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Your Ref:

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Mr Rod Cooke

BY EMAIL

Dear Rod

Re: Burnham Overy Harbour and Commons Trust

I refer to the enquiry that you have posed on me as to the rights of the Burnham Overy Harbour and Commons Trust (the Trust) to deal with matters relating to the remit of the Trust operation.

You have sent me a copy of a lease dated 1st April 2014 from the Rt. Hon. Edward Douglas (7th) Earl of Leicester (1) (Lessor) to David De Stacpole, Peter Derek Beck, Hugh Charles Merrell and the Hon. Viscount Thomas Edward Coke (2) (Lessees).

In that lease, the Lessor purports to lease or demise under the Lessees the '*exclusive right to allow boats to rest or to be parked or moored including the exclusive right to fix these moorings and buoys along the whole of the land foreshores creeks sea bed shown coloured green on the attached plan...*'.

I have looked at the Land Registry registrations and there is registered under title number NK416721 an area of land known as 'Land at Burnham Overy Staithe and Burnham Norton' registered in the proprietorship of The Right Hon Edward Douglas Earl of Leicester of the Estate Office, Holkham Hall.

There is also registered under title number NK419143 an area of land known as Overy Marsh also registered in the proprietorship of The Hon Thomas Edward Coke.

These two areas do not fit together, thus leaving substantial areas of creeks and water below high water mark unregistered and therefore apparently not within the ownership of the Earl of Leicester. It is these areas, as shown coloured green on the plan attached to the said lease that I understand the Earl of Leicester is purporting to demise to the Lessees.

I have seen no evidence that the Earl of Leicester is in fact the owner of these areas of land so shown coloured green on the said plan attached to the lease of the 1st April 2014.

As you will be aware, I also have considerable doubts as to whether the Earl of Leicester is in any event the proper and legally entitled proper owner of Overy Marsh

as currently registered in his name under NK419143 – for reasons that I have set out in separate correspondence, viz briefly:

1. This land was allotted and awarded under the Enclosure Award to Trustees to hold for the commoners of the manor
2. The Trustees were to be for the time being the Lord of the Manor, the Rector of the Parish and the Overseers of the Poor
3. I have seen no evidence that this land transferred in any shape or form to the Earl of Leicester's name – in any event I do not see that it was included in the conveyance of the 8th June 1922 when the Earl of Orford transferred considerable other areas of land to the Earl of Leicester. The question of correct ownership, therefore, of Overy Marsh, under title number NK419143 remains open.

Whilst as a matter of law it is possible for any landowner to issue a lease over common land, a landowner cannot lease out anything more than he or she is entitled to.

Be that as it may, it is clear that the majority of the lands coloured green on the plan attached to the lease of the 1st April 2014 do not appear within the ownership of the Earl of Leicester, and I find it difficult, therefore, to understand how the Earl of Leicester can demise by lease those areas of land, to the Lessees.

Those Lessees appear to have agreed or provided that management of those lands shall be undertaken by a Trust named Burnham Overy Harbour Trust.

Rights of common as set out in the rights section of CL124 are protected by registration registered in the Commons Register held under the Commons Registration Act 1965 (and its replacement, Commons Act 2006).

The rights as set out in the Rights Section of the Register, are said to be in gross, (ie unquantified) and are now final.

The Acts provide that upon any such entry becoming final then it is deemed to be conclusive evidence of what it says. Those rights as so registered are the entitlement of the registered common right holder, and even assuming that Lord Leicester was able to lease lands to the Trust, then the Lessees of the lease or the Trust cannot in any way bind or commit a commoner or commoners or in any way regulate or affect his rights by any resolution they may pass, nor can it interfere with any rights a commoner may have to exercise the lawful enjoyment of those registered rights.

Any queries please do not hesitate to come back to me.

Yours sincerely,

Edward Harris