

EDWARD HARRIS SOLICITOR

TREDEGAR FAWR
LLANGYFELACH
SWANSEA SA5 7LS



TELEPHONE 01792 772505 DX 56752 MORRISTON

FAX NUMBER 01792 772553

E-MAIL:- edwardharris@ehlaw.co.uk

www.edwardharris-law.co.uk

Our Ref: EKH.JS.DV.

Your Ref:

11th January 2019

Mr Rod Cooke
Acting Secretary RHDCRA

BY EMAIL: r.cooke33@btinternet.com

Dear Mr Cooke

Re: Claim by the Holkham Estate (Earls of Leicester) to ownership of 'Overy Salt Marsh' Enclosure Number 295 – unenclosed lands – 77 acres; and half of island Enclosure No 294

Thank you for your email of the 18th December 10.25. I have read those extracts of the Enclosure Award for the Parish of Burnham Overy that you have sent me, which clearly awards and allots allotment number 295 (77 acres) Overy Salt Marsh and 296 (1.06 acres) to the three Trustees.

I also agree that the Enclosure Award clearly appears to set out the Trusts on which the said land is to be held and it seems to me that the Trust specifically mentions the names of the owners of the 'commonable messuages and land' which were particularised in the Schedule thereto.

I really, therefore, need to see the whole of the Enclosure Award because it seems to me that what you have pointed out on page 19 of the Act is specifically different from what the Award provides. The portion of the Act (that you have sent me) provides that there should be areas of land for the poor inhabitants of the said Parishes to cut and take and use whins, furze, turf and flags – continuing on page 20. The wording of the Award would appear to refer back to the Trustees and "their Successors", for ever, as Trustees...." If the Lord of the Manor, the Vicar/Rector and the Overseers etc were Trustees then the ownership, in my view, does not automatically vest in the Parish Council by virtue of the Local Government Act 1894. The trusteeship, of one of the Trustees presumably, would change from being the Overseers etc of the Poor and become the Parish Council but it would seem to me that those three Trustees or their successors are still the Trustees in so far as the Law of Property Act 1925 did not in some way vest the ownership in the Public

Trustee to await the appointment of new Trustees??i have not considered that point as yet.

I do agree with you, however, that there would appear to be no way that the Earl of Orford could convey or sell the 77 acres by virtue of the Conveyance of the 8th June 1922 to the Earl of Leicester.

I suppose that the present Earl of Leicester will simply say, "there it is, he has the deed of conveyance which is now 96 years old and somehow he will try to say *prima facie* it shows that he owns the land". I would advise that I ought next to have a look at the Land Registry file to see what his solicitors said to the Land Registry when they applied to register that land in the name of the Holkham Estate.

The Conveyance (indenture) of the 8th June 1922 was made between the Rt Hon Robert Horace Earl of Orford (vendor) (1), his mortgagees (2) (3) and (4), and the Rt Hon Thomas William Earl of Leicester (purchaser) (5).

I have also looked at the old Ordnance Survey maps for the area, and the said allotted field Enclosure Award (number 295) appears on all editions of the Ordnance Survey maps, namely 1887, 1904 and 1939 as being Ordnance Survey number 232 and has various different measurements attributed to it.

However, I cannot see that Ordnance Survey number 232 was included in the Schedule of lands conveyed to the Earl of Leicester by the 1922 Conveyance. I see reference to an area of land referred to as Ordnance Survey number "174a" described as "Saltings" situated in the Schedule under the heading 'lands in hand in the Parish of Burnham Overy'. By coincidence, the acreage given is 60.639 which is the same acreage as for an area of land OS232 on the 1906 edition OS Map.

I cannot find reference in the relevant Ordnance Survey sheet to an area of 77 acres which has the OS number "174a".

You may therefore like to check with the Holkham Estate when you meet the Agent as to how the Estate claims to own the property outright by virtue of the 1922 Conveyance lands known as Overy Marsh, wherein there appears to be no reference to the or is there another Conveyance under which they claim ownership??

As I mentioned in an earlier letter, it seems to me quite clear that the Enclosure Award allots Parcel Nos 295 & 294 to the three trustees in their respective capacities.

1. Earl of Orford or lord of the manor and to the "lands for the time being of the same manor"
2. Vicar of the Parish Church of Burnham Overy aforesaid (ie. for the time being)
3. Church Warden and Overseers of the Poor " for the time being" of Burnham Overy

To hold, as far as I can see, on trust on the terms and for the persons set out and in accordance with the extract of the Award set out in the second page of your email of 18th December 2018.

It would seem quite clear as a matter of simple conveyancing that the Earl of Orford was not in a position to convey the interest in Enclosure Award allotment number 295 (or OS Numbers, 232 or 174a) in any event and the 1922 Conveyance does not appear to have referred to Enclosure Award Nos 295 and 294 or OS No 232- I do not know what the reference in the Schedule of the 1922 Conveyance to OS 174a refers to, and therefore in my view if the 1922 Conveyance cannot clearly identify the parcel of land, it cannot be conveyed. The only explanation may be that there is an edition of Ordnance Survey map which I have not been able to find which contains this number as describing "Overy Salt Marsh", and which shows that this area (Overy Sald Marsh) of land as OS174a.

In any event, I see no evidence that the Earl of Orford ever acquired the beneficial interest in one third or in any other portion of Enclosure Award Number 295 and 296. He was a Trustee in his capacity as lord of the manor and in my view the position of appointed Trustee remains with the lordship of the manor, and whoever is the lord of the manor at the present time has the right to nominate a Trustee to hold the lands, with the other 2 trustees, upon the trust provisions set out in the Enclosure Award.

I would be happy to advise the Parish Council as successors in Trusteeship to the Church Warden and Overseers of the Poor- but you and I would need to clear any costs aspect.

I have not seen the Tithe Map - Tithe Schedule and it would be of help to see this - can you send me copies

As mentioned in my earlier letter, I will still have to investigate the question of who are the present Trustees of the legal estate.

I think it is necessary to show that there are present day Trustees who hold and manage this land ie the present lord of the manor, the present vicar and the Parish Council as successors to the "overseers of the Poor".

Those Trustees as landowners, would have the power and the legal right to ascertain from anyone who goes onto that land in apparent exercise of the wildfowling rights, as to what rights they actually have, and then to take action to require that they do not go onto that land if they do not have proper rights.

Best wishes,
Yours sincerely

Edward Harris



