - Relating to land, foreshores, creeks and seabed Burnham Overy Harbour.*

The following research seeks to provide evidence that Holkham Estate DOES NOT own the *to land, foreshores, creeks and seabed Burnham Overy Harbour*.

## The Research:

Here we see a map of the area in question produced by Holkham Estate in 2015 to show their claimed ownership along with a supporting letter from Howes Percival. These are reproduced from the website of BOHT.





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To whom it may concern

Our Ref : TJH/ASR/220932.53  
Date : 5 November 2015

Dear Sirs

**The Honourable Thomas Edward Coke**  
**Land at Burnham Overy**

We act on behalf of The Trustees of the Honourable Thomas Edward Coke, Earl of Leicester.

The Estate of The Earl of Leicester owns the land shown edged red on the plan attached to this letter part of which is pursuant to a Conveyance dated 8 June 1922 and made between Robert Horace Earl of Orford (1) and Thomas William Earl of Leicester (2) and the remainder which is registered at the Land Registry under title numbers NK419143 and NK416721.

Yours faithfully

**Howes Percival LLP**

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Without access to the Land Registry (fees apply to any searches) and in absence of further information from Holkham Estate, it is not possible here to distinguish between the lands conveyed to Holkham Estate from The Earl of Orford and those merely registered with the Land Registry. The following research will reveal, using the Tithe map for Burnham Overy Staithe, that there is very strong evidence to show what was and what was not owned by The Earl of Orford at Burnham Overy Staithe. Most importantly, the Tithe map and the Tithe Apportionment documents show that ownership of all of that claimed by Holkham Estate does in fact belong to the Parish Council of Burnham Overy Staithe; held in trust for the poor. (The maps can be studied in full on the internet on the Norfolk County Council Map Explorer website. The Tithe Apportionment details are at the Norfolk Record Office on MF748 [23-114]) The Earl of Orford could only lay claim to, within Burnham Overy Staithe harbour, land numbered 368 which at that time were *Oyster pits* but now known to locals as part of The Hard.





Number 324 on the above Tithe map relates to land seen on the Enclosure Award maps as unenclosed. (See NCC Map Explorer website). On the Tithe map 324 is shown as:

- Landowner – Trustees of the Poor and a Mr George Wiseman is mentioned.
- Description of the property - Saltmarsh, pasture and water.
- Acreage – 77 acres.

The Local Government Act of 1894 transferred all legal rights to this type of property to the Parish Council:

The Local Government Act 1894 states at Section 6:

*6. Transfer of certain powers of vestry and other authorities to parish council.*

*(1) Upon the parish council of a rural parish coming into office, there shall be transferred to that council:—*

*(a) The powers, duties, and liabilities of the vestry of the parish except:*

*(i) so far as relates to the affairs of the church or to ecclesiastical charities; and*

*(ii) any power, duty, or liability transferred by this Act from the vestry to any other authority:*

*(b) The powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers*

*(c) The powers, duties, and liabilities of the overseers or of the churchwardens and overseers of the parish with respect to*

*(i). . . . . F2*

*(ii) The provision of parish books . . . F3 or matters relating thereto; and*

*(iii) The holding or management of parish property, not being property relating to affairs of the church or held for an ecclesiastical charity, and the holding or management of village greens, or of allotments, whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants or any of them;*

Paul Clayden (p173 *The Parish Councillors Guide* - Shaw and Sons 2009) puts the 1894 Act into modern parlance:

*“Parish property includes old parish workhouses and cottages provided by the overseers before the establishment of boards of guardians under the Poor Law Amendment Act 1834; lands acquired for the employment of the poor; vestry rooms; parochial offices; land allotted under an inclosure award to be used as village greens; recreation grounds, field gardens, or otherwise for the benefit of inhabitants. Property formerly held by the board of guardians was transferred to the parish council by section 115 of the Local Government Act 1929.”*

*“The legal interest in all property which was formerly vested either in the overseers or in the churchwardens and overseers of the parish, other than*



*property connected with the affairs of the church or held for an ecclesiastical charity, is vested in the parish council, subject to all trusts and liabilities affecting the same.”*

The question of whether or not these Acts of Parliament are still in force was put to the MP for South Norfolk whose researcher has replied as follows:

*The relevant sections of the Local Government Act 1894, the Local Government Act 1929 and the Local Government Act 1972 are still in force.*

### ***Implications of the legislation***

*Section 6 of the 1894 Act, and section 115 of the 1929 Act, are still in force. Indeed, if property was transferred under the 1894 Act, this would remain the case even if the Act were repealed. The property would not revert to its previous owner(s).*

*The Local Government Act 1972 reconstituted the entire system of local government in England and Wales. Where a council's area did not change, it would remain in existence and retain the property it owned before the passing of the Act.*

The importance of the 1894 Act and it continuing to be in force cannot be stressed enough for it looks like it over-rules any subsequent claims to the land in question; i.e. it protects the land left in trust for the poor. Here is a legal precedent for the 1894 Act being used in the High Court (see 6 & 7), there are others:

***IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM THE  
HIGH COURT OF JUSTICE, CHANCERY DIVISION***

*Miss Vivien Rose QC (sitting as a Deputy Judge of the Chancery Division)  
HC12C00065*

*SUSAN SNELLING ROY MERISON Claimants/Appellants*

*- and -*

*BURSTOW PARISH COUNCIL Defendant/Respondent*

<http://www.ala.org.uk/sites/default/files/2013EWCA1411.pdf>

This High Court action concerns matters relating to the right of ownership of land that was given in trust for the poor of Burstow at the time of their enclosures. The High Court in this case uses the 1894 Act as proof that Burstow Parish Council does own the land in question. Hopefully, a High Court action would not be required to settle the situation at Burnham Overy Staithe.

### **Summary:**

- Whilst Holkham Estate seems to have registered the land in question with the Land Registry, it provides no evidence of actual ownership. That the BOHT was set up as a charity and a lease was signed with Holkham Estate for the management of moorings on *land, foreshores, creeks and seabed at Burnham Overy Harbour*, would seem to have been carried out on the basis of false claims. This is not to suggest that there was any dishonest or fraudulent intent on the parts of the parties to these arrangements. Rather, it is to suggest that not enough due diligence was conducted by those with the legal responsibilities for the various transactions that took place between The Earl of Orford, Holkham Estate and BOHT.
- There is ample evidence for the ownership of 77 acres of land at Tithe map number 324 belonging to Burnham Overy Parish Council to be held in trust for the poor. Ownership legalised by the 1894 Local Government Act and confirmed by other later Acts of Parliament. Ownership supported by legal argument in the High Court of Appeal. That Burnham Overy Parish Council seems to have failed to recognise its responsibilities concerning land ownership and its duty towards the poor is for them to consider; that they have the responsibility to hold this land in trust seems to be without question.

### **Implications for the future:**

There are a number of interested parties listed on the website of BOHT:

- Scolt Head and District Common Rights Holders.
- Burnham Overy Sailing Club.
- Natural England.
- Holkham Estate.
- King's Lynn and West Norfolk Borough Council.
- Burnham Overy and Norton Wildfowlers.
- Burnham Overy parish Council.
- Burnham Overy parishioners.
- Burnham Overy Boat House.

It would seem rational that, initially, these parties should consult in order to bring the situation to one that meets the legal framework; i.e. that the *land, foreshores, creeks and seabed at Burnham Overy Harbour belongs*, in the main, to Burnham Overy Parish Council. The management of these assets becomes the responsibility of Burnham Overy Parish Council on behalf of the poor. Holkham Estate would relinquish its claim and BOHT Charity would either be



wound up, or take on new rules of governance in accordance with the wishes of the Burnham Overy Parish Council. There would seem to be a need for the parish council to involve Scolt Head and District Common Rights Holders and Burnham Overy and Norton Wildfowlers as the only other parties with legal rights to moorings and various uses of the *land, foreshores, creeks and seabed* at *Burnham Overy Harbour*.

**Conclusion:**

These findings are based on the evidence that is publicly available and are subject to scrutiny by those who might be privy to information held privately at this time. It would be for those persons to come forward with evidence for a contrary position. In the meantime the research outlined above would seem to provide conclusive evidence for Burnham Overy Parish Council owning the *land, foreshores, creeks and seabed* at *Burnham Overy Harbour*.

RWC Nov. 2016