

SH&DCRA end of year update for all Common Rightholders

Throughout 2022 the AGM and General meetings have been held as usual and the working party format continues to be used by the Committee for dealing with the more day-to-day matters.

A SH&DCRA General meeting has been booked for February 24th 2023 and the AGM for May 5th 2023.

The SH&DCRA website is quite regularly updated:

<https://rcooke330.wixsite.com/scolthead>

There is a non-committee SH&DCRA Facebook page which has lots of information and discussion which feeds back to the committee:

<https://www.facebook.com/groups/1236419309836862>

1. **Trustees:** As previously reported, SH&DCRA have formed a trust that will hold the property of the Association and manage funds that come to the Association through the use of that property for the benefit of the commons. At the moment the Trustees have one common right in their name. Parts of this common right can be leased for up to two years at a time. Please make contact via the SH&DCRA secretary if you or somebody that you know wishes to be considered.
2. **National Trust and CL124** -There are a number of outstanding issues:
 - a. Proposals for a new Agreement with SH&DCRA were put forward by the NT over a year ago. It is important to note that SH&DCRA Committee did not ask for a new Agreement. If the NT proposals were to be accepted in their present form it would result in SH&DCRA signing away legal rights that are embodied in the present Agreement, in particular: the right to issue licences and to receive compensation payments for tolerating activities on the common. There were also a number of issues relating to the downgrading by the NT of the management role of SH&DCRA. There are no plans by the SH&DCRA Committee to pursue the matter further.
 - b. Poor NT management of the Brancaster moorings lettings has been raised by SH&DCRA Committee for well over two years. This abuse of moorings and

payments to SH&DCRA, which have not increased for over two decades, is now being addressed by the NT. Similarly, the abuse of fishermen's leys is also now being addressed by the NT.

- c. The NT have been asked to attend to fencing against the common issues so that grazing can recommence.
- d. The NT have said that they do not claim subsidies on the common.
- e. The NT, after comment by SH&DCRA, removed the gate leading to the Fishermen's Hard.

3. **Brancaster Parish Council** – Beach Road Car Park:

- a. Brancaster Parish Council have ignored all SH&DCRA attempts to resolve the issues that arise from the car park income. Therefore Court Proceedings against Brancaster Parish Council have been entered in to on behalf of common rightholders over CL124. This is to claim for them the monies that are rightfully theirs for tolerating a loss of grazing on the common. Full details are on the SH&DCRA website. <https://rcooke330.wixsite.com/scolthead>
- b. SH&DCRA Committee have reported to Norfolk Police the actions of Brancaster Parish Council, in using this money to defray Council Tax, with an allegation of fraud which is a criminal offence. This matter is going through the police complaints process.
- c. Brancaster Parish Council and The Royal West Norfolk Golf Club were informed, by special delivery, that Brancaster Parish Council do not act for common rightholders. Therefore the 20% of the net car park receipts should not be given by the RWNGC to Brancaster Parish Council. The SH&DCRA Trustees will take over responsibility for the collection and distribution to common rightholders of these funds.

4. **Burnham Overy Harbour Trust, Holkham Estate and CL65:** There are a few changes since the last update so:-

- a. Action by SH&DCRA concerning failure of BOHT and the Charity Commission to provide FoI information about their exchanges concerning the unlawful nature of the BOHT charitable objectives and activities on common land is still ongoing and will be subject to a hearing by a judge.
- b. Despite the above; SH&DCRA Reeves have been made known to, and contact has been established with, the new BOHT secretary and chair.

SH&DCRA noted at the 2022 AGM that there was some misunderstanding concerning the Association stance on the proposed BOCHT Constitution. The following are matters that need to be addressed:

- c. There is further evidence that Holkham Estate has never owned large tracts of Overy Creeks and Marshes. This is supported by the solicitor and has been published on the SH&DCRA website.
- d. Burnham Overy Parish Council: The solicitor also noted 77 that acres and half of the island belongs to the poor of Overy and not to Holkham Estate. In fact the previous Lord Leicester never claimed to own this land and the present Lord Leicester has pretty much said the same.
- e. Holkham Estate have also tried to register with the Land Registry a large expanse of the creeks around Overy marsh and island. This was challenged by SH&DCRA at the Land Registry and has been in abeyance for over two years.

The question raised by the solicitor instructed by SH&DCRA is; how can Holkham Estate give a lease over land that it does not own? The solicitor's advice can be seen here: <https://rcooke330.wixsite.com/scolthead/about-5>

SH&DCRA continue to be open to BOHT, Holkham Estate and Burnham Overy Parish Council concerning the management of CL65 **but insist that management must be based upon the proper legal framework.**

5. Burnham Overy Harbour Commons Trust:

Unfortunately, there has been little movement during 2022 towards creating the planned Trust. SH&DCRA have offered on a number of occasions to meet with BOHT and Holkham Estate to finalise the BOHCT Constitution, Fairways Rules and Moorings Policy. It has been noted that there is a new BOHT Chair and Secretary and contact has been made as seen above. (4b)

The main sticking points for SH&DCRA have been, as seen above, ownership of parts of the common. SH&DCRA Committee were instructed by the EGM to gain legal advice which they did. (See link above.) This basically boiled down to the fact that Holkham Estate do not own parts of CL65 that they claim to own. The solicitor was clear that Holkham Estate cannot give a lease over land that it does not own. Hence the lease given to BOHT by Holkham Estate does not stand as a lawful document. As at Brancaster, where there are also issues concerning who owns parts of the common,

SH&DCRA Committee has said that ownership can be a separate issue so long as the laws relating to common land are followed by the new Constitution.

The proposed BOCHT management plans contained the following:

15) Burnham Overy Boathouse Ltd will relinquish its management of the majority of its moorings transferring these, by way of a licence issued by the BOHCT to the long established families and users of the moorings at time of transition Burnham Overy Boathouse will provide a list of those users of the “Boathouse” moorings who will be commuted to the new list and these individuals become respected and long term users of these moorings in their own right.

This clause does not meet the requirements of the laws of the commons; i.e. nobody can give “individuals....moorings in their own right” on common land. Furthermore, the majority of these “Boathouse” moorings are on common land not owned by Holkham Estate. This is not to say that they could not be licenced by common rightholders; just that it needs to be done lawfully with the consent of common rightholders.

Brancaster and Burnham Overy Gun Clubs:

An issue has been raised that concerns non-common rightholders being members of the gun clubs and going wildfowling on common land. Also, there are concerns about the gun clubs selling day tickets for strangers to shoot on the common. BONWA and Brancaster Gun Club have taken legal advice but have only released a short summary which, on the face of it, take matters no further forward. It seems that there is a continued failure by some parties to understand the nature of common rights, and common rights in GROSS in particular. Common rights over CL65, and CL124 for that matter, are IN GROSS. As Gadsden says; “...rights in Gross are not usually subject to the same rules and that generally there is no limitation by reference to a dominant tenement...” (Page 262, 6-07). There needs to be a discussion with common rightholders about whether or not there can actually be a “surplus” where the rights are in Gross and, if so, how much Holkham Estate can lawfully lease to another party.

IMPORTANT: The SH&DCRA Committee put in a lot of time and energy, as well as using their own money for Association business. If you as a common rightholder want to have a say or put something forward for discussion/action, please make contact via the secretary.