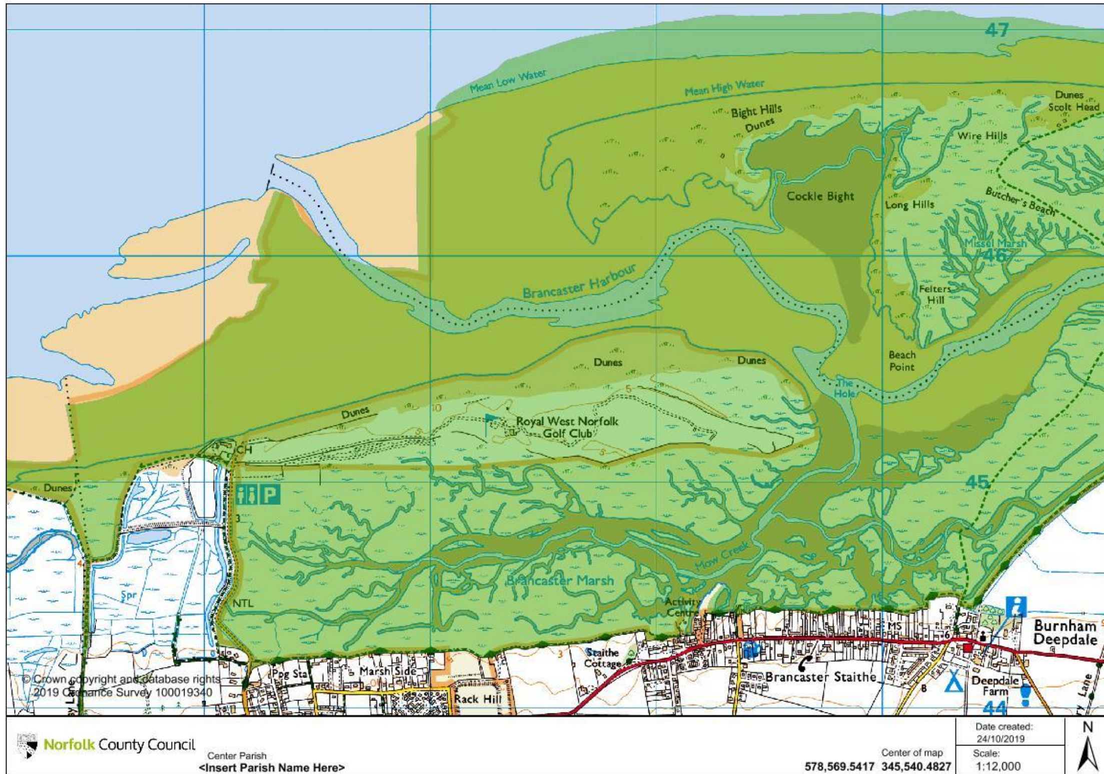
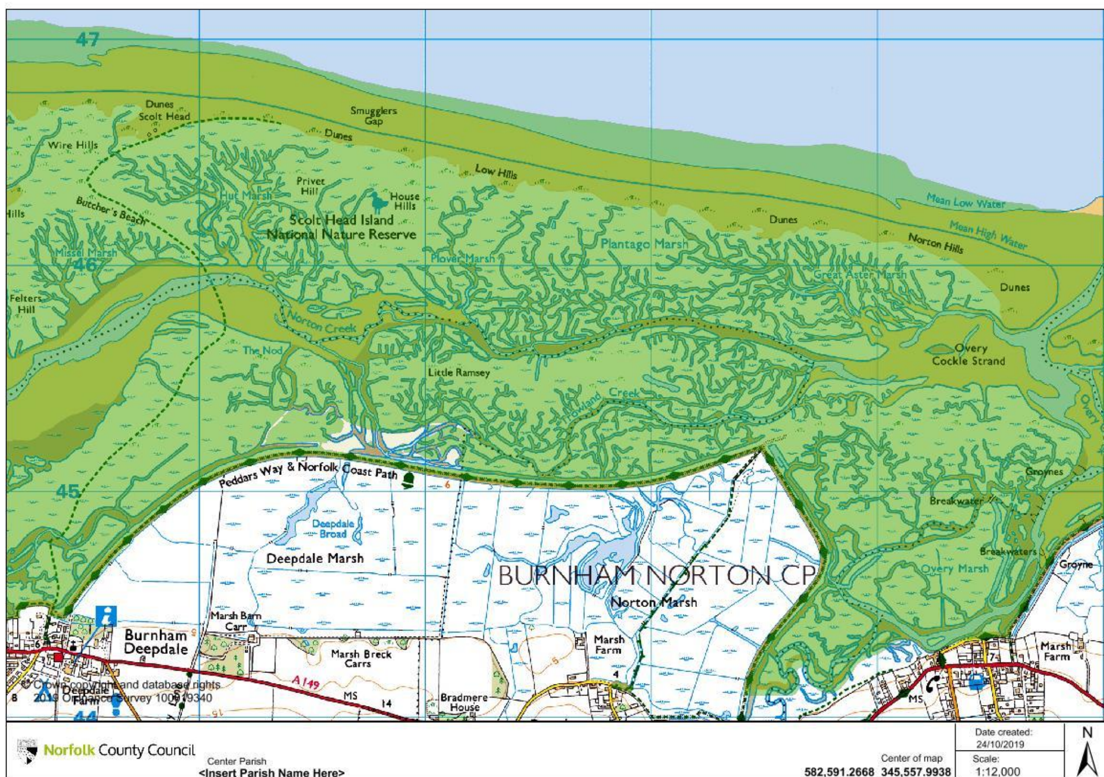
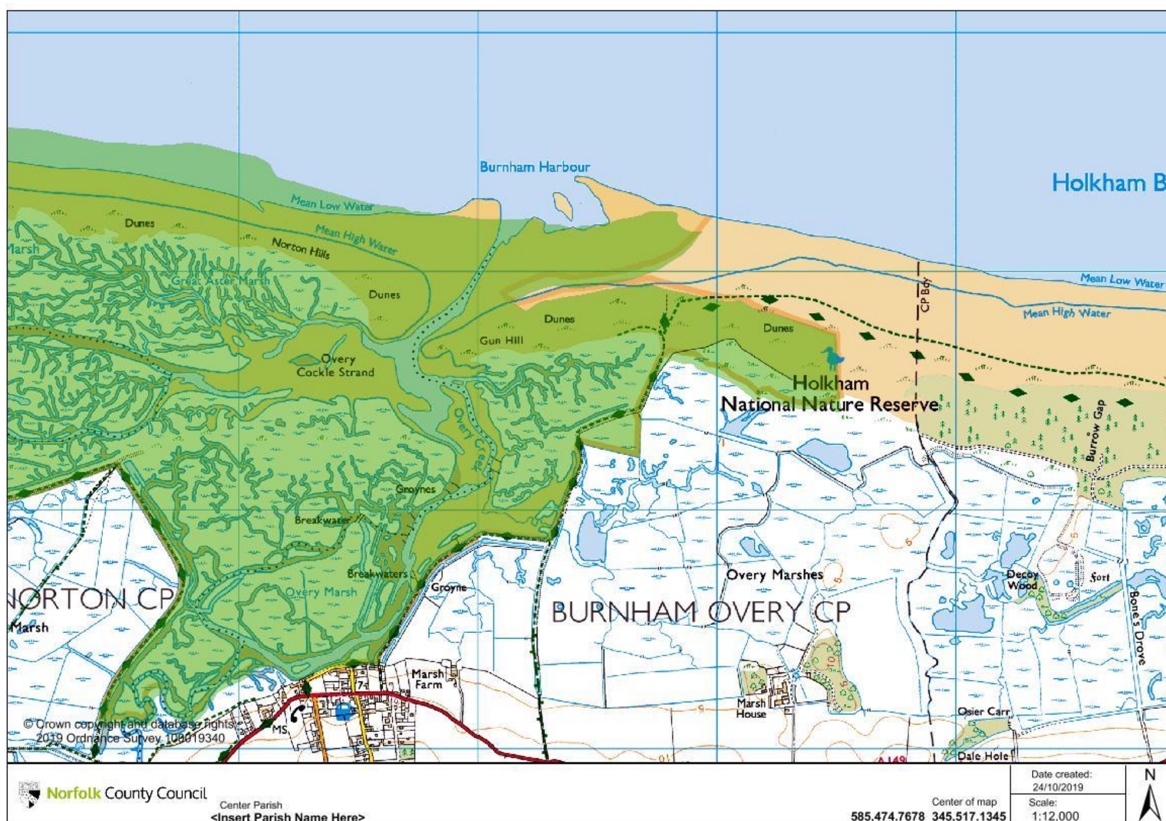
Honesty, or lack of it, and management of the commons CL65 and CL124

CL65 1334.35 hectares or almost 3,300 acres.

CL124 360.16 hectares or almost 900 acres.







****All of the common land shown in green is supposed to be protected by the CROW Act 2000, the Commons Act 2006, Natural England, the National Trust, and has the status of SSSI.**

Both commons have been subject to the Enclosure Acts of the eighteenth and nineteenth centuries and ownership by the parishes of Brancaster and Burnham Overy Staithe of all or parts can be proven by reference to those Acts and the Tithe Awards of mid-1800.

Here is the rub: Both CL65 and CL124 are the subject of attempts to claim ownership by either the Royal West Norfolk Golf Club (RWNGC), National Trust (NT) or Holkham Estate.

Common rights were registered over these commons by the 1965 Commons Registration Act and became final in 1968. Full details can be found at the Commons Registration Authority, Norfolk County Council (CRA). The land became common land as a result of the common rights being recognised in law.

The parishes of Brancaster and Burnham Overy Staithe have over the last few decades seen an influx of the very wealthy and the very, very wealthy. It is these people, the NT, Holkham Estate and members of the RWNGC, that now seem to wish to deny the Common Rightholders (CRH) of their ancient rights and the commons of their protection from overuse.

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Over the many years that I have been involved with Scolt Head and District Common Rightholders (SH&DCRA) I have been struck on occasions by the lack of honesty from some quarters, and I do include a tiny minority of CRH in this statement. Never has this struck me more so than since I took over the duties of Secretary to the Association.

Prior to taking on this role, the main area that concerned me was the dishonesty of the CRA. I and many more locals who lived near the commons registered, in 1965, our common rights over CL65 and CL124. These rights were duly accepted as rights in gross and became final in 1968 with the protection of the 1965 Commons Registration Act; and later the 2006 Act. For around thirty years all went well and then in the 1990's some bright spark at the CRA decided that, despite being protected by an Act of Parliament, it would be necessary to redefine the registered common rights; this means basically a rewriting of the Commons Register. Legislation forbids this! The effect of this, if adhered to, would be to deprive huge numbers of common rightholders of their common rights. The remedy is quite easy; the CRA returns to the position it held in 1968 in compliance with the 1965 Act, but no, they insist on holding to a nonsensical position which can only be remedied by going to the High Court it seems. They have at their disposal the deep pockets of taxpayer's money; i.e. they will use CRH taxes to fight the CRH!

Where is the honesty in this?

Brancaster Salt Marsh Common known as CL124.

I knew very little about CL124 at Brancaster other than CL65 runs into Brancaster Harbour and therefore I have been a member of the Brancaster Gun Club for decades. Then quite suddenly, having volunteered as Secretary to SH&DCRA, I find myself incredibly surprised at the seemingly shameless exploitation of that common. Make no mistake, this common is destroyed almost beyond recovery unless some superhuman efforts are made by all those organisations who should be protecting the commons environment (in bold above **).

The RWNGC seems to be the main culprit for this destruction with its wholesale encroachments for car parking, roads and buildings on the common. Let's explore these issues a bit and keep in mind; that a number of members of the RWNGC are legal experts and that the RWNGC employs, with their very deep pockets, a top legal firm, Birketts, to keep the CRH at bay. Before moving on however, we should not forget the inaction of the NT and Natural England (NE) who have been made very aware of the encroachments and destruction of this common but have chosen to pretty much ignore the situation.

Overriding all else is the matter of who it is that owns the common CL124. Here there seems to be the utmost dishonesty on the part of the RWNGC for, despite having no proof of original title to any part of the common, they insist that their unreliable documents dating from the 1920's are good enough. They are supported in this by the Land Registry who will, believe it or not, only look back fifteen years for proof of ownership! Brancaster Parish Council and SH&DCRA have an enormous archive of material taken from the original sources that prove conclusively that the common belongs to the village. The remedy you might think lies with the Authorities, but no, at the recent Planning Inspectorate Inquiry into deregistration of part of the common the RWNGC, with their ultra-deep pockets, threatened the CRH with severe financial penalties if they contested RWNGC ownership. They were supported in this by the Inspector who followed such a restrictive protocol that there were hardly any grounds for CRH to speak at all.

Where is the honesty in this?

The initial deregistration application by the RWNGC was shrouded in secrecy. No attempt was made to discuss the RWNGC requirements with SH&DCRA. The law requires that common rightholders must be consulted about all matters concerning the common so it seems rather strange that the RWNGC with all of its legal expertise should ignore the law. Interesting too that a previous employee of Norfolk County Council dealing with deregistration for the CRA should turn up as an employee of Birketts now dealing with deregistration for the RWNGC! Why was the original application signed in May 2017 by the RWNGC not only made in somewhat secret circumstances, but also not signed off by the CRA until May 2018?

Despite the dispute about land ownership of CL124 going on for decades, the RWNGC failed to mention this on their application. Question 9 on the Deregistration application form CA13 required the RWNGC to inform the CRA of any other person interested in the land or likely to object; they did not. It is a criminal offence if you deliberately mislead the CRA. The Inspector seemed to think that this was reasonable behaviour! Some might question his impartiality at this point.

Where is the honesty in this?

The RWNGC have tried, and are still trying, to divide the CRH by offering them money to withdraw any opposition to their deregistration plans. They question the legality of SH&DCRA to act for common rightholders. First it seems the RWNGC offered to pay £5,000 to a local charity if SH&DCRA did not mount a challenge to deregistration; (bribery?). More recently, the RWNGC has confirmed this threatening stance by stating that it will not to review its position on the car park finances (more about the car park below) should there be a; *...serious legal or other offensive challenge to their ownership.* It is a fact well known to the legal experts at the RWNGC that SH&DCRA are the legally recognised body to represent the CRH; furthermore, they have been accepting licences from SH&DCRA since 1984.

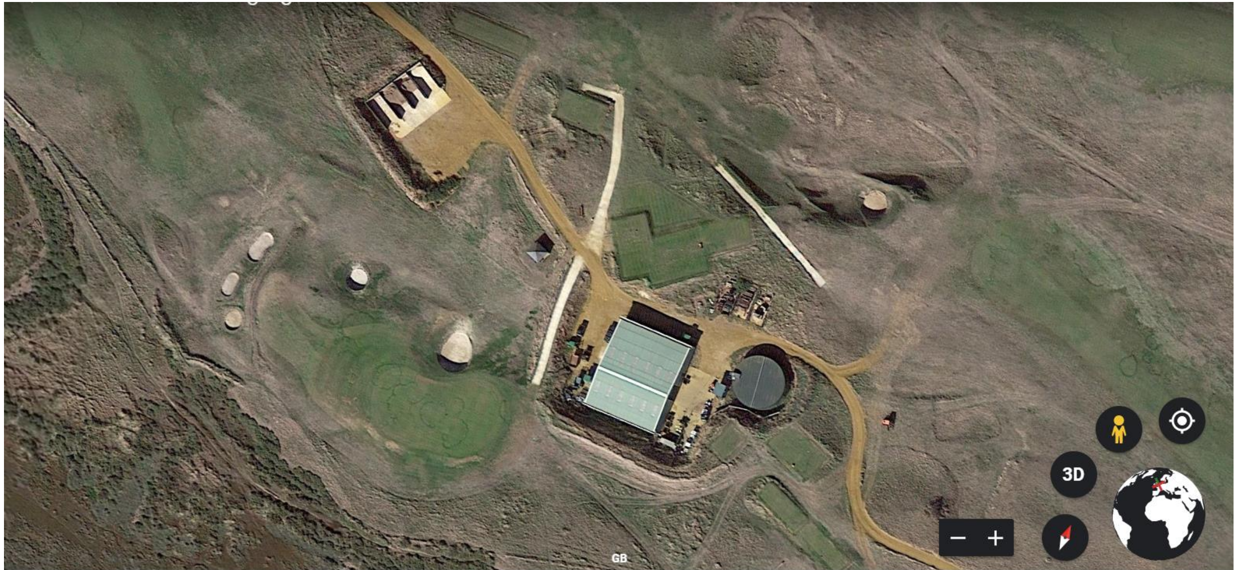
Where is the honesty in this?

The RWNGC have developed a massive car park on the common and have taken over the years, for their own private use, hundreds of thousands of pounds. Last year alone they took over £80,000. This is money for which there seems to be very limited accounting and some of which quite possibly, according to a lease of 1967, could be being transferred into private hands. The car park is not a part of the golf course so is subject to both the Commons Act

2006 and the CROW Act 2000. Here again the RWNGC and their legal experts have chosen to ignore the law; Defra requires that consent must be gained from the Planning Inspectorate for works on registered common land (and some equivalent land) under section 38(1), of the Commons Act 2006. Furthermore, the CROW Act 2000 quite clearly states that there should be no activity on common land which is organised or undertaken for any commercial purpose. It would seem that the NT and NE are complicit in these encroachments as they have allowed this development and the NT also takes tens of thousands of pounds from it on an annual basis. It might be pertinent to mention the law of *Unjust Enrichment* at this point for, if ever there were a lack of justice, there certainly is here.

We should also remember that Brancaster Parish Council has been collecting income from the car park on the common and using it to defray the costs of the Council Tax, it seems. The Parish Council have letters from its auditors telling them that they should not be doing this!

There are large developments, encroachments, on the golf course itself, including roads and buildings, none of which seem to have the permissions required by common land legislation. It would seem that the NT and NE are complicit in these encroachments too as they have allowed a large number of beach huts on the common, a massive blot on the landscape of a road, plus a further car park to be developed on the common. As seen above, Defra requires that consent must be gained from the Planning Inspectorate for works on registered common land (and some equivalent land) under section 38(1), of the Commons Act 2006.



Where is the honesty in this?

Common CL65

I have known the marshes, creeks and dunes at Burnham Overy Staithe, or just Overy as locals called it, for well over sixty years. During that time I have seen a small village community become overwhelmed by the wealth of those that have chosen to turn the village into a bolt-hole from their city lives. The effect on the common has been to see destruction of the common habitat on a large scale. The once abundant produce of the common such as shell-fish, dabs, mullet, samphire and wildfowl has been decimated. Where are we now?

Much of CL65 is owned by Holkham Estate, taken (legalised theft) by the then Lord Leicester by Enclosure in the 1800's, but not all of it. Most importantly, Holkham Estate do not own those parts of the creeks at Overy where the majority of the moorings are placed on CL65. This fact is easily checked out with the Land Registry, and has been by SH&DCRA, who also have legal advice supporting this fact. Holkham Estate do not own that part of CL65 called Overy Marsh 77 acres, nor do they own half of the island at Overy. For all of its legal advice this has not stopped Holkham Estate from issuing a lease over land that they do not own, nor did it stop them from registering land that they do not own!

Where is the honesty in this?

Let's explore this situation a bit further:

The land, Overy Marsh 77 acres and half the island, was registered by Holkham Estate after ownership had been questioned. The immediately previous Lord Coke, Edward, did not claim the Marsh or island and there are documents to this effect. Therefore, was this registration fraudulent? Here is the warning from Land Registry Form of Registration FR1: *WARNING: If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.*

Where is Burnham Overy Parish Council in all of this? The Parish Council have all of the evidence that this land belongs to the village, it was given over for the use of the poor when all of the other common land was taken from them in the 1800's. They have had this evidence for approaching three years but it seems that they have failed to use it to challenge the false claim of Holkham Estate. In doing so it seems that Burnham Overy Parish Council have become complicit in the massive encroachments that have despoiled the common and infringed upon common rights, they have also failed in their duty to protect village assets.

Where is the honesty in this?

Holkham Estate continue to carry out a management role that threatens to dictate to CRH rather than manage within the Laws as they relate to Common Land. <u>The law requires that common rightholders must be consulted about all matters concerning the common.</u> CRH also have a veto over aspects of commons management that infringe upon their rights. Holkham Estate are well aware of this; they have a copy of the definitive guide (Gadsden) to law as it relates to common land. They choose, it seems, to ignore the law.

Burnham Overy Harbour Trust (BOHT) rely on an (unlawful?) lease from Holkham Estate in order to carry out activities on the common CL65 regardless that in law the lessee has no more rights than the lessor. Holkham Estate do not own the land, so how can such a lease be legal? The solicitor acting for SH&DCRA has made all of this clear and Holkham have seen this advice but they and the BOHT carry on regardless.

BOHT, a group of private individuals, have over the years carried out a number of works on the common CL65. BOHT has also registered itself as a charity with charitable objects that contravene the Law as it relates to Common Land. The Charity Commission has strict guidelines for charities, see: *Due diligence, monitoring and verifying the end use of charitable funds.* However, none of this seems to matter at all when it comes to BOHT and Holkham Estate ignoring the law as it relates to common land and rights of the CRH.

As has been seen above, Defra requires that consent must be gained from the Planning Inspectorate for works on registered common land (and some equivalent land) under section 38(1), of the Commons Act 2006. A look at the projects (encroachments) on the common over the last few years show that this also doesn't seem to bother the BOHT or Holkham Estate either.

We can also ask; where are the NT and NE in all of this? Why haven't they been doing their jobs protecting the commons and the environment?

Burnham Overy Staithe. (Picture kindly donated)

This common land, CL65, is protected by the CROW ACT 2000 and the Commons Act 2006 both of which, it seems, have been unlawfully contravened by the Charity Commission and the BOHT.

Contraventions of the CROW Act 2000 can be seen in the following:

CROW Act 2000

General restrictions on public access are set out at Schedule 2 to the CROW Act

2000

Essentially the restrictions seek to exclude activities inconsistent with the quiet enjoyment of access land. Examples include the use of land by persons with animals other than dogs, by persons with vehicles other than an invalid carriage (e.g. wheel-chairs, including motorized ones) by persons engaging in organized games or camping.

Schedule 2 *prevents access by any person who (without a private right or a private permission from the owner):* Much of the land in question has NO owner registered with the

Land registry so it is only the CRH that are the legal occupiers of this land. (See green areas on map below.) None of the land used by the BOHT charity moorings has a registered owner and, even if it had, CRH must be consulted and have the right to veto encroachments on the common.

(m) Obstructs the flow of any drain or watercourse, or opens, shuts or otherwise interferes with any sluice-gate or other apparatus,

BOHT might well find it difficult to plead not guilty for failing to gain Section 38 permissions for works that they have carried out.

(p) Affixes or writes any advertisement, bill, placard or notice,

BOHT has put up many signs around the area in question which approve of encroachments on the common. This is unlawful.

(q) In relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does anything which is intended by him to have the effect-

(i) Of intimidating those persons so as to deter them or any of them from engaging in that activity,

(ii) Obstructing that activity, or

(iii) Of disrupting that activity,

BOHT and Holkham Estate does all of the above one way or another but in particular by ignoring the law as it relates to common land.

(r) Without reasonable excuse, does anything which (whether or not intended by him to have the effect mentioned in paragraph (q)) disturbs, annoys or obstructs any persons engaged in a lawful activity on the land,

See q above.

(t) Engages in any activity which is organised or undertaken (whether by him or another) for any commercial purpose.

As can be seen from the Charity Commission website entry for BOHT Charity, there is an income registered every year.

https://apps.charitycommission.gov.uk/Showcharity/RegisterOfCharities/CharityWithoutPartB.aspx?RegisteredCharityNumber=287315&SubsidiaryNumber=0

The BOHT has an arrangement with the Burnham Overy Boathouse Ltd to licence moorings on the common for commercial gain. The BOHT reports sums in excess of £100,000 in its bank accounts which would appear to have been raised through its unlawful activities on the common. As we have seen, the BOHT operates on the back of an unlawful lease from Holkham Estate over land that they do not own. To repeat, it is only the CRH that are the legal occupiers of this area shown green (below).

Where is the honesty in this?

Taken from Land Registry documents.

What of Common Rightholders themselves?

I mentioned earlier that the two commons are subjected to actions by some CRH that also lack honesty.

There are two organisations that have purchased shares in common rights on the commons, Kent Wildfowling and Conservation Association and East Coast Sporting Ltd; so, not a whole common right, but a part share as allowed by the Law of Property Act. The law as it relates to common land is quite specific about the amount of produce that a CRH may take from the common; basically it is enough for the one family.

Kent Wildfowlers advertise on their website; *No restrictions on membership – just join and shoot.* On the same advertisement fees for joining are also shown. This advertisement indicates unrestricted access to the two commons, CL65 and CL124. A copy of the latest Kent Wildfowlers newsletter; page 2 offers shooting on Scolt Head island where there are in fact local CRH agreements for restricted wildfowling. Page 12 of the Newsletter gives details of shooting offered for Norfolk; two guns, four days on both Burnham and Scolt Head with bag limits of five geese. There is a similar bag limit and two guns on Scolt Head. No bag limits are mentioned on other species which might indicate why in 2018 large numbers of ducks were washed up on the tidelines.

The police have powers to put a stop to this but the Chief Constable of Norfolk has passed the issue on to Natural England who have prevaricated for months on end and still have not done anything to stop what is basically; *armed trespass.*

The right to a mooring in this beautiful part of the coast is de rigueur to fit with the million pound plus second/third/fourth home that these incomers must have. It follows therefore that the sums of money that are offered in order to purchase one of these ancient common rights do become very tempting to some CRH. In many cases these are people who have lived all their lives at just above the poverty level so an offer of £17,000 for a quarter share in a common right takes quite a lot of refusing in those circumstances.

It is also perfectly legal for a CRH to licence some or all of his common right to another person. This has seen some rather unscrupulous CRH, just a tiny few, who have placed any number of moorings on the common and draw quite large sums of money letting them out to the wealthy.

Where are we now?

The pressures on the two commons of the large numbers of encroachments, unlawful and lawful activities are overwhelming the natural habitat. The sailing fraternities have created barriers to the natural development of the saltmarsh environment and, such is the wealth of these people, the common edges are for much of the year covered in their boats and trailers; that is if it is not worn away by cars that squeeze into any available space that they can find.

Around two years ago the SH&DCRA decided that the time had come for a fightback in order to rescue the commons and common rights. Unfortunately, the vacuum left by years of inaction by CRH against encroachments on the commons has been filled by those who have few or no legal rights to manage the commons.

The RWNGC, the NT, Holkham Estate and Natural England are all guilty of ignoring the law as it relates to common land. The police refuse to deal with *armed trespass* on the common and we are left wondering what they might do were Lord "call me Tom" Coke to report armed trespass on Holkham Estate? BOHT, this group of private individuals set themselves up as a charity and get away with treating CL65 as their private playground. The great and the good with their double barrelled names and super wealth make themselves directors of Burnham Overy Boathouse Ltd and work hand in fist with BOHT charity and Holkham Estate to frustrate any move by the CRH to hold them to account. Almost any move by SH&DCRA to try to protect the commons and common rights is met by threats of legal action. This action can only be taken in the civil courts and could result in legal costs of many thousands of pounds, money which the CRH do not have. Justice!

What do *they* care about honesty and justice?

In 2016 an article appeared in the Guardian newspaper; *the lack of access to justice is a national disgrace.* This was reporting on a statement by the then most senior judge in Britain, Lord Thomas of Cwmgiedd, who wrote that *"our justice system has become unaffordable to most".*

It's a remarkable statement for the Lord chief justice to make. But unfortunately it's right. In Britain, in the 21st century, a growing number of people can't afford to defend themselves and make sure their rights are respected. The facts are startling. In 2009-10, more than 470,000 people received advice or assistance for social welfare issues. By 2013-14, the year after the government's reforms to legal aid came into force, that number had fallen to less than 53,000 – a drop of nearly 90%.

At the same time, tribunal fees have been introduced and court fees increased, time and again. Advice centres – which provide straightforward guidance on legal problems – have closed across the country.

A strong and reliable justice system is key to a secure society and a growing economy. The success of our society relies in large part on the trust we all put in the rule of law and the knowledge that the courts will be there to enforce our rights should something go wrong. When that trust breaks down, the fundamental principle of the rule of the law is being eroded. (My emphasis.)

In 2018 The Law Society came out with a statement that; *Justice isn't being served* and went on to offer the much more serious consequences of a failure to gain justice through the courts:

There is a broader societal issue at stake here. As a growing number of people find that they can't get justice through the official channels, there is a risk of more and more people taking the law into their own hands. It is a risk the government itself recognised in its impact assessment when it introduced wide-ranging legal aid cuts in 2013. If trust in the justice system breaks down, the rule of law will be replaced by the rule of the mob, or of might is right. And which of us can be confident that we would not be the losers if that were to happen?

Clearly then, it is only the wealthy that have access to the law; equally clearly it is the very wealthy and the very, very wealthy that for their own private benefit make unlawful use of the commons CL65 and CL124 and chose to deny **justice** to the commons and CRH.

This article is an appeal to those people and organisations – Holkham Estate, the Royal West Norfolk Golf Club, the National Trust, The Charity Commission, Natural England, Norfolk Police, Burnham Overy harbour Trust, Burnham Overy Boathouse Ltd – to come on board and help the Common Rightholders to manage the commons lawfully and in compliance with Defra guidelines. The importance of protecting the commons is in all our interests.