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**BRANCASTER AND THORNHAM COMMONS, NORFOLK: HISTORICAL  
BRIEFING PAPER<sup>1</sup>**

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(Revised draft February 2010)

***Introduction***

The case study area comprises registered common land on the north Norfolk coast around Brancaster Bay. The primary coastal common land units in the vicinity of the village of Brancaster (CL 65, CL 124, CL 161) comprise salt marshes and the Scolt Head Island National Nature Reserve, much of which is owned by the National Trust. On the western shore of Brancaster Bay, the village of Thornham has two further significant blocks of salt marsh common land known as Thornham Common (CL 41) and Thornham Low Common (CL 56). The case study area also includes a small area of inland common near Brancaster Staithe, known as Barrow Common (CL 159). These land units are all within the North Norfolk AONB, and are also part of the Heritage Coast designation.<sup>2</sup>

The major common land units for Brancaster and Thornham<sup>3</sup> are:

- *CL 65 (1334.35 ha)*

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<sup>2</sup> See <http://www.defra.gov.uk/wildlife-countryside/issues/common/pdf/norfolk.pdf>, <http://www.norfolkcoastaonb.org.uk/mediaps/pdfuploads/pd000125.pdf>, pp. 5-6.

<sup>3</sup> At Thornham, two small common chalk pits were also registered (CL 198 and CL 121), whilst the Brancaster registrations included a small grassy area north of the village (CL 162). These have been excluded from our case study research.

Brancaster and Burnham harbour marshlands, including Scolt Head Island and parts of Burnham Norton and Burnham Overy marshes

- *CL 124 (360.16 ha)*  
Brancaster marshes north of Brancaster and Brancaster Staithe
- *CL 161 (51.96 ha)*  
Intertidal area to the north of Brancaster (north of CL124)
- *CL 159 (35.60 ha)*  
Barrow Common, inland common near Brancaster Staithe
- *CL 41 (225 ha)*  
Thornham Common
- *CL 56 (74 ha)*  
Thornham Low Common.

In marked contrast to the upland case studies, the surviving common land in the Norfolk case study parishes represents only a fraction of the land over which common rights formerly existed. In the upland case studies of Eskdale and the Elan Valley comparatively little enclosure has taken place since 1600, with the result that the boundary between a very limited area of inbye land in the valleys and the extensive tracts of common on the hills remained broadly stable. In contrast, enclosure of commonable arable land in the Norfolk case study parishes in the eighteenth century resulted in the extinguishment of common rights over the bulk of the parishes, only the salt marshes and smaller vestigial areas of common land lying inland remaining. The surviving commons thus represent only one element of the common land system which operated in the case study area before c.1750.

The case study lies in the ‘sheep-corn’ country of north-west Norfolk, on light sandy soils overlying boulder clay.<sup>4</sup> In broad outline, each of the parishes of north-west Norfolk, from Holme-next-the-sea to Burnham Deepdale, exhibited similar patterns of historic land use. Each parish consisted of a transect across the countryside, from the coastal salt marshes in the north to an undulating plateau at *c.* 50 metres above sea level in the south. The villages, aligned east-west, lay at the junction between the coastal marshes and the higher land, the latter forming the community’s agrarian resource, the bulk of which was formerly cultivated and subject to common rights. The coastal parishes contained three distinct land use zones:

1. the coastal marshes, only capable of agricultural use if reclaimed by embanking and drainage, but valuable for a range of resources;
2. the rising ground immediately south of the villages, which formed the core of the villages’ open arable fields;

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<sup>4</sup> The contextual material below draws on M. R. Postgate, ‘Field systems of East Anglia’, in A. R. H. Baker and R. A. Butlin (eds), *Studies of Field Systems in the British Isles* (Cambridge, 1973), pp. 281-324; T. Williamson, *England’s Landscape: East Anglia* (London, 2006); E. Martin and M. Satchell, ‘*Where most Inclosures be*’: *East Anglian Fields: history, morphology and management*. East Anglian Archaeology Report No. 124 (Ipswich, 2008).

3. the rolling plateau on the southern edge of the parishes, formerly heathland, parts of which had been divided into ‘brecks’, blocks of pasture which were cultivated on a long ley rotation, by the early-modern period

Enclosure in the eighteenth century involved the second and third categories but, in the two parishes which form this case study, left the first category untouched. In Brancaster, the enclosure act of 1755 covered 2,350 acres, the bulk of it in the ‘brecks’ and the common field, which lay largely ‘open and unenclosed’; it specifically excluded ‘the Salt and Fresh Marshes and the Commons and Wastes of the said Town’.<sup>5</sup> After enclosure, the surviving areas of common land fell into two distinct categories: first, those areas of salt marsh which had not been drained and reclaimed (as occurred at Titchwell and on parts of Thornham and Brancaster marshes); second, small patches of inland common on what were formerly the heathland ‘brecks’, such as Barrow Common, Brancaster, and Ringstead Common.

The character of the common lands in the case study parishes thus differed. The coastal marshes included both salt water and freshwater marsh and embraced a spectrum of vegetation types, from comparatively dry pasture, through fragmented mud flats, to the foreshore. They also included the sand dunes fronting the sea, notably the dune bank at Brancaster now occupied by the golf course. These dunes or ‘sea banks’ were known in the vernacular as ‘meals’/‘meles’ (from Old Norse *melr*, ‘sand hill’). The lower reaches of the marshes were fragmented by tidal creeks and larger channels through the marshes, providing access to the sea from the staithe at both Brancaster and Thornham, divided the marshland into smaller units.

The inland commons lay on the hills overlooking the sea, a topographical position reflected in the name of Barrow Common (from Old English *beorg*, ‘hill’) and its description as being in ‘le common hilles’ of Brancaster.<sup>6</sup> The heathland character of the inland commons is recorded both in the use of the Latin term *bruera/bruarium* (‘heath’)<sup>7</sup> to describe common land in Brancaster, and in the fact that several areas of common land on the inland plateau bore the name ‘ling’ (Old Norse ‘heather’): ‘Thornham Ling Common’ survived until the later eighteenth century and there were commons called ‘the Lyng’ at both Brancaster and Holkham in the sixteenth century.<sup>8</sup>

In discussing these surviving commons, it is necessary to acknowledge problems of definition, particularly in the context of the existence of enclosure awards for both Thornham and Brancaster. Due to their appearance on the register, all the land units listed above are considered and treated as common today. However, it is evident in this case (as in our other study areas) that the register is not necessarily a reliable

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<sup>5</sup> NRO, PC 86/1: Brancaster Inclosure Act 1755, p. 1.

<sup>6</sup> NRO, HARE 6345 (presentment, 11 Oct 1598).

<sup>7</sup> For example in the 13th century Robert of Brancaster held ‘a heath (*brueram*) towards Docking’: W. H. Hart and P. A. Lyons (eds), *Cartularium Monasterii de Ramseia* (Rolls Series 79, 3 vols. 1884-93), Vol. I, p. 413; in 1577 a man from neighbouring Burnham Deepdale was presented for grazing horses on the *Bruarium* (‘heath’) of Brancaster: NRO, HARE 6342, 28 Oct. 1577.

<sup>8</sup> NRO, HARE 6338, court leet, 27 Oct 1569: *communiam vocat’ the Linge*. Holkham: estate plan, 1590 ‘the Lyng’: Allison 1957, p. 17. Thornham Ling Common is marked on Faden’s *Map of Norfolk* (1797). Thornham Parish Council applied to register Thornham Ling Common (Norfolk CL 55), but after hearing objections, the Commons Commissioner refused registration: Decision of the Commons Commissioner, Thornham Ling Common (CL 56) on 28 July 1972, ref. 25/D/7 (available at <http://www.acraew.org.uk/uploads/Norfolk>).

guide to land use and status in the past. In her study of the impact of registration in Norfolk, Birtles uncovered a dramatic increase in the number of commons listed in Norfolk in the aftermath of registration, and charted the innumerable ways in which ineligible lands had been registered. Birtles notes that parish councils ‘often felt obliged to register land rather than run the risk of losing it for the parish.’<sup>9</sup> Of all the registered units associated with Brancaster and Thornham, only Barrow Common (CL 159) is on Birtles’ own list of common land units which could be considered as verifiably common.<sup>10</sup> Brancaster Marsh (CL 124) also has a documented history of longstanding use as common land. The other land units discussed here either come under the status of stinted pastures resulting from enclosure acts (Thornham commons, CL 41 and CL 56), or lands with historically obscure legal standing, yet with a strong local sense of their ‘common’ nature. Scolt Head Island, which was not considered common by Hoskins and Stamp, and which does not seem to have a history of common rights,<sup>11</sup> was nevertheless registered as part of the CL 65, which also includes other areas which do not appear to have been recognised as common in earlier centuries. There is the possibility of similar discontinuities between historic practices and registered common rights. Today, the register contains a large number and range of common rights entries for the coastal commons, including grazing rights and rights to take samphire, seaweed, shellfish, sea lavender, fish, bait, estovers, wildfowl, sand, shingle, herbage and reeds (see 1.3.3-1.3.5 below). Birtles points to the ‘mass registration’ of rights to the foreshore and saltings on the coast, suggesting, ‘That these commons have so many finalised rights attached to them is due more to lack of objection or negotiated settlement than to any universally recognised rights of common.’<sup>12</sup>

This raises interesting questions about the status of such lands and rights in the past, the intentions of those involved in ‘enclosing’ them in the eighteenth century, and the characteristics or conditions which made them seem culturally ‘common’ post-1965.

## 1. Property Rights

### 1.1 Boundaries

The boundaries of the common land registered under the 1965 Act were largely determined by the process of enclosure during the eighteenth century. The current extent of Barrow Common (CL 159) was, in effect, created by the Brancaster enclosure act of 1755. The landward boundaries of the marshland commons represent the outer limits of enclosure and reclamation. Some small-scale attempts at

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<sup>9</sup> S. Birtles, ‘The impact of commons registration: a Norfolk study’, *Landscape History*, (20) 1998, pp. 83-97, p. 89.

<sup>10</sup> *Ibid.*, pp. 91-2, n 37. Birtles concludes that of almost 500 commons registered, only 46 (registered in 62 CL units) are legitimate commons. Together these cover some 2,561.8 acres.

<sup>11</sup> Hoskins and Stamp were emphatic on the status of certain lands in our case study area, but excluded Scolt Head: ‘No naturalist needs to be reminded of the very great and varied interest of the north Norfolk coastlands. Scolt Head is now a name known throughout the world wherever naturalists gather. No part of this was common land, but some of the extensive salt marshes of the neighbourhood definitely are. Low Common at Thornham (500 acres) – partly grazed, partly used by the Air Ministry – is an example; the Brancaster Salt Marshes are another’, Hoskins and Stamp 1963, pp. 135-6.

<sup>12</sup> Birtles (1998), pp. 88-9.

embanking and draining are recorded. For example, in 1558 Richard Taylor was presented at Brancaster court for enclosing part of the marsh there ‘with two ditches (*fossatis*) and with an earth wall (*muro terreno*)’; and sections of Thornham marsh had been let to copyholders by 1574, most in small parcels (3 acres or 6 acres) but one of 20 acres.<sup>13</sup> Activities such as these presumably pushed the limit of reclamation northwards behind the village streets, at the margin between the dry land and the marsh. A more substantial instance of reclamation took place in 1616, when Sir Charles Cornwallis, the lord of Brancaster manor, had ‘newly inbanked and wonn from the sea’ part of Brancaster marsh.<sup>14</sup> This area, known as ‘the imbanked marsh’ is identified in 1630 as the north-western corner of the parish, between Marsh Lane and the boundary with Titchwell, an area of 113.5 acres.<sup>15</sup> It may have been part of a more extensive episode of reclamation: in 1637 the lord of Brancaster was in discussion about the marsh between the imbanked marsh and Titchwell Marsh with the Dutch engineer Van Hasedunck, who was reputed to have been involved in land reclamation at Thornham and Holme Next the Sea in 1642-3.<sup>16</sup>

The boundary on the seaward side of the common marshes differed between Thornham and Brancaster. In Thornham, as in most manors, the boundary ran along the high water mark but the regular rhythm of tidal fluctuation and the shifting pattern of creeks and channels presumably made it difficult to draw a firm line between common and foreshore. This is illustrated by a Commons Commissioner’s decision of 1975 in respect of Thornham common (CL 41), which gives a description of the boundaries and character of the marshland:

A large part of the [common] is regularly covered at high tide, and much of the north boundary is ill-defined, being the line of the foreshore, which varies from time to time; on this part there is growing much samphire and sea lavender, and there are many places where bait is obtainable; there is also an area (known as Jockey Beach) where there is much easily gettable sand and shingle. However the south part of the Unit Land (especially a piece called the Hallows) contains some grassland which never or seldom floods either because it is higher than the rest or is protected from the sea by a bank, and which is therefore valuable for grazing. In a few places there are trees and scrub.<sup>17</sup>

In a separate decision, the Commissioner established that Thornham Low Common (CL 56) comprised ‘saltings north and northwest of the CL 41 Land and is between it and the sea... The Unit Land on its sea side is bounded by the High Water Mark of Medium Tides’.<sup>18</sup> The boundary between Thornham Common and Thornham Low

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<sup>13</sup> NRO, HARE 6334 (Easter 1558); CHC 135539, Thornham rental, 1574, ff. iv, xiv<sup>v</sup>.

<sup>14</sup> NRO, PD 379/86.

<sup>15</sup> Gloucestershire Archives [GA], D 2700, MJ19/3, ff. 94v-95.

<sup>16</sup> GA, D 2700, MJ19/4. J. A. Steers, ‘Some notes on the North Norfolk Coast from Hunstanton to Brancaster’, *The Geographical Journal*, Vol. 87, No. 1 (1936), pp. 35-46, p. 44, n. 2.

<sup>17</sup> Decision of the Commons Commissioner, Thornham Common (Norfolk CL 41), 18 December 1975, ref. 25/D/79-95, p. 2 (available at <http://www.acraew.org.uk/uploads/Norfolk>).

<sup>18</sup> Decision of the Commons Commissioner, Thornham Low Common (Norfolk CL 56), 14 September 1979 (with corrections), ref. 25/D/112-125, p. 2 (available at <http://www.acraew.org.uk/uploads/Norfolk>). According to evidence presented at the hearing, CL 56 consisted of two parts: one part east of the Harbour Channel was a strip of approximately one mile long east to west with a ‘variable width of between 400 and 100 yards and including a small island’; and a

Common appeared confused during registration (see 1.2, below). Nevertheless, there seems to have been an underlying understanding that the two commons formed discrete units with separate patterns of landownership.

In Brancaster, by contrast, the boundaries of the registered commons extend to the low tide mark, reflecting the quasi-regal rights over the foreshore held by the lords of Brancaster. These derived from Edward the Confessor's charter to Ramsey Abbey in 1053, which granted the monks (who were lords of Brancaster in the medieval period) royal liberties, including 'scipbryce and the sea-upwarp' (i.e. 'wreck of the sea', the right to ships and goods cast ashore in storms), at Brancaster and Ringstead.<sup>19</sup> However, The division of the Brancaster salt marshes into separate CL units reflects in part the historic distinction between CL 124 as 'common marsh' and CL 65 as lord's freehold (see below, 1.2). Why one section of the intertidal area (CL 161) should have been deemed to be separate from the other registered units is not clear from the historical record. Some commoners made reference to more than one land unit when registering their rights to the Brancaster salt marshes (e.g. noting in their entry for CL 124 that their rights also applied to CL 161 and CL 162); other commoners' rights varied over the land area of a single CL unit (e.g. rights holders might register different rights to the part of CL 65 owned by the Nature Conservancy Council from the area owned by the National Trust), implying that some of the CL unit boundaries were unhelpful or even arbitrary.<sup>20</sup>

## ***1.2 Ownership***

In summarising the historical evidence for the ownership of the commons in Brancaster and Thornham, it is necessary to treat each area of common land separately.

### *1.2.1 BRANCASTER*

Brancaster was granted to Ramsey Abbey in Huntingdonshire under a charter of 1053. Following Dissolution, the manor passed successively through the Southwell, Cornwallis, Hare and Berkley families, the last being absentees, seated at Stoke Gifford in Gloucestershire.<sup>21</sup> Norborne Berkley (1718-1770) was lord at the time of the enclosure and restructuring of lands in Brancaster under the Inclosure Act of 1755.<sup>22</sup> The manor subsequently came to Berkley's sister, wife of the Duke of Beaufort, and her son (the 5th Duke), who sold it in 1792 to a local landowner, Law Simms.<sup>23</sup> The lordship descended through his family until the twentieth century, passing to his daughter, Mary (lady of the manor 1835-72), wife of Joseph Newman

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second part west of the Harbour Channel was 'an irregularly shaped area about ½ a mile from north to south and between ½ and 1/3 of a mile from west to east and including 5 small islands.'

<sup>19</sup> Hart and Lyons, *Cartularium Monasterii de Ramseia*, I, pp. 219, 241.

<sup>20</sup> See for example, Norfolk County Council Commons Register, CL 124, rights entry no. 13 and CL 65, rights entry no. 97.

<sup>21</sup> Charles Parkin, *An Essay Towards a Topographical History of the County of Norfolk: Volume X* (London, 1809), p. 300.

<sup>22</sup> NRO, PC 86/1: Brancaster Inclosure Act 1755.

<sup>23</sup> See the account given on the Barrow Common website:

<http://www.northcoastal.freeserve.co.uk/barrowcommon.htm>.

Reeve.<sup>24</sup> During the ownership of Simms Reeve, who was lord until 1919, the Royal West Norfolk Golf Club was founded in 1892, on land and links he leased to them for the purpose. In 1922, after the death of Simms Reeve, the Brancaster estate was sold.

*Salt marshes and foreshore.*

Despite now being registered as common land, much of the salt marsh appears to have been considered to be the lord's several freehold in the seventeenth century; only the marshes in CL 124 have a history of common use back to the seventeenth century.

**1. CL 124 Brancaster Marsh Common.** In 1630<sup>25</sup> this area comprised two distinct sections of marsh belonging to the lords of Brancaster:

- a. The 'common marsh', containing 370 acres, to be identified with the dunes and marshland north of Mow Creek, including the area now forming the Royal West Norfolk golf course. Under the agreement of 1616, whereby the lord of the manor gained exclusive use of the newly embanked and reclaimed area of marsh to the west of this area, the lord's sheep were excluded from the common marsh.
- b. The 'narrow marsh', estimated at 183 acres, to be identified with the marshes immediately behind the villages of Brancaster and Brancaster Staithe, to the south of Mow Creek. This was in the lord's private ownership and was part of his 'sheepwalk' but in 1670 it was said that the tenants had 'feed for their great cattell' there.<sup>26</sup>

Under the Brancaster enclosure act of 1755 the lord of the manor relinquished his grazing rights over these sections of marsh but presumably retained his rights in the soil. Perhaps a strengthened sense of 'ownership' among the commoners as a result of the release of grazing rights lay behind the idiosyncratic descriptions in the 'landowner' and 'occupier' columns of the tithe apportionment in 1841. Under 'landowner' the words 'Marsh Common' were entered; the occupier was stated to be 'The Parish'.<sup>27</sup> Nevertheless, when the Royal West Norfolk Golf Club developed a golf course on the links towards the end of the nineteenth century, the lord of the manor's ownership of the soil was implied, if not stated explicitly. The Golf Club paid both the lord and the parish council for the privilege of golfing on the common and, when a formal agreement was entered into in 1902, it was with both the parish council (as representative of the commoners) and Simms Reeve, as lord of the manor. However, later agreements, in 1937 and 1948, were between the golf club and the parish council alone.<sup>28</sup> Yet ownership of the common was claimed in the 1920s by Rose Sutherland, who had purchased the saltmarshes, beach and foreshore in 1923, becoming lady of the manor of Brancaster. Sutherland's lordship was not without controversies, particularly as regards fishermen's access to mussel lays and oyster beds (see 1.3.5), and a legal dispute with the Royal West Norfolk Golf Club over the freehold of the links.<sup>29</sup> In 1964, a local syndicate purchased the manorial estate at

<sup>24</sup> Francis's White's *History, Gazetteer and Directory of Norfolk*, (1854), pp. 846-7 (as reproduced on *Genuki*).

<sup>25</sup> The following summaries are drawn from the 1630 survey of the manor: GA, D 2700, MJ19/3.

<sup>26</sup> GA, D 2700, MJ19/6.

<sup>27</sup> NRO, PC 86/3, parcel no. 151.

<sup>28</sup> NRO, PC 86/5 (agreement, 1902); /9 (agreement, 1937); /10 (agreement, 1948).

<sup>29</sup> The RWNGC claimed that the freehold of the links was not part of the manorial estate; Sutherland won the case, and the matter was settled when the Club purchased the freehold and

auction in order to pass it to the National Trust. At registration, ownership of CL 124 was registered as being divided between the Royal West Norfolk Golf Club and the National Trust.

**2. CL 65 Scolt Head Island and marshes south of Norton Creek.** In the seventeenth century there is no indication that any of this area was deemed to be common. In the survey of 1630 land within the CL unit was described under two headings (a. and b. below); the remainder of the CL unit (c. below) may not have existed at that time:

a. Ramsey Meels (cf. the modern name Little Ramsey), lying between ‘Fleet Creek’ (now Trowland Creek?) on the south and the sea on the north. This 100-acre marsh was lord’s freehold: its name, presumably referring to Ramsey Abbey, the pre-Dissolution owner of the manor, suggests a history of seigniorial ownership.

b. East Meels, the block of marsh north of Deepdale Marsh. This was also the lord’s several marsh and its private status can be traced as such back to c.1240, when Robert of Brancaster, the largest freeholder in Brancaster, held ‘a marsh called E(a)st Meles’ (*unum Mers, quod dicitur Estmeles*), which was said to contain pasture for 600 sheep.<sup>30</sup> In the tithe apportionment of 1841 both Ramsey Meels and East Meels were recorded as belonging to the lord of the manor, Joseph Newman Reeve and his wife, and were said to be occupied by themselves.<sup>31</sup>

c. Scolt Head Island is nowhere recorded in the seventeenth-century sources: indeed, the northern sides of Ramsey Meels and East Meels were said in 1630 to abut upon the sea, suggesting that Scolt Head did not exist at that time. It seems likely that much of the island is the result of more recent accretion of coastal deposits. If that were the case, it may explain the disputes over ownership in the twentieth century. On Simms Reeve’s death in 1922 it was agreed that the north part was owned by Lord Orford and the southern part by the executors of Reeve’s Brancaster Hall Estate. Scolt Head Island and other nearby lands were bought by Lord Leicester, who sold the major part of the island to the National Trust in 1923, in order to create a nature reserve.<sup>32</sup>

At registration, ownership of CL 65 was divided between the Norfolk Naturalists Trust, Lord Leicester (who had retained some areas of Scolt Head Island), and the National Trust.

Of the three CL units of saltmarsh common in Brancaster (CL 65, CL 124 and CL 161), it thus seems that only CL 124 was true common land in the seventeenth century, consisting of ‘the common marsh’ and the ‘narrow marsh’, over which the

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manorial rights from her in respect of the golf links: TNA, CRES 58/346: Mr Simms Reeve - Crown Estates Foreshore Rights File, 1891-1962; letter, Mills and Reeve, Solicitors, to Secretary Board of Trade, 28 April 1927.

<sup>30</sup> Hart and Lyons, *Cartularium Monasterii de Ramseia*, I, p. 413.

<sup>31</sup> NRO, PC 86/3, parcel no. 331.

<sup>32</sup> J. A. Steers (ed.), *Scolt Head Island* (Cambridge, W. Heffer & Sons Ltd., 1960), pp. 1-2.

tenants had grazing rights. The remaining marshes were lord's severals (or did not yet exist), while CL 161 (the foreshore area) presumably reflected the ownership of the foreshore at Brancaster by the lords of the manor. Their interest in the foreshore was a recurring theme in the twentieth century. When the manorial rights and estate were put up for sale in the early 1960s, the lot was described as comprising: 'freehold in the wastes of the manor, the foreshore, saltings, tidal water lands, Channels, creeks, the right of lays of mussels, cockles, of other shellfish in the harbour, channel or other creeks, together with all rights, royalties, quit rents, appurtenances and privileges hereto belonging and appertaining and enjoyed and exercised therewith by the vendors.'<sup>33</sup>

**3. CL 159 Barrow Common** Prior to enclosure in 1755 the southern plateau consisted of 'the Sheepe Pasture' or 'the Brecks'. The 1630 survey shows that much of it was cultivated but that some substantial areas of common waste survived. The largest was 'the Ling', 214 acres of 'heath and furzy ground', lying in the vicinity of the modern Field House (TF 783 415). Barrow Common appears to have been created from two adjacent areas of waste, called 'Barrowe' (containing 47.5 acres) and 'the common hills', a common pasture of 38.75 acres.<sup>34</sup> The 1755 Enclosure Act redefined rights in the southern section of the parish, effectively creating the modern Barrow Common by granting it to the use of the poor (see below), in exchange for converting the rest of the plateau ('the Brecks') into 'the sole property of the Lord of the Manor'.<sup>35</sup> The act stated that the lord of the manor, Norborne Berkeley, owned the 'piece of unenclosed land ... called Barrow-hills' which was to become common land, but it did not state explicitly in whom ownership was to be vested after the creation of Barrow Common. By 1841 the lord's ownership appears to have been forgotten, as the tithe apportionment stated that Barrow Common was both owned and occupied by the 'Common Rights Owners'.<sup>36</sup> Nevertheless, in the twentieth century ownership of the soil of Barrow Common has been with the owners of the Brancaster Hall estate, with which it was sold in 1922 and 1991.<sup>37</sup>

### 1.2.2. THORNHAM

Thornham had two manors, known as 'Thornham manor' and 'Thornham Priory Manor' respectively, the latter passing to the Dean and Chapter of Norwich after the Dissolution. In terms of common land management, it appears that the larger 'Thornham manor', belonging to the bishops of Norwich, was the more important, having jurisdiction over common lands and salt marshes. It appears to have been leased by the bishops in the post-medieval period, passing through several hands

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<sup>33</sup> TNA, MAF 209/1313 Manor of Brancaster: exclusive rights to shellfish 1962-4, cutting from the Eastern Daily Press, dated 30 May 1964.

<sup>34</sup> GA, D 2700, MJ19/3 (Brancaster survey, 1630) and MJ19/5 (Brancaster field book, 1663).

<sup>35</sup> NRO, PD 379/36.

<sup>36</sup> NRO, PC 86/3, parcel no. 267.

<sup>37</sup> NRO, PD 379/89; <http://www.northcoastal.co.uk/barrowcommon.htm>.

between the seventeenth and nineteenth centuries.<sup>38</sup> John Wilson of Stanhoe and Anne his wife claimed to be lords of the manor in 1730 and 1754, while, at the time of the Thornham enclosure act of 1794, it was said that George Hogg 'is or claims to be, Lord of the Manor of Thornham, and is Owner and Proprietor of about Nine Tenth Parts of the Farms, Lands, and Grounds, within the said Parish'.<sup>39</sup> Henry Bourdillon Imlach Bett, of Thornham Hall (Hogg's descendant?) was lord of the manor of Thornham in 1975.<sup>40</sup>

As a result of the enclosure act (1794) and award (1797), ownership of the commons became rather more complex. Whilst the enclosure act awarded George Hogg the 'Commonable Marshes or Low Common' west of the Staithe Road (with other lands in the manor), householders retained access to the commonable marshes lying to the east. The act directed that:

the Residue and Remainder of the said Commonable Marshes or Low Commons, being eastward of the said Road called The Staithe Road shall be and remain Common of Pasture, to be used and enjoyed as a Stinted Common by the several Proprietors thereof, or other Persons interested therein (except the said George Hogg, his Heirs or Assigns, in respect of his or their Common Right Houses or Tofts in Thornham aforesaid).<sup>41</sup>

The award evidently extinguished the lord of the manor's interest in the grazing to the east; what is not clear is whether the award intended to extinguish his ownership of the soil, and replace that with ownership by the stint-holders in undivided shares. The act clearly states that the land was to remain 'Common of Pasture', and the award repeatedly refers to the future regulation and uses of the 'Commonable Marshes', 'Low Common' or 'Stinted Common', and management by 'Common Reeves', but it also refers to the 'several Proprietors'. The later Thornham manorial court books recorded the transfer of stints (generally using the term 'rights' rather than stints) in manorial admittances and surrenders, both attached to property and on their own. The assumption seems to have been that the land in question was indeed still common, as can be seen in the conveyance of a 'Copyhold or Customary right of Common of Pasture for two Head of Stock in over and upon the Common and Salt-Marshes', in 1894, and the admittance to 'a Common Right over the Commons of Thornham', in 1897.<sup>42</sup>

In 1975 the Commons Commissioner argued that: 'the 1797 Award contains no clear indication as to how the ownership of the Unit Land was to become vested, probably because nobody at that time thought that the ownership was of any practical

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<sup>38</sup> Parkin (1809), pp. 391-4. In 1854 ownership of the soil was said to belong 'principally' to William Hogge of Biggleswade, described as 'lessee of the lands and rectorial tithes, under the Bishop of Norwich, who has the largest manor': Francis's White's *History, Gazetteer and Directory of Norfolk*, (1854), pp. 856-7 (as reproduced on *Genuki*

<sup>39</sup> NRO, Bett 14/6/79, Hogg Deeds, G2; G4; Thornham enclosure act 1794 (copy).

<sup>40</sup> Decision of the Commons Commissioner, Thornham Common (Norfolk CL 41), 18 December 1975, ref. 25/D/79-95 (available at <http://www.acraew.org.uk/uploads/Norfolk>).

<sup>41</sup> NRO, PC 9/1-2, Thornham enclosure award and map, 1797.

<sup>42</sup> NRO, H. Bett 14/6/79/4, Thornham court book, 1894-1925, pp. 3, 29 (17 November 1894; 4 August 1897).

consequence.<sup>43</sup> He judged that the common was a stinted pasture, and that ownership of such pastures should be vested in the Public Trustee (under the terms of the 1925 Law of Property Act, which prevented the holding of land in undivided shares).<sup>44</sup> The case of Thornham Low Common (CL 56) was doubly complicated by a dispute over landownership between Thornham Parish Council and H. B. I. Bett (lord of the manor) and by the fact that part of the land area of CL 56 should probably have been registered with CL 41. In a decision of 1979, the Commons Commissioner established that the eastern part of CL 56 belonged to the Public Trustee (in keeping with CL 41) and that the western part belonged to H. B. I. Bett.<sup>45</sup> A report of 1985 lists the owners of CL 41 as the Public Trustee, with the road to the shoreline owned by Thornham Parish Council; and notes that CL 56 was part owned by the Public Trustee and by Norfolk Naturalists Trust, implying that the Bett family must have transferred or sold their share of CL 56.<sup>46</sup>

### ***1.3 Common Rights***

#### ***1.3.1 Pasture rights***

The bulk of references to grazing rights in the early-modern records are to ‘shack’ or ‘shackage’, the grazing of livestock on the stubble of the open fields after the crop was harvested. The normal season for ‘shack’ ran from Michaelmas (29 September) to Lady Day (25 March). During this period enclosures were to remain open to allow livestock freedom to graze: in 1598 three individuals were presented at Brancaster court for keeping land in Brancaster field enclosed ‘in le shack tyme’, where the lord’s sheep ought to have had ‘shack’.<sup>47</sup>

The organisation of pasture rights in the early-modern period has to be viewed in the context of a distinctive feature of Norfolk sheep-corn husbandry, the ‘foldcourse’ system. A foldcourse was a section of a village’s lands over which a sheep flock (often the lord of the manor’s demesne flock) had exclusive grazing rights. Folding sheep on the arable land, both fallow land and stubble after harvest, played an important part in the sheep-corn system, the sheep fertilising the land with their dung and breaking the soil down with their hooves – the combined process known as the ‘tathe’. Each foldcourse needed to include both open field arable land, which provided grazing in autumn and winter, and heathland or marsh, to provide summer grazing. In some parishes only parts of the fields and waste were assigned to particular flocks; in others (such as the nearby manor of Holkham) the entire parish was divided into four foldcourses.<sup>48</sup>

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<sup>43</sup> Decision of the Commons Commissioner, Thornham Common (Norfolk CL 41), 18 December 1975, ref. 25/D/79-95, p. 5 (available at <http://www.acraew.org.uk/uploads/Norfolk>).

<sup>44</sup> Ibid.

<sup>45</sup> Decision of the Commons Commissioner, Thornham Low Common (Norfolk CL 56), 14 September 1979 (with corrections), ref. 25/D/112-125 (available at <http://www.acraew.org.uk/uploads/Norfolk>).

<sup>46</sup> Rural Planning Services, *The Future of Rural Common Land: A Report for the Department of the Environment*, (May 1985).

<sup>47</sup> NRO, HARE 6345 (16 Jan. 1598).

<sup>48</sup> K. J. Allison, ‘The sheep-corn husbandry of Norfolk in the sixteenth and seventeenth centuries’, *Agricultural History Review*, 5 (1957), pp. 12-30.

Foldcourses are recorded in both Brancaster and Thornham. At Brancaster in 1586 the lord and tenants came to an agreement over the fold course arrangements on the outfield 'brecks'. The tenants agreed to permit the lord and his farmers to 'have the feed' of their lands, in recognition of which the tenants were granted land in the brecks, the right to have two sheep per acre grazing with the lord's flock, and a monetary allowance. The tenants would continue to pay for the benefit of the 'tathe' of the flock on the brecks at the rate of 12d. per acre 'somer tathe' and 12d. per acre 'wynter tathe'.<sup>49</sup> By the mid-seventeenth century the lord of Brancaster had two foldcourses, referred to in 1663 as 'The Marsh Pasture or weather Grownd' and 'The Ewe Pasture or Linge Grownd'. Surveys of that year and 1670 show that the ewe foldcourse (for 700 ewes) covered the western part of the 'Brecks' and the wether foldcourse (for 600 wethers) included the eastern part of the 'Brecks', including Barrow hills, and the salt marshes (the lord's several marshes in Ramsey and East Meels, and the 'narrow marsh').<sup>50</sup>

At Thornham, the traditional grazing arrangements were described in 1730. There, a flock of 900 sheep (400 belonging to the lords of the manor; 400 to the landowners of the town of Thornham; and 100 to the shepherd keeping the flock) were kept on the Ling Common and the Brecks (i.e. pasture ground at the southern end of the manor, the Brecks being sown with corn on a long ley rotation) and could also graze the 'half year lands', between Michaelmas [29 September] and Lady Day [25 March], when not sown with corn. Farmers could also 'shack or depasture with their great cattle' all lands not sown with corn between the same dates.<sup>51</sup>

In the foldcourse system, grazing for the sheep flocks was at a premium during the summer months, when the open fields were closed to livestock. In consequence, the common marshes, as well as the heathland and brecks, formed an important part of the grazing resource. In Brancaster there were attempts to prevent livestock from neighbouring manors grazing the marshes: in 1554 three individuals from Burnham Deepdale were presented at Brancaster court for putting horses on the sand dunes ('the Lord's Meles'); and in 1602 the Titchwell shepherd was presented for wrongly exercising shack on the marsh and meadow and ordered not to trespass in future.<sup>52</sup> The extension of enclosure behind the villages, out on to the marshes, not only infringed rights of pasture but could restrict vital access to fresh water: in 1556 Richard Taylor was presented at Brancaster court for enclosing part of Brancaster Common, which not only prevented the lord and tenants from exercising their grazing rights over the new enclosure but also obstructed access to 'the fresh water Springes' for the sheep in the foldcourse (*foldagio biden*), causing damage to the lord's sheep and the tenants' beasts.<sup>53</sup>

In 1616 the pasture rights of the lord and tenants of Brancaster on the marshes were redefined in the light of marshland reclamation. In exchange for forfeiting their right to graze the 'newly inbanked' section of the marsh that the lord, Sir Charles Cornwallis had 'wonn from the sea', the tenants' rights to the pasture on the

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<sup>49</sup> NRO, HARE 6343 (Sept. 1586).

<sup>50</sup> GA, D 2700, MJ19/5 and 6.

<sup>51</sup> NRO, H. Bett 14/6/79, Deeds: G (2), Thornham agreement, 10 Aug. 1730.

<sup>52</sup> NRO, HARE 6336, m. 1 (4 Dec. 1554); HARE 6347, (24 Mar 1602).

<sup>53</sup> NRO, HARE 6334, Easter 1558.

remaining marshes (described as the ‘uninbanked & uninlosed [marsh] that lyethe next unto Tytchwell’ and ‘the Marshe grounds & Meales in Brancaster’) were confirmed. The lord retained the right to graze his wether flock on parts of the unenclosed marsh.<sup>54</sup> Subsequent evidence shows that the tenants’ pasture rights on the marshes and on the inland heaths were closely defined. On the marshes they were restricted to the ‘common marsh’ (from which the lord’s sheep were excluded) and to grazing for ‘great goods’ (horses and cattle) on the ‘narrow marsh’ behind the village (see above, 1.2).<sup>55</sup> In the ‘uplands’ the tenants could graze their milk cattle in Barrow and Crowsnest (a small area of common pasture adjoining to Barrow) across the autumn and winter from Michaelmas [29 September] to 1 May, and in the Ling from 1 November.<sup>56</sup>

Major reconfiguration of grazing arrangements took place in both Brancaster and Thornham during the eighteenth century during the process of enclosure. In 1730 the lords of the manor and the landowners of Thornham came to an agreement whereby enclosure of arable land was accompanied by the removal of all sheep from the common land. The lords, John and Anne Wilson, and the landowners could enclose their lands (the lords’ lands were specified as the Brecks and other ‘infield land’) and have exclusive ‘feed and advantage’ of them in future. No sheep were to be put on the commons or brecks in future but all other sorts of cattle could be turned out on the commons. However, the shack period for great cattle was reduced to the weeks between corn harvest and 20 November annually.<sup>57</sup> Manor court papers from Thornham show that in 1786, an attempt was made to identify and list all known common rights holders and their properties, suggesting a need or ambition to harden grazing rights, perhaps in preparation for further enclosures.<sup>58</sup>

#### *Thornham Enclosure (1794)*

By 1794, it had obviously been decided that a more formal rearrangement of rights and land holding was necessary in Thornham, leading to the enclosure of large areas of land, and the stinting of saltmarsh commons. The award recorded that there would be 49 rights of feeding and depasturing cattle upon the commonable marsh in respect of the common-right houses in Thornham – presumably 49 identifiable common right houses. Owners of each common right house would be permitted to graze:

two Cows or heifers or one Cow or one heifer and one Gelding colt Mare filly or female ass with or without a foal under six months old by the side of such Mare or Ass.<sup>59</sup>

The common right owners would have power, as a body, to choose to lessen or increase the value of stints and alter the kinds of animals permitted to be grazed, introducing a degree of flexibility not always found in stinting awards. The award

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<sup>54</sup> NRO, PD 379/86: agreement, 15 Jan. 1615-16 between Sir Charles Cornwallis and the free and copyhold tenants of Brancaster.

<sup>55</sup> GA, D 2700, MJ19/3 (Brancaster survey, 1630), f. 95; MJ19/6 (estate particulars 1670).

<sup>56</sup> GA, D 2700, MJ19/2, court book, 1626-30 (court leet, 18 Oct. 1627); NRO, HARE 6338 (13 Nov. 1567).

<sup>57</sup> NRO, H. Bett 14/6/79, Deeds: G (2), Thornham agreement, 10 Aug. 1730.

<sup>58</sup> NRO, H. Bett 14/6/79/12, Thornham verdicts, list of common rights, 1 December 1786.

<sup>59</sup> NRO, PC 9/1-2, Thornham enclosure award and map, 1797.

names 35 people as recipients of the rights, but over time, a monopoly developed, with the lords of Thornham purchasing stints piecemeal.<sup>60</sup> During a controversy over rights in 1925 (see below), it was reported that ‘Mrs Betts was buying up all the rights of the commons, but there was nothing to stop her doing so, and there was nothing wrong in her saying she wanted her rights properly protected.’<sup>61</sup> By the time of registration under the Commons Registration Act of 1965, Mr Bett of Thornham Hall had acquired almost all of the 49 stints.<sup>62</sup>

The pasture rights associated with CL 41 and CL 56 are not identical. As noted above, the Commissioner decided that the eastern part of CL 56 belonged to the Public Trustee (in keeping with CL 41) and that the western part belonged to Mr Bett. This meant that the eastern part would be ‘subject to the rights of feeding and depasturing cattle as awarded and established by the 1797 Award’. However, though probably eligible to do so, four of those stint-owners who had registered stints on CL 41 had failed to do the same for CL 56 (presumably unaware that the eastern part would be deemed subject to the 1797 Award). As the Commissioner acknowledged, this meant that although he could determine that the eastern part of CL 56 was subject to the same ownership and terms as CL 41 and the original 1797 award, he could not determine whether the four stint-owners had inadvertently forfeited their right to graze it. He stated: ‘If this question ever arises, it will have to be determined by the High Court or some other tribunal’, noting, however, that ‘having seen the Brown Part [the east was mapped as brown on the registration map], it is I suppose unlikely that it will ever be worth so litigating.’<sup>63</sup>

The exercise of grazing rights seems to have been low or infrequent in recent decades at Thornham. Grazing was described as ‘negligible’ in 1985, and the common itself was classified as ‘non-agricultural’.<sup>64</sup>

### *Brancaster Enclosure (1755)*

The Brancaster enclosure act (1755) and award (1756) concentrated on pasture rights on the inland commons, and therefore was largely directed towards the enclosure of the common field and brecks rather than the salt marshes. The Brancaster enclosure involved the re-structuring of land uses and re-assignment of common rights – a means of separating out the rights of the lord and the several other estate-owners, from the less substantial householders. In compensation for rights lost elsewhere, the act reserved a specific area of inland common, Barrow Hills Common, for commoners’ livestock and for collection of gorse. The act defined those who would be eligible for rights to Barrow Common as follows: ‘the Owners of each and every Dwelling-house in the said Manor and Parish of Brancaster, his, her, and their Heirs,

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<sup>60</sup> For example, in the Thornham manor court book 1894-1925, entries dated 22 May 1918 record the lady of the manor’s recent purchase of 7 stints in 5 separate lots, NRO, H. Bett 14/6/79 (4).

<sup>61</sup> NRO, H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, report in Eastern Daily Press, 15 June 1925 (clipping inserted into Thornham minute book).

<sup>62</sup> Decision of the Commons Commissioner, Thornham Common (Norfolk CL 41), 18 December 1975, ref. 25/D/79-95, p. 5 (available at <http://www.acraew.org.uk/uploads/Norfolk>).

<sup>63</sup> Decision of the Commons Commissioner, Thornham Low Common (Norfolk CL 56), 14 September 1979 (with corrections), ref. 25/D/112-125, p. 3 (available at <http://www.acraew.org.uk/uploads/Norfolk>).

<sup>64</sup> Rural Planning Services, *The Future of Rural Common Land: A Report for the Department of the Environment*, (May 1985), pp. 46, 67-9.

and his, her, and their Tenants respectively (not occupying in the said Parish, or elsewhere, Lands or Tenements of more than the yearly value of Five Pounds, over and besides such Dwelling-house)'. This was evidently an attempt to create equitable access to the common for *all* cottages in the manor or parish, but with an emphasis on the interests of poorer and landless households (i.e. by excluding those who had access to land or tenements of more than £5 annual value). The intention seems clear, yet the wording carries with it multiple interpretations. It is not easy to classify the rights as either strictly appurtenant rights (attached to a specific property) or personal rights which might be heritable. In principle, the newly created rights were associated with property (the dwelling houses), and indeed it was stipulated that the gorse that was cut was to be 'burnt in such Dwelling-houses', and that rights were 'belonging and appertaining to their said Dwelling-houses'. Yet there is an implication in the wording of the act that the heirs of the owners of dwellings in the village could inherit the right. Furthermore, it is not apparent whether eligibility came from residence in a specific property or simply residency in the parish: was the right limited to property that existed at the time of the award, or would owners of new houses also become eligible? Nor is it entirely clear where the boundary between dwelling owner and tenant lay (e.g. was it the owner, or the tenant, or both parties who must not have additional property of more than £5?).<sup>65</sup>

The act evidently left a number of unanswered questions for future commoners and historians. Nevertheless, the intention to create an equitable settlement for Barrow Hill can be seen in the fact that each eligible household received the same size of right, regardless of the size of their property. Each eligible household was given rights for:

Two commonable Cows or Heifers, or for a Mare and Foal, or for Two Horses...with Liberty to cut Furze thereon for their firing, to be burnt in such Dwelling-houses in every Year, for ever hereafter, at all Times of the Year.<sup>66</sup>

Whilst Barrow Hills Common received most comment, the 1755 act also determined that the lord and more substantial landowners would relinquish their rights of common and sheep-walk over the salt marshes west of the harbour and staithway (i.e. the common marshes lying west of Brancaster Staithe).<sup>67</sup> The enclosure act also established a clear boundary between the lord's fresh marshes (i.e. the embanked marsh, reclaimed in 1616) and the common salt marsh: 'And it is hereby further Declared and Enacted, That the Creek or Ditch on the East Side of the Bank, inclosing the said *Norborne Berkeley's* Fresh Marshes from the Common Salt Marshes, doth belong to, and is the Property of, the Lord of the said Manor of *Brancaster*...leaving always a sufficient Passage, on the East Side of the said Creek or Ditch, for the commonable Cattle to pass from the North to the South Parts of the said Salt Marshes.'<sup>68</sup>

The 1755 enclosure left the salt marsh commons unenclosed. Despite relinquishing their rights of pasture on the common marsh, the lords of the manor and landowners appear to have pursued an ambition, never fully realised, of restructuring the salt marshes also. Proposals drawn up by the lady of the manor in the later eighteenth

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<sup>65</sup> NRO, PC 86/1: Brancaster Inclosure Act 1755. Pp. 3-4, 6.

<sup>66</sup> NRO, PC 86/1: Brancaster Inclosure Act 1755, pp. 3-4, 6.

<sup>67</sup> NRO PC 86/1: Brancaster Inclosure Act 1755, p. 3.

<sup>68</sup> NRO PC 86/1: Brancaster Inclosure Act 1755, p. 10.

century (c.1783) reveal an intention to drain large areas of the west salt marsh, reserving some 50 acres for cottagers' use, and limiting them to the same stint as had been applied to Barrow Common under the 1756 award.<sup>69</sup>

At the time of registration, grazing rights to the Brancaster common land units were often registered in obscure and inconsistent terms. Numerous of the registrations for CL 65 included a right to take 'herbage', a term that is often used to mean grazing; however, in these instances there is no mention of the numbers or types of animals that would be grazed, so 'herbage' was perhaps used here in a more abstract sense as meaning a right to take vegetation (perhaps indicating confusion with estovers).<sup>70</sup> Some rights holders registering rights to other CL units in Brancaster implied that their grazing rights were applicable to *all* the CL units. In a typical example, one rights entry for CL 124 was phrased as a right 'to graze 5 cattle and 10 geese over the whole of the land comprised in this register unit and register units CL 161, CL 162, and CL 65'.<sup>71</sup> It is striking that '5 cattle and 10 geese' recurs as the size of the grazing rights registered on CL 124, suggesting a limited degree of uniformity, whether by long standing tradition or recent agreement is not clear.<sup>72</sup>

Twenty-five separate entries for rights were made at the registration of Barrow Common (CL 159), though one was subsequently deleted. The majority of entrants registered rights for two head of cattle (or more broadly two 'animals') each; one person registered rights for fourteen cattle in respect of his cottages numbered 1-6 on one street in the village. Some also registered additional rights to graze horses.<sup>73</sup>

### ***1.3.2 Turbary rights***

No evidence for the existence of turbary rights has been found in the historical records, though one claim to a turbary right was registered on Barrow Common under the 1965 Act.<sup>74</sup>

### ***1.3.3 Rights of Estovers***

The wide range of ecosystems represented on the different sections of common provided a variety of vegetation which could be exploited, from marram grass on the dunes, marsh samphire and other species on the saltwater marshes, rushes and reeds on the freshwater marshes, to gorse ('whin' or 'furze') on the inland commons. No explicit statement of rights to estovers has been found, though manor court orders and presentments referring to the taking of gorse, rushes and reeds (see below, 3.1) make it clear that these species were exploited and that access to them was controlled by byelaw by the sixteenth century. A list of expenses for the enclosing of Barrow

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<sup>69</sup> GA, D2700/QS3/5: Proposal to drain Brancaster salt marsh, [nd] (accompanying documents dated 1771-1788). The proposal is possibly contemporaneous with, and relates to, a map of the Duchess's Brancaster estate which was drawn up in 1783 (D2700/QS7/2),

<sup>70</sup> See Norfolk County Council Commons Register, CL 65, rights entries.

<sup>71</sup> Norfolk County Council: Common Land Register, CL 124, rights section, entry no. 18.

<sup>72</sup> Norfolk County Council: Common Land Register, CL 124, rights section. However, there were variants (e.g. rights for 5 cattle and 20 geese).

<sup>73</sup> Norfolk County Council: Common Land Register, CL 159, rights section.

<sup>74</sup> Norfolk County Council: Common Land Register, CL 159, rights section, entry no. 19.

Common in 1756 included the cost of sowing whin seeds, implying that the species was being deliberately cultivated.<sup>75</sup>

After the 1965 Act, 20 of the 24 initial registrations of rights on Barrow Common included what appear to be claims to estovers. The term ‘estovers’ is used in only two entries, the remainder expressing their claims as the right to ‘take fuel’ (15 entries), ‘cut furze for firing’ (2 entries), or ‘take fuel and furze’ (one entry).<sup>76</sup>

### 1.3.4 ‘Samphire Rights’

Under the Commons Registration Act 1965, numerous individuals claimed an assemblage of rights on both Brancaster and Thornham marshes (CL 124, CL 41, CL 56), which were referred to collectively as ‘samphire rights’. The spectrum of rights embraced a wide range of activities: gathering vegetation, taking wildlife and digging sand and shingle. Specific rights claimed included rights to take samphire, seaweed, sea lavender, estovers, fish, bait and shellfish, wildfowl and game, and sand and shingle. They appear to blur the distinction between common rights and customary practice, since they include traditional uses of the foreshore, such as gathering shellfish or bait, rather than the common itself. Marsh samphire, which grows on the lowest levels of the salt marshes, along the uncertain boundary with the foreshore, was both a local delicacy (a tradition of pickling the plant is recorded from Norfolk, where it continues to be sold in local markets, and it became a delicacy exported to London restaurants in the later twentieth century) and a traditional source of sodium in glassmaking and soap manufacture, for which it was dried and burnt in heaps. The latter use gave it its alternative name, ‘glasswort’.<sup>77</sup> Sea lavender is said to have been the local equivalent of white heather, ‘sold in bunches to tourists, as a popular radiator adornment after a coastal holiday’.<sup>78</sup> Both these marshland species thus had a monetary value as a cash crop, stretching the concept of ‘necessary’ use rights. Despite the fact that collecting samphire and sea lavender appears to have been a customary right in north Norfolk, no references to either species has been found in the earlier sources recording the local management of common rights.

One species of vegetation taken for human consumption, which does enter the written record at an early date, however, was sea holly, or ‘sea hulver’ in the vernacular (*Eryngium maritimum*). Presentments against individuals for digging up sea holly roots are recorded at Brancaster across the seventeenth century from 1625 to 1689.<sup>79</sup> The earliest reads:

William Tompson and William Baker wrongly dug maritime roots in English called ‘Seahulver rootes’ in ‘le meeles’ [i.e. the sand dunes] of Brancaster without licence of the lord of this manor, and they carried them away to the prejudice of the lord and in bad example to others.<sup>80</sup>

They were each amerced 6d. and ordered to desist under pain of 3s. 4d. each but Tompson continued to offend and the penalty was doubled the following year. He was amerced again in 1629 when the court noted that environmental damage had

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<sup>75</sup> GA, D2700/QS6/3 (account of the charges and disbursement of inclosing Barrow Common, 1756).

<sup>76</sup> Norfolk County Council: Common Land Register, CL 159, rights section.

<sup>77</sup> R. Mabey, *Flora Britannica* (London: Sinclair-Stevenson, 1996), pp. 97-9.

<sup>78</sup> Mabey (1996), pp. 111-12.

<sup>79</sup> GA, D2700/MJ/19/1-2.

<sup>80</sup> GA, D2700/MJ/19/1, 5 Oct. 1625.

resulted from his activities: ‘the Meeles are greatly decayed (*maxime decasati*) which is referred for the lord’s advice’.

Sea holly root or ‘eryngo’ became a fashionable cure-all in the seventeenth century. The root was candied, preserved in syrup or made into lozenges. Like the potato, it was claimed to have aphrodisiac qualities, a play of 1611 listing it with ‘oyster-pies, potatoes, skirret roots ... and divers other whetstones of venery’ in a banquet given to a lover on the way to meet his mistress.<sup>81</sup> While the candying of ‘eryngo’ can be traced back to the early seventeenth century, its fame spread after 1621 when a Colchester apothecary began to market it.<sup>82</sup> It is striking that the first presentment concerning ‘seahulver root’ in the surviving Brancaster records dates from 1625, shortly after this. It seems likely that the repeated presentments are evidence that the plant was in demand for medicinal purposes and that William Tompson and William Baker and their successors were local men responding to this new market for a local resource.

The wording of the presentments suggests initially that offenders were infringing the lord of the manor’s rights by digging the roots ‘without licence of the lord’. Digging for sea holly roots would have infringed the principle that ‘breaking the lord’s soil’ on manorial waste was prohibited, except in particular circumstances, such as when exercising turbary rights. At Brancaster some of the sand dunes lay within the common marsh but others were deemed to be lord’s freehold in the seventeenth century. When William Claye dug sea holly roots in one of these freehold areas, the East Meels, in 1653 he was presented for digging ‘where of right he ought not to have done to the greate damag of the lord’. The implication was, perhaps, that there were other places where it would have been legal for the offender to take the roots. It seems very possible that digging the roots had become a customary practice, which only in some circumstances entered the court record.

The presentments are capable of a variety of interpretations. The earlier presentments could be attempts by the lord and his steward to prevent the taking of sea holly from developing into a customary right by repeatedly amercing an offender (perhaps one among many), to establish that the gathering of this new crop represented an unwarranted usurpation of custom and/or because the digging caused environmental damage to the lord’s soil – it is striking that the earliest presentment refers to the ‘bad example’ set by the offenders. However, some of the presentments from the 1650s onwards were against men from the neighbouring settlements of Titchwell, Burnham Deepdale and Burnham Norton, in one case (in 1651) their exploitation of the plant being described as not only to the lord’s damage but also to the ‘prejudice of his tenants’. A second interpretation, therefore, is that the actions of men from outside the manor were detrimental to the interests of Brancaster men, for whom sea holly roots may have provided a useful source of income. Certainly, taking sea holly roots is thought to have continued in Norfolk until the nineteenth century, strongly

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<sup>81</sup> quoted in R. N. Salaman, *The History and Social Influence of the Potato* (Cambridge, 1949), pp. 427-8.

<sup>82</sup> J. Thirsk, *Food in Early Modern England* (London, 2007), pp. 199, 352, n. 8, citing *VCH Essex* II, 371-2.

suggesting that it came to be accepted as a customary right on the seaboard commons, despite manor court presentments such as those at Brancaster.<sup>83</sup>

### 1.3.5 Foreshore rights

The resources of the foreshore were an important part of the local economy of these case study villages and in Brancaster fell within the bounds of the registered commons, as a legacy of Ramsey Abbey's rights. Aspects of the exploitation of the foreshore in the early-modern period can be recaptured from the records of the *curia admiralitatis* at Brancaster, which protected the lord of the manor's interests below the high tide mark. Fishing with stake nets and by spearing, collecting shellfish, shooting and snaring wildfowl on the marsh, and collecting marram grass are all recorded (see below, 3.1.3). Members of neighbouring communities might need to pass through another manor in order to reach the foreshore: hence, seven men from Burnham petitioned the court in 1567 for licence to cross the marsh in Brancaster to get to the sea to place their nets.<sup>84</sup>

One of the more controversial issues on the foreshore was the gathering of shellfish and creation of oyster and mussel pits or 'lays' (also known as 'stalls'). Young shellfish were gathered from harbours, banks and creeks, and placed in the lays, pits or stalls to develop or remain fresh until ready for sale. Traces of historic oyster pits are not an uncommon occurrence on the coastal saltmarshes of the South East. Reeves and Williamson describe one system in Essex where there are 'elaborate complexes of ponds for overwintering oysters in the saltings beside reclaimed marsh'.<sup>85</sup> Generally speaking, the creation or use of 'lays' was not seen as a common right, but rather required the permission or license of the lord of the manor and paying of a fee or rental. For example, a byelaw made by Thornham manor court in 1785 stated that anyone making or using 'Oyster pits or Lays' within the manor must pay the lord two shillings and six pence per year, and that anybody refusing to pay would be fined ten shillings.<sup>86</sup> However, once again, the particular pattern of property rights in Brancaster led to disputes over access to shellfish. In 1916, the Norfolk County Court ordered the Earl of Orford and three other defendants to pay a man £12 in damages for trespassing over the cockle lay he held from the lord of Brancaster. The involvement of the Earl of Orford suggests that at root, this case stemmed from the disputed ownership of the foreshore around Scolt Head Island (which was subsequently divided between Orford and the Brancaster Hall Estate).<sup>87</sup> In the years 1927-8, the then lady of the manor of Brancaster, Rose Sutherland, came into conflict with both the Board of Trade and some of the Brancaster fishermen. After looking into the legal background, the Board of Trade upheld Sutherland's title to the

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<sup>83</sup> Norfolk Wildlife Trust, 2009: 'Natural Connections – Sea Holly', at [http://www.norfolkwildlifetrust.org.uk/naturalconnections/species\\_profiles/sea\\_holly](http://www.norfolkwildlifetrust.org.uk/naturalconnections/species_profiles/sea_holly)

<sup>84</sup> NRO, HARE 6338, 14 Nov. 1567.

<sup>85</sup> Reeves and Williamson (2000), pp. 163-4. Photographs of oyster pits have been put online by Essex County Council (accessible via SEAX website). English Heritage has also published photos of nineteenth-century oyster pits found at the Deben Estuary, Ramsholt, Suffolk (see: <http://www.english-heritage.org.uk/server/show/conMediaFile.4137>).

<sup>86</sup> NRO, H. Bett 14/6/79/2, Thornham court book, 1777-1841, 2 December 1785, pp. 78-9.

<sup>87</sup> County court judgement recorded in the Brancaster manor court book: NRO, MC 1813/30, Brancaster court book, 1895-1935, 15 August 1917, p. 250.

foreshore, including shingle and some of the areas where shellfish lays and pits were made. In 1953, another dispute was taken to the Inspectors of Fisheries, when Sutherland leased her 'exclusive' access to cockles to a fishing company from King's Lynn.<sup>88</sup>

During the years 1962-4, when the issue of the sale of the Brancaster manorial estate was ongoing, the 'manorial rights' were described by the Eastern Area Inspector of Fisheries as comprising 'the exclusive right to gather shellfish between high and low water mark on the south side of the approaches to Brancaster harbour, as well as lays actually in the harbour itself, where the Brancaster fishermen have extensive mussel beds; for which they pay an annual rent; also included in these rights are the grazing and mineral rights on the marshes, and some land.'<sup>89</sup> The Inspector was hoping that the fishing rights could be separated out from the rest of the manorial estate and be purchased by a co-operative of fishermen, but he was pessimistic as to whether the fishermen could agree, noting that they were split by disputes.<sup>90</sup> In the event, a syndicate bought the estate and transferred it to the National Trust (as noted above).<sup>91</sup> Shortly after, many members of the community registered rights to fish, shellfish and bait under the 1965 Commons Registration Act.<sup>92</sup> Thus the distinction between common rights, customary use-rights, Crown rights, and manorial rights on the foreshore has often been blurred, and sometimes controversial.

Rights to take wildfowl from the foreshore and saltmarshes have also proved an interesting case. For example, between 1713 and 1720, a number of individuals were fined by the Brancaster port court for 'fishing and fowling' in the 'lord's liberty', and presumably therefore infringing on the lord's rights. In 1713, the seven men fined for fishing and fowling were all from Burnham Norton, as were eight men fined for the same offence in 1717, suggesting that these were trespassers from outside the manor.<sup>93</sup> At the time of registration many people registered rights to take wildfowl<sup>94</sup> and these rights have since gained in significance, being traded and sold between members of local gun clubs.<sup>95</sup>

## 2. Local Governance Institutions

### 2.1 Manorial Courts

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<sup>88</sup> TNA, CRES 58/346 Mr Simms Reeve, Crown Estates Foreshore Rights File, 1891-1962; TNA, MAF 209/1312 Manor of Brancaster: claim to exclusive right of shellfish 1953; TNA, MAF 209/1313 Manor of Brancaster: exclusive rights to shellfish 1962-4.

<sup>89</sup> TNA, MAF 209/1313 Manor of Brancaster: Exclusive rights to shellfish, 1962-4, letter, Thorpe to Pendlebury, 28 March 1962.

<sup>90</sup> Ibid., see also TNA, MAF 209/1313 Manor of Brancaster: Exclusive rights to shellfish, 1962-4, letter, Thorpe, 30 October 1963.

<sup>91</sup> TNA, MAF 209/1313: cutting from Eastern Daily Press dated 30 May 1964.

<sup>92</sup> For example, see rights entries on the Norfolk County Council Commons Register, CL 65.

<sup>93</sup> GA, D2700/MJ19/13, 21 Oct. 1713, 28 Oct. 1717, 23 Nov. 1719, 5 Dec. 1720.

<sup>94</sup> For example, see rights entries on the Norfolk County Council Commons Register, CL 65.

<sup>95</sup> See M. Pieraccini and C. P. Rodgers, *Brancaster Qualitative Research Analysis* (November 2009), on the Contested Common Land website, [www.ncl.ac.uk/q/?=node/10](http://www.ncl.ac.uk/q/?=node/10).

An incomplete run of court rolls survives for Brancaster manor from 1540 to 1687.<sup>96</sup> Although the bulk of court business concerned transfers of property, courts leet, generally held annually in the autumn, include presentments against breaches of agrarian byelaws and the imposition of new orders (*bileges*). Overlap between the manor court and the parish officers is found in orders from 1598 and 1599, by which the overseers of poor and churchwardens were given responsibility for overseeing the cutting of reeds on the 'lytle common' and the income from those infringing several byelaws was divided between the lord and the parish, with two-thirds going to support the poor.<sup>97</sup> The context of these orders is clearly the passing of the Old Poor Law act in 1598 but they reinforce the impression that the manor court at Brancaster was a strong community institution.

At Brancaster a separate court, the *curia admiralitatis* or *curia portus admiralis* (described in 1556 as 'le halfue courte' and in 1651 as the 'Porte Courte or Admiraltie'),<sup>98</sup> protected the lord's rights and the exercise of 'good neighbourhood' on the foreshore. Meeting on the same day as the court leet, its business embraced both the lord's rights to 'groundage' (where ships ran aground within the bounds of the manor) and wreck of the sea and oversight of the exercise of fishing, wildfowling and gathering rights on the foreshore, in connection with which the court made and policed byelaws equivalent to the agrarian byelaws made by the court leet. In the modern period, the court's business seems to have gradually reduced, and the last two court books (covering the periods 1860-1895 and 1895-1935) are largely empty of common land management, save for the occasional appointment of a pinder or common reeve.<sup>99</sup>

For Thornham, the surviving manor court rolls from the seventeenth century are for 'general courts' (*curiae generales*), the business of which was almost entirely restricted to recording transfers of property. No early-modern agrarian orders or byelaws from Thornham have been located.<sup>100</sup> In the modern period, the Thornham court was relatively active, generally meeting annually, and occasionally twice a year. Regular features included the appointment of constables and pinders, setting out the level of fines for loose stock, and asserting the lord of the manor's rights to wreck of the sea. Occasionally the court made a stronger statement of authority. For example, in 1785 the court made orders on a range of offences, including grazing, estovers, the taking of clay and gravel, and use of oyster lays (detailed below), perhaps indicating that offences were accelerating, or that there was a perceived need to harden manorial property rights. One of the orders made in 1785 was intended to exclude graziers from the neighbouring village of Titchwell, asserting that they had no right to put stock on the Thornham commons and salt marshes without the consent of the lord of the manor and common right owners. It is interesting to note that Thornham

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<sup>96</sup> TNA, LR3/48/2-3 (1540-44); NRO, HARE 6334-6344 (covering 1548-1586); HARE 6345-6348 (1598-1614), HARE 6349 (1622-3); HARE 6350 (1634-5); HARE 6354 (1668-70); HARE 6355 (1685-7); GA, D 2700, MJ19/1 (1625-8); MJ19/2 (1603-8, 1621-4, 1626-30, 1630-3, 1637-9, 1641-59, 1660-82, 1683-90).

<sup>97</sup> NRO, HARE 6345, 11 Oct. 1598, 1 Oct. 1599. Cf also order of 30 Sept. 1600, where the penalty was to be divided equally between lord and parish.

<sup>98</sup> NRO, HARE 6337, May 1556; GA, D 2700, MJ19/2, court book 1641-59, f. 38v.

<sup>99</sup> NRO, MC 1813/29, Brancaster court book, 1860-1895; MC 1813/30, Brancaster court book, 1895-1935.

<sup>100</sup> Court records consulted were those for Thornham Priory manor 1613-1633 (NRO, DCN 60/36/17), 1626-9 (NRO, BRA 981/1) and 1654-1719 (NRO, CHC 135539).

commoners had a say in the matter, and that they were described as common right ‘owners’, whether a legacy of the 1730 agreement, or a precursor of the 1794 enclosure act, is not clear.<sup>101</sup> The court of December 1786 re-iterated and restated many of these byelaws, and at about the same time, made a list of all the common right houses – further evidence of a growing emphasis on establishing property rights.<sup>102</sup>

## ***2.2 Transition to post-manorial institutions***

Thornham and Brancaster could be expected to experience a sharp break in the institutional framework as a result of the impact of eighteenth-century enclosure acts and awards. In the case of Thornham, this is indeed so. Enclosure at Thornham involved the establishment of a new institutional framework on the remaining common lands or stinted pasture, comprising annual meetings of common rights owners, and regulation by elected reeves (see 1.3.1 and 3.2.1). The new institution was relatively resilient, and continued to operate into the twentieth century despite the diminishing number of stint owners (as seen in the Thornham Common Minute Book, 1924-1951).<sup>103</sup>

The Brancaster enclosure act of 1755 does not appear to have made such an obvious break with the manorial past and it is likely that the manor continued to be the only identifiable authority should one be required. No specific provisions for the management of Barrow Common were made under the enclosure act; nor has any evidence been found to suggest the existence of a separate management body in the nineteenth or twentieth century. It seems likely that use of the common remained under the remit of the manor court, while that was still in operation. The Brancaster manor court book records a case of two men being fined in the Hunstanton Petty Sessions in 1902 for poaching rabbits on Barrow Common, suggesting that the lord’s rights were still being policed at that date.<sup>104</sup> A Rightholders’ Association was established in 2001 and management of Barrow Common has been secured by the formation of the Barrow Common Management Committee in 2004, consisting of seven members: a representative of the landowner; two parish councillors; and four members of the Barrow Common Rightholders’ Association.<sup>105</sup>

The late twentieth and early twenty-first century also saw the setting up of overlapping bodies for the management of the salt marsh commons in Brancaster, the Scolt Head and District Common Right Holder’s Association and the Brancaster Commons Committee. Often the common feature was the parish council, and it is important to understand the role the parochial body has played in mediating the transition from manorial to post-manorial context (see 3.2.4).

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<sup>101</sup> NRO, H. Bett 14/6/79, Thornham court book, 1777-1841, 2 December 1785, p. 77-8.

<sup>102</sup> NRO, H. Bett 14/6/79/12, Thornham verdicts, list of common rights, 1 December 1786.

<sup>103</sup> NRO, H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51.

<sup>104</sup> NRO MC 1813/30, Brancaster Manor Court Book, 1895-1935, 1 October 1903, p. 110.

<sup>105</sup> Barrow Common Management Plan 2005 (information kindly supplied by Maurice de Soissons (2010).

### 3. Local Governance Mechanisms and Regimes

#### 3.1 Manorial Byelaws

##### 3.1.1 Pasture rights.

The familiar litany of offences associated with common pasture are recorded in the early-modern manor court records for Brancaster: overcharging the common, allowing diseased animals to graze, infringing byelaws (the substance of which is not always stated) regulating the types of animals or the times at which grazing was permitted. For example, presentments of 1569 and 1603 for putting cows to graze on the Ling, where the offenders are said to have acted ‘against the byelaw of the court’ and ‘against the custom formerly used by the lord’s tenants and inhabitants of the vill of Brancaster’, make clear the existence of a body of local regulations controlling grazing.<sup>106</sup> Two presentments in 1598 imply the existence of customary rules limiting the numbers of stock which could be grazed but it is not clear whether these rules were based on the concept of levancy and couchancy or of a numerical stint. William Adam overcharged ‘le shack’ in the field of Brancaster by putting on more sheep ‘than of old he used to keep in shack time’; Robert Guybon, gentleman, overcharged the common shack by keeping bullocks (*boviculi ley rontes*) and ‘neat cattalle’ to the number of 60, when ‘by reason of his holding’ he should not have kept so many.<sup>107</sup> A presentment at the manor court in 1606 may hint at stinting: John Bearman was accused of overcharging the common pasture of the vill with ‘more beasts than by right he ought to according to the rate and quantity of land in his tenure’ (*pluribus averiis quam de iure deberet iuxta ratem et quantitatem terrae in tenura sua*).<sup>108</sup>

Pinders (*imparcatores*) were appointed by the court leet at Brancaster, their role being spelt out in 1565 as ‘taking all cattle grazing at large in the closed season (*tempore seperali*) causing damage in the corn and cornfields of the lord’s tenants and impounding those cattle in the lord’s pound (*parco*)’.<sup>109</sup> Sea reeves and pinders (sometimes called ‘common reeves’) were still being appointed by the Brancaster court into the 1890s, though the appointments were possibly less frequent than had been the case earlier.<sup>110</sup> Pinders were also appointed by Thornham court. At Thornham the jury generally appointed two to three pinders, but occasionally this number could rise (for example, five pinders were appointed in 1777). Pinders were given powers to impound un-rung swine and any stock found trespassing or loose in the commons, fields or enclosures. In 1777, inhabitants would be fined 6d. for each head of swine found un-rung; 2d. for each head of swine, sheep, neat beasts, horses or any sort of cattle found loose; whilst members of other parishes whose animals were loose in Thornham parish lands could expect to be fined 4d. In 1785, ‘loose’ animals were described as those ‘not either roped staked down, kept in hand or inclosed with Hurdles or Lifts, or attended by a Keeper’; in 1777, trespassing was defined as meaning stock found loose except during shack time.<sup>111</sup> The emphasis was perhaps

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<sup>106</sup> NRO, HARE 6338 (27 Oct 1569); GA, D 2700, MJ19/2, court book 1603-8 (11 Oct. 1603).

<sup>107</sup> NRO, HARE 6345 (16 Jan. 1598).

<sup>108</sup> GA, D 2700, MJ19/2, court book 1603-8 (court leet, 20 Oct. 1606).

<sup>109</sup> NRO, HARE 6339.

<sup>110</sup> See, for example, NRO, MC 1813/29 Brancaster court book, 1818/29, 30 October 1894, p. 478.

<sup>111</sup> NRO, H. Bett 14/6/79/2, Thornham court book, 1777-1841, 2 December 1785, p. 80;

predominantly on the protection of open fields and shack lands, rather than the salt marsh commons.

In addition to pinders, in 1745, the Thornham court book records the appointment of a herdsman for the town, who seemed to be especially employed to control stock on the Low Common, the Field (presumably open field), and Ling Common. A byelaw governing stocking of the commons was also made as part of his appointment (discussed above). This is an isolated case, so it is not possible to say whether this was a one-off response to an immediate or short-term problem, or whether this was a regular annual appointment which was not usually recorded in the manor court book.<sup>112</sup>

### 3.1.2 *Estovers.*

The bulk of the orders governing the exercise of estovers, made by the early-modern manor court at Brancaster, concern the cutting of ‘whins’ (i.e. gorse, *Ulex europeanus*). As elsewhere in lowland England, it was a valuable resource, access to which needed to be controlled. Its principal use was as fuel, particularly for firing ovens, and it was the staple fuel among the rural poor.<sup>113</sup> A series of court orders between 1556 and 1598 are probably to be interpreted as attempts to preserve stands of gorse on the common as a resource for the poor, the implied assumption being that those with holdings of land would have access to gorse on their own property. In 1556 it was ordered that no inhabitant of the vill was to cut gorse ‘in les comon whinnes’ nor to carry them away by cart for the following three-year period. Similar proscriptions against taking whins by cart recur in 1569, when a three-year period is again specified) and 1598 (when the ban was to last for four years).<sup>114</sup> Comparable byelaws were found elsewhere in southern England, the ban on taking gorse by wheeled vehicle being repeated in byelaws from Northamptonshire and Oxfordshire, for example.<sup>115</sup> The three- (or four-)year bans at Brancaster may have been periodic attempts to allow the gorse to regenerate: a problem of over-exploitation may be recorded in a less draconian restriction imposed two years before one of the three-year bans was imposed. In 1567 the court ordered that no one was to ‘take or collect in one year in and upon the common of Brancaster for his own use more whins (*Jampnos*) than one man is able to take (*fodere*, which normally means ‘to dig’) in one day’, under penalty of 6s. 8d. The order was to remain in force for three years.<sup>116</sup> Presumably the complete ban on taking whins by cart, introduced two years later, suggests that the limitation had not been successful in managing the resource.

The order of 1569 makes it clear that a distinction was drawn between the wealthier and poorer members of the community:

it is ordered and decreed by the tenants of the lord of this manor that no tenant or inhabitant of this manor who has horses or cart shall collect whins (*Jampnos*)

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NRO H. Bett, 14/6/79/2, Thornham court book, 1777-1841, order, 6 November 1777.

<sup>112</sup> NRO, H. Bett 14/6/79/1, Thornham court book, 1727-1776, 13 November 1745.

<sup>113</sup> See J. M. Neeson, *Commoners: common right, enclosure and social change in England, 1700-1820* (Cambridge, 1993), pp. 159-60, 174-6; L. Shaw-Taylor, ‘The management of common land in the lowlands of southern England’, in De Moor et al (eds), 2002, pp. 75-6.

<sup>114</sup> NRO, HARE 6334 (Sept. 1556); 6338 (27 Oct. 1569); 6345 (11 Oct. 1598).

<sup>115</sup> Neeson (1993), p. 175; Shaw-Taylor (2002), p. 76.

<sup>116</sup> NRO, HARE 6338, 13 Nov. 1567.

upon the common of this manor for three years (*per Triennium*) under penalty of forfeiting to the lord 6s 8d for each cartload during that time; but it is clearly permitted (*bene Licebit*) for the poor to collect whins, carrying [them] in bundles (*fasciculis*) on [their] heads.<sup>117</sup>

This order should be seen in the context of other entries concerning the exploitation of gorse. The previous spring, the court had forbidden inhabitants from collecting whins (*Saliuncas*) on the lord's or the tenants' several lands under a penalty of 3d per bundle, and the following spring 10 men were presented and amerced 3d each, because their wives had taken whins growing on the lord's several lands, contrary to the court's byelaw.<sup>118</sup> The landed had access to whins on their own land; the landless, excluded from these private resources, were therefore given priority on the common.

Brancaster court leet also attempted to manage access to bracken, rushes and reeds. The same sitting of the court which imposed a four-year ban on taking gorse by cart in 1598 also restricted access to rushes (*iuncas*). Both quantitative and seasonal restrictions were imposed: no one was to take more than one cartload from the common each year, nor to cut them in any year before 24 June.<sup>119</sup> The following year the court made a byelaw governing the cutting of reeds (*arundum*) growing in a place in Brancaster called 'the lytle common', ordering that no reeds were to be carried away in any future year before 1 January without leave of the churchwardens and overseers of the poor.<sup>120</sup> In 1603 it was ordered that bracken ('brakes') were not to be carried away before 1 November.<sup>121</sup> In 1627 the same principle that applied to 'whins', namely that they could be taken 'by burdens' carried on the back, but not by cart, was applied to the cutting of bracken (*felices*) and rushes.<sup>122</sup> The context of these orders is not clear but they suggest pressure on these resources at the end of the sixteenth century.

The Thornham court also evidently struggled to prevent inhabitants from cutting and selling whins for sale to outsiders. In 1785, the court ordered that anybody caught selling or disposing of whins from the Thornham lings 'to any out town person' would have to pay the lord of the manor £2 for every cart load, and £3 for every wagon load, or pay a proportional fine for amounts which were more or less than these loads. Similarly, anyone found cutting marram grass or rushes on the meals or sea banks would be fined 20s. for every offence.<sup>123</sup> The court of 1785 also recorded that an agreement had been made between the tenants of the manor and the lord, allowing the lord to stake out an area of ten acres of the Ling common; subsequently, no whins could be 'stubbed or cut' in that area by anyone in the parish, on pain of being fined £1 for every bundle or faggot, £5 for every cart load, and £10 for every wagon load.<sup>124</sup> The agreement itself makes clear that the purpose of this exclusion zone was to provide cover for the 'Preservation of Game', showing that the lord was

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<sup>117</sup> NRO, HARE 6338, 27 Oct. 1569.

<sup>118</sup> NRO, HARE 6338 (8 Apr. 1569; 1 Apr. 1570).

<sup>119</sup> NRO, HARE 6345, 11 Oct. 1598.

<sup>120</sup> NRO, HARE 6345, 1 Oct. 1599.

<sup>121</sup> GA, D 2700, MJ19/2, court book 1603-8 (11 Oct. 1603)

<sup>122</sup> GA, D 2700, MJ19/2, court book 1626-30 (18 Oct. 1627).

<sup>123</sup> NRO, H. Bett 14/6/79/2, Thornham court book, 1777-1841, 2 December 1785, p. 77.

<sup>124</sup> NRO, H. Bett 14/6/79/2, Thornham court book, 1777-1841, 2 December 1785, pp. 81-82.

asserting and protecting his manorial rights.<sup>125</sup> In 1786, the court reiterated that ‘no one has a right to Cut Whins off the Lings belonging to Thornham but for the Use of the Inhabitants of Thornham to be Consumed therein.’<sup>126</sup>

*3.1.3 Foreshore rights.* Much of the work of the *curia admiralitatis* of Brancaster involved managing the taking of fish from the foreshore. Men from outside the manor were amerced: in 1567 William Overman of Burnham Deepdale was presented for spearing flat fish (‘prickinge for buttkyns in le Fleete’).<sup>127</sup> The placing of stake nets across the creeks was controlled by the court: in 1556 the court ordered a man to move his stakes; in 1574 several men (including one from Deepdale) were presented for placing nets in ‘le Flettes’ (i.e. the creeks), ‘where they ought not to do’; and in 1599 a comprehensive byelaw was made.<sup>128</sup> As well as forbidding anyone from lifting nets set in place (the vernacular term used is ‘scaled’) by someone else, or from digging up another’s stakes, the byelaw required everyone having nets ‘scaled’ within the water belonging to the lord of Brancaster to remove their nets until ‘le spryng scales’ (the meaning of which has not been established). The need to preserve friendly relations among those fishing on the foreshore is seen in presentments for taking fish from the nets belonging to others and the byelaw that no one was to place his nets where they annoyed another.<sup>129</sup>

Similar entries, both against outsiders and against breaches of ‘good neighbourhood’, occur in relation to other resources. An inhabitant of Burnham Overy was presented for fowling in the marsh of the lord of Brancaster in 1567; men from outside the manor had brought a gun called a ‘fowlyng pece’, charged with ‘hayleshott’ and had killed many birds: a tenant in Brancaster who knew one of the men and ‘did countenance and mayntayne’ him was required to desist on pain of a swingeing fine of £5.<sup>130</sup> Friction within the community is glimpsed by the presentment of a man, who was also amerced for removing fish by night from another man’s net, for taking a curlew from a snare set by another.<sup>131</sup>

Mentions of shellfish are fewer in the court records, but the sitting of the court in December 1570 includes two presentments which shed light on this aspect of foreshore rights. One concerned two men apparently from outside the manor ‘entering the lord’s port’ and collecting shells which they then sold in King’s Lynn. The other involved environmental damage which threatened the sustainability of the resource: two men had collected shells with iron rakes, with the result that ‘le Scallpe’ (i.e. the ‘shelf’ or shellfish bed) was ‘utterly ruined and devastated’, which was against the order of the court.<sup>132</sup>

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<sup>125</sup> NRO H. Bett 14/6/79/12, Thornham verdicts, agreement between Thornham lord and tenants re the Ling Common, 2 December 1785.

<sup>126</sup> NRO, H. Bett 14/6/79/2, Thornham court book, 1777-1841, 1 December 1786, pp. 111-2.

<sup>127</sup> NRO, HARE 6338 (14 Nov. 1567). ‘Butt’ is recorded as a dialect term for ‘flounder’ in Norfolk (Wright, *English Dialect Dictionary*); ‘buttkyn’ may therefore refer to a small flat fish, such as a dab.

<sup>128</sup> NRO, HARE 6337 (1 May 1556); 6342 (15 Nov. 1574); 6345 (1 Oct. 1599).

<sup>129</sup> NRO, HARE 6338 (14 Nov. 1567).

<sup>130</sup> NRO, HARE 6338 (14 Nov. 1567); 6347 (24 Mar. 1602).

<sup>131</sup> NRO, HARE 6338 (5 Dec. 1570).

<sup>132</sup> NRO, HARE 6338 (5 Dec. 1570).

Exploitation of shellfish occasionally appears in later court records, generally for the purpose of protecting manorial rights and dues in relation to pits and lays. Thus, for example, a byelaw made by Thornham manor court in 1785 stated that anyone making or using ‘Oyster pits or Lays’ within the manor must pay the lord two shillings and six pence per year, and that anybody refusing to pay would be fined ten shillings.<sup>133</sup> A minute of 1917 in the last manor court book for Brancaster recorded the outcome of a case tried the previous year at Norfolk County Court, where an individual was awarded damages from four defendants found to have trespassed over the cockle ley he held from the lord of Brancaster.<sup>134</sup>

### **3.1.4 Enforcement**

As seen above, both the Brancaster and Thornham courts appointed officers such as pinders to enforce their byelaws. However, it is difficult to know from the court books alone the degree to which pinders were actively policing the commons and exacting fines. It is noticeable that the later series of Thornham court books (covering the period 1727-1925) predominantly record orders and tariffs of fines, thereby re-affirming the customary law of the manor, but does not name many individual offenders or their offences (though there are exceptions to this). Likewise, it is not always possible to see whether the fines that were demanded by the court were paid by offenders. For example, at the court in 1785, a number of individuals were presented for substantial encroachments (though not all cases involved common land), implying that enforcement had been weak for some time. Two men were found to have ‘taken a Ditch from off the Common Eight feet in Breadth and fifty feet in Length’; they were instructed to fill it in.<sup>135</sup> Another individual was instructed to remove a wagon house he had built on the Ling Common. In the latter case the offender was saved the trouble of pulling it down: at the next court (1 December 1786) it was noted that his waggon house had been ‘overtun’d by the Wind.’<sup>136</sup>

### **3.2 Post-manorial governance mechanisms**

The main evidence for post-manorial governance is the system set in place for the management of the Thornham stinted pasture, as stipulated in the enclosure act of 1794 and award of 1797, and seen in evidence of its operation into the twentieth century (principally the Thornham Common Minute Book, 1924-1951). The Brancaster enclosure does not appear to have set in place a comparable system of management (this needs further investigation), leaving its modern history rather unclear, and little documentary evidence covering the nineteenth and early twentieth centuries. However, more recent documentation gives an indication of how landowners were attempting to manage the Brancaster commons in the late twentieth century.

#### **3.2.1 Thornham**

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<sup>133</sup> NRO, H. Bett 14/6/79/2, Thornham court book, 1777-1841, 2 December 1785, pp. 78-9.

<sup>134</sup> NRO, MC 1813/30, Brancaster court book, 1895-1935, 15 August 1917, p. 250.

<sup>135</sup> NRO, H. Bett 14/6/79/2, Thornham court book, 1777-1841, 2 December 1785, pp. 78, 81.

<sup>136</sup> NRO, H. Bett 14/6/79/2, Thornham court book, 1777-1841, 1 December 1786, p. 114.

The Thornham act set in place a system of oversight and management, with three ‘Commons Reeves’ to be elected annually from among common right owners and tenants. The reeves were charged with improving and regulating the common, ensuring that no cattle strayed from the common and that any trespassing stock were impounded. The award also stated that the reeves were to maintain a rule book (it is not known whether this survives). The common right house owners would have to pay an annual fee to the reeves for each animal depastured, at a level directed by the majority of owners – any defaulters who failed to produce the fee within fourteen days would be barred from the common and their animals driven off. Items which the reeves could spend money on included a bull, drainage and improvement. This system of electing reeves continued into the 1940s, though the stints became concentrated in fewer hands, and the number of reeves fell from three to two. Between 1924 and 1951, the two reeves were paid £1 each per annum, and there was a high degree of stability with only three different individuals performing this role; one of these, Jacob Walker, the lord of the manor’s bailiff, was a reeve almost continually throughout this period.<sup>137</sup>

The Thornham Common Minute Book (1924-1951) reveals the issues which occupied stint owners and reeves in the first half of the twentieth century. Rights owners generally met annually in the porch of Thornham church, as stipulated in the award of 1797. The meeting consisted of between three and six people, though it is possible that not all eligible owners chose to attend; on one occasion only the two common reeves attended, and they were obliged to re-appoint themselves.<sup>138</sup> Meetings appear to have been chaired by representatives of the lords of the manor, who (as noted above) owned the majority of stints. Thus, the minutes are usually signed by an agent or representative of the Bett family.<sup>139</sup>

A controversy over rights in the early 1920s led to Thornham stint owners taking two villagers to court over alleged trespasses with geese. The reeves were asked to sue the offenders for £10 damages on the premise that the two had no common rights, and that Oldfield Green had been regulated under the 1797 award, which prohibited anyone (including genuine rights holders) from depasturing geese or goats. The judge found in favour of the Thornham common right owners, but evidently felt some sympathy for the offending graziers, suggesting that enclosures had caused harm (he noted that a case such as this was of ‘great public importance’ and he was ‘sorry the point could not go to a higher court’).<sup>140</sup> It seems that even among the right owners themselves, there was sometimes confusion over what animals could be grazed in respect of a right, as seen in meeting minutes of 1929. One grazier who had one stint was grazing three head of stock. A discrepancy or error was found: the conveyance giving him the right described ‘one right of Common carrying 2 head of Cattle and 2 horses’; however, the meeting consulted the original sale conditions, and found that these described a right as meaning two cattle *or* two horses. The grazier agreed to pay for the third animal ‘at the usual rate of £1 per head’. There is therefore an implication that people paid a fee for depasturing animals over and above their

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<sup>137</sup> NRO, H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51.

<sup>138</sup> NRO, H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 10 June 1935.

<sup>139</sup> NRO, H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51.

<sup>140</sup> NRO, H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 9 June 1924, 18 February 1925, 1 June 1925, 24 May 1926, 6 June 1927; *Eastern Daily Press*, 15 June 1925 (clipping inserted into minute book).

entitled number; this might also indicate that non-rights owners could also pay for such a privilege.<sup>141</sup> This is underlined by an entry made in 1948, when the meeting agreed to speak to one individual regarding his putting of stock on the common, and to charge him £2.<sup>142</sup> The original enclosure award had stated that the common right owners would have power, as a body, to choose to lessen or increase the value of stints and alter the kinds of animals permitted to be grazed, but it would seem that reeves and rights owners maintained the stint values originally set out by the award (these had become a property right enshrined in deeds and conveyances), though perhaps maintaining a flexible approach to extra animals, which required a fee to be paid.

The minute book provides evidence that the meeting had regard for the carrying capacity of the common, and the need to regulate grazing. In 1930, the reeves suggested, and the meeting agreed, that the opening date of the common should be the 13 May instead of 1 May, arguing that ‘this Extra fortnight would make all the difference in the growth of the feed on the Common’.<sup>143</sup> There are intimations that stint owners hoped to improve the common, for example, in 1946 they asked for a report from the WAEC about improvement of grazing; in 1948 one member ‘showed his appreciation for what had been done to improve the common’, suggesting that works of some sort had been carried out.<sup>144</sup> In 1951, the last entry in this minute book suggested a new impetus in stock management. It was agreed that all cattle should be treated for warble fly before being turned onto the common. It was also agreed that all cattle should be tagged, and the number recorded; if a grazier wanted to change an animal, the tag would have to be handed in and a new one issued.<sup>145</sup>

The meeting also dealt with a range of ongoing maintenance and community issues, typical of open spaces. They discussed the removal of rubbish, manure heaps, tents and unwanted electricity poles.<sup>146</sup> Elsewhere, the minutes detail repairs to gates, fences, roads, culverts and so on, including a minute that ‘some of the Fen eyes on the Common were stopped up & it was agreed that these should be attended to’.<sup>147</sup> The book notes an agreement that one individual would ‘hire the tangle’, or seaweed, across the whole common, presumably showing letting of rights.<sup>148</sup> The minute book also records just one minute relating to mussel lays, and this seems to be an exceptional case, where an outsider was allowed to create a lay in Thornham for one year for the rent of £3 because of work being done to replace Hunstanton Pier.<sup>149</sup>

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<sup>141</sup> NRO H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 20 May 1929, 9 June 1930.

<sup>142</sup> NRO H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 17 May 1948.

<sup>143</sup> NRO H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 9 June 1930.

<sup>144</sup> NRO H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 11 June 1946, 17 May 1948.

<sup>145</sup> NRO H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 14 (12?) May 1951.

<sup>146</sup> For example, NRO H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 18

February 1925, 24 May 1926, 28 May 1928, 20 May 1929, 8 May 1939, 13(18?) February 1940.

<sup>147</sup> For example, NRO H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 24 May 1926, 28 May 1928, 8 May 1939, 2 June 1941, 17 May 1948.

<sup>148</sup> NRO H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 29? May 1942, 21 May 1945, 11 June 1946, 27 May 1947, 17 May 1948.

<sup>149</sup> NRO H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 17 May 1948.

The minute book also reveals the impact of the Second World War: areas of common land were taken over, and occasionally damaged, by the military, and the stint owners requested payment of rent and expenses for repairs.<sup>150</sup> The presence of the military was long term, and Thornham Low common was described by Hoskins and Stamp in 1963 as ‘partly grazed, partly used by the Air Ministry’.<sup>151</sup>

A report by the Rural Planning Services written in 1985 gives clues as to more recent land use and management. The RPS found that grazing was ‘negligible’ but that some wildfowling and fishing was undertaken by boat. They found that issues regarding common land were directed towards Thornham Parish Council, and that there was a Common Rights Holder committee with a chairman (described as the major stint holder), secretary and a representative from the parish council. They noted, ‘In the past the committee has drained land and cut reeds, through the auspices of its Chairman, a farmer and the major rights holder.’ Low Common, however, was under the management of Norfolk Naturalists Trusts, ‘for nature conservation purposes.’<sup>152</sup>

### 3.2.2 *Brancaster Saltmarshes*

Whilst there is substantial documentation regarding controversies over access to shellfish and shingle at Brancaster, there seems to be limited archival evidence relating to the management of grazing on the saltmarshes or the exercise of other common rights such as estovers during the nineteenth and twentieth centuries. However, the Brancaster Parish archive does contain evidence of more recent management. In 1984, the Scolt Head and District Common Right Holders’ Association was founded, and today, an information panel sited at Brancaster Staithe states that ‘Scolt Head and District Common Right Holders Association administer the many common rights in the Brancaster area’.<sup>153</sup> In 2000 the Brancaster Commons Committee was set up as an Executive Committee to ‘oversee the management of the Commons CL65, 124, 161 and 162 within the Parish of Brancaster.’ This involved both the rights holders and numerous stakeholders and interested bodies, including Natural England, which manages the National Nature Reserve on Scolt Head Island. Seats on the executive committee were allotted to The National Trust (Area Manager); five members of the Common Rightholders Association (one chairperson, and four elected representatives of different common rights interests); The Parish Council; The District Council; Brancaster Fairways Advisory Committee; The Golf Club (as invited); English Nature (as invited); and The National Trust’s Education Warden or Property Manager as observer only.<sup>154</sup>

Previously, management appears to have been divided between the National Trust, Brancaster Parish Council, and the Common Rightsholders, and if the 2000 scheme failed or was removed, management was to revert to the earlier arrangement:

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<sup>150</sup> For example, NRO H. Bett, 14/6/79/28, Thornham Common Minute Book, 1924-51, 29 (?) May 1942, 14 June 1943.

<sup>151</sup> W.G.Hoskins and L. Dudley Stamp, *The Common Lands of England and Wales* (London, Collins, 1963), p. 136.

<sup>152</sup> Rural Planning Services, *The Future of Rural Common Land: A Report for the Department of the Environment*, (May 1985), pp. 46, 68-9.

<sup>153</sup> National Trust information panel, Brancaster Staithe.

<sup>154</sup> NRO PC 86/2 Brancaster Commoners Committee Rules for the Conduct of Business, 2000, pp. 1-2.

- Brancaster Parish Council and the Common Rightholders to manage the area from the Staithe Way westward to the eastern bank of the freshwater marshes, including the Golf Links;
- The remainder areas of CL65, 124, 161 and 162 to be managed by the National Trust and the Common Rightholders.<sup>155</sup>

In addition, the use of, and access to, Brancaster salt marshes is subject to the schedule of twenty-seven standard byelaws which regulate access to all National Trust properties, and which were confirmed in 1965 (with subsequent amendments).<sup>156</sup> These documents and byelaws reveal the complex layers of interest and authority which have developed in relation to the common marshes, divided into separate CL units and yet with overlapping patterns of land ownership and land-use issues.

### 3.2.3 *Brancaster, Barrow Common*

Barrow Common has undergone significant environmental change as patterns of use have changed across the twentieth century. The exercise of the rights of grazing and estovers, principally ‘sticking’ (the collection of gorse as fuel) have declined to extinction, particularly since the mid-twentieth century. Other uses have taken place, including gravel extraction (pits are marked on the 1906 Ordnance Survey map) and military use. During the Second World War the common became the site of a radar station, ‘RAF Barrow Common’, with over 80 people on site. Two concrete buildings survive: one building housed the radar station, and another the diesel power plant. Military personnel were billeted on a nearby farm.<sup>157</sup> By the late twentieth century much of the common had been invaded by scrub and some woodland.

In more recent years, use and management of the common has sometimes proved controversial, as seen in a disagreement between Brancaster Parish Council, the rights holders, and the owners of the soil over the latter’s decision to carry out burning of bracken and gorse.<sup>158</sup> The Barrow Common Management Committee has embarked on a programme of environmental management aimed at enhancing the common for recreation, while at the same time preserving its wildlife and its semi-natural character.<sup>159</sup> The Committee has an interest in presenting the cultural history of the site, for example, placing an information panel on the radar station in 2008.. A sign welcoming visitors to the common has been erected, stating that the Common is ‘managed according to several Commons Acts to conserve a variety of plants and animals and to provide quiet enjoyment, fresh air and exercise to the public’.<sup>160</sup> Posts have also been erected on areas of the common which might have been accessible from the road, to prevent vehicles from driving onto the common. On a visit made in

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<sup>155</sup> Ibid., p. 3.

<sup>156</sup> National Trust information panel, Brancaster.

<sup>157</sup> Barrow Common radar station information panel, erected by the Barrow Common Management Committee in 2008.

<sup>158</sup> See <http://www.northcoastal.co.uk/barrowcommon.htm>.

<sup>159</sup> Barrow Common Management Plan (2005) (courtesy of Maurice de Soissons).

<sup>160</sup> Barrow Common Management Committee information panel.

April 2009, there was evidence of activity to control bracken, and to clear a view to the sea from the radar station.

### **3.2.4 Parish councils**

As has been intimated in previous sections, one theme running through the post-manorial history of both Thornham, and especially Brancaster, has been the role played by local parish councils. In more recent decades, they have assumed responsibility for safeguarding common land and have often represented the interests of commons rights holders' and/or the public. In Thornham, the Parish Council became a stint-holder. In Brancaster, the Parish Council manages the public car park on the common salt marshes, and is represented on bodies and committees overseeing Scolt Head Island, the Brancaster salt marshes, and Barrow Common. This accords with the quasi-charitable or civic function given to these commons in the eighteenth century, when the common lands were seen as a means to support the poorer members of the community: a quite different social function and cultural context from common lands in our upland case study areas, which remained embedded in a pastoral culture and were of continuing economic value to the farming community. The role of the parish council cannot be explored in full in this briefing paper, but is mentioned as a subject which requires further investigation.

## **4. Historical Concepts of Sustainability**

### *4.1 Ecological Sustainability*

A clear – and early – example of ecological concern can be seen in the order against a particularly damaging form of fishing or shell collecting, made at Brancaster in 1570, where raking for shells with iron rakes had caused the shellfish bed to be ‘utterly ruined and devastated’; a forerunner, perhaps, of contemporary environmental concerns about intensive trawling of the sea bed. A similar explicit concern to protect against environmental degradation is found in the manor court’s response to what was probably an expansion in the digging of sea holly roots in the 1620s: the fact that the sand dunes were ‘greatly decayed’ as a result was one of the aspects of concern. Repeated orders to protect whins, rushes and grasses also demonstrate a need to preserve natural resources which were under pressure.

In a wider sense, the environment of Brancaster and Thornham was potentially highly vulnerable. Commoners on coastal saltmarshes were dealing with a particularly unstable landscape, some aspects of which were beyond their control. Marshes are ‘shifting, fragile, uncertain grounds’, and as Reeves and Williamson state, their productivity and sustainability has always been contingent on highly unstable ecological factors:

With hard work and careful organization men could effect radical alterations to the environment, and could make a good living. But the land was always vulnerable to the vagaries of climate, to natural changes in land/sea levels, and to the dynamics of coastal erosion and deposition.<sup>161</sup>

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<sup>161</sup> Reeves and Williamson (2000), p. 153.

Thus exploitation and restructuring of the coastline has been a constant project, from the early schemes of reclamation to the various strategies employed today to cope with sea level rises. The Thornham enclosure commissioners' approach to stint values – giving the community powers to lessen or increase the value of stints and alter the kinds of animals permitted to be grazed – also implies an understanding of the need to be responsive to changing ecological and agrarian conditions; perhaps, in this case, the effects of a coast line which could expand or contract over time, changing carrying capacities.

#### *4.2 Equitable access to resources*

There is substantial evidence to show that manor courts and their successor institutions in Brancaster and Thornham attempted to maintain equitable access to resources and maintain the spirit of good neighbourhood, and that they sometimes had to confront behaviour which challenged these notions. This is particularly evident in the rules governing access to whins, grasses and rushes (limiting the amount each commoner could take), and in the attempts to deal with offences committed against other members of the community (e.g. stealing fish and birds from another man's nets and traps).

But there is also a sense in which common land in the Norfolk context was seen as a resource for the poorer elements of the community. In Brancaster, manorial records provide evidence that courts attempted to protect the poorer commoners' interest in products such as gorse, at the expense of more substantial rights holders, and in the treatment of Barrow Common in the 1755 enclosure award, we see evidence of an attempt to create an equitable, community-wide right of access for all households, but which is limited to the poorer level of household (i.e. excluding those who had access to land or tenements of more than £5 yearly value). This reflects the way in which the social functions of common land were being adapted to the new situation: a process of using commons for poor relief which Birtles identifies in her Norfolk study. The common was given a trustee as if it were a charity allotment, but ownership was deemed to have been vested in the owners of the eligible properties: 'Although looking like a charity common in some respects, the direct ownership enjoyed by the commoners raises it above charity status.'<sup>162</sup> This makes Barrow Common a quite different entity from others in our series of case studies, since in the post-manorial period it was essentially reinvented with a charitable function, with access levelled across the community (all households had the same size of right), and yet also contingent on wealth rather than property rights.

The Thornham case shows how the notion of equitable access can change over time. Whereas before enclosure, access to the Thornham commons seems to have been largely determined by the size of the property, the enclosure award of 1797 levelled access so that each eligible house had the same right; however, this pattern was eventually superseded by a monopoly. On the whole, it seems unlikely that those drafting the Thornham award predicted the level of concentration in ownership that would occur. The management system set up seems to revolve around the notion of multiple small stint-holders based in a number of common-right properties – as was no doubt the case when the act was first put into practice. In this respect it perhaps

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<sup>162</sup> Birtles (2003), p. 194.

shares some of the characteristics of charitable stinted pastures or commons such as Barrow Common. But by facilitating (possibly unintentionally) the severance of stints, this association between households and rights inevitably broke down, and in many respects the sense of ‘common’ equitable grazing was probably lost.

#### *4.3 Conflicting Demands*

A number of conflicting demands on the landscape emerge at Thornham and Brancaster. For example, Thornham commoners’ need to collect whins for fuel, as opposed to the lord of the manor’s desire to preserve cover for game. There are also intimations of conflict between commercial interests in resources (collecting whins, rushes, etc. for sale to outsiders) versus domestic needs (fuel for a commoner’s household). Others demands stemmed from specific historical events, such as the requisitioning of areas of common for military purposes in the Second World War.

One pressure which has been less in evidence here than in our other case studies, has been that between grazing and non-grazing interests, since, in contrast to our other cases, grazing appears to have been in gradual decline for some time.

Today, conflicting demands are of a modern character, including a sometimes difficult balance between public access and recreation, protection of nature reserves, gathering of products such as samphire, and sports such as wildfowling. The National Trust’s information panel at Brancaster Staithe points to the different interests in, and pressures on, the landscape,

As well as being designated an Area of Outstanding Natural Beauty (AONB) because of its unspoilt landscape, much of the Norfolk Coast is of international importance for wildlife. The area is also very important for people – those that live and work in the area and those using it for recreation. Indeed the popularity of the area creates considerable pressure on it.<sup>163</sup>

The sign states that management of the Trust’s Brancaster estate ‘requires a sensitive approach if the right balance is to be achieved’.<sup>164</sup>

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<sup>163</sup> National Trust information panel, Brancaster Staithe.

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