

The enclosure of Old Heath Common 1811-18

by Patrick Denney

Introduction and historical background

The area known as Old Heath is situated about 2 miles from Colchester town centre on the road leading to Rowhedge and East Donyland. It extends to about 700 acres all lying within the former parish of St. Giles, although latterly under the auspices of St. Barnabas. In the early 1800s this was little more than a straggling hamlet surrounded by fields and common land. By the end of the century, however, and with an expanding population, agriculture was in decline and the area fast becoming urbanised. Since then it has grown to become what is now a sprawling suburb of Colchester, well populated with a mix of residential housing and light industry. The object of the present study is confined to the period 1800-1818, a time which brought lasting changes to both the local community and landscape. For this was the age of enclosure, and although this part of north-east Essex was little affected by such changes, the community at Old Heath suddenly found themselves in the thick of the fray. For what began as a seemingly straightforward exercise in agricultural improvement developed into a battle between opposing manorial lords that attracted considerable interest from the county's landed gentry.

First, it is necessary to define the area under discussion, for the district of Old Heath has never been officially recognised as a village or parish in its own right. Prior to the 1920s, it was almost totally isolated from the main town and had over the years developed its own identity as a village community. The first official attempts at establishing any firm lines of demarcation were those taken by 19th-century census enumerators, and for the purpose of this study it has been decided to copy their lead in establishing the following boundaries: to the east, the river Colne and the Old Channel, Rowhedge and East Donyland to the south, Cavendish Avenue and part of Middlewick to the west and Barnhall Avenue and Distillery Lane to the north.¹

It is believed that a community, of sorts, has occupied this area since at least Saxon times, although the Domesday reference mentions only the nearby estate of Donyland from which the Old Heath or Battleswick manor is believed to have originated. Also, in numerous documents dating from the 13th century, the area is frequently referred to as The Old Hythe, a name which would appear to derive from the Saxon 'Hetha', signifying a harbour. Morant claimed that the area was

so named because 'wares and merchandises brought to this town by water used to be unloaded there.' And although he was of the opinion that the old harbour must have been out of use for some 500 years, he recited a case, just 100 years earlier, where a witness had sworn that he had passed by a small boat up the channel or creek where ships, anciently, went up to the Old Hythe.² This channel leading to the Old Hythe is clearly marked on an estate map of 1734 where it is described as 'The old channel that vessels went to Colchester Old Hithe with goods'.³ Further evidence in support of the Saxon harbour theory is seen in early references to the present Hythe or harbour district of Colchester. In court rolls and other records from the 13th century onwards, the area is frequently referred to as the New Hythe, in apparent contrast to an Old Hythe.

The earliest mention of the new harbour is found in an agreement concerning the tithes of St. Leonard's-at-the-Hythe, dated 1227, and it is shortly after this that the earliest reference to the Old Hythe occurs.⁴ Interestingly, on numerous occasions between the 13th and 19th centuries, both the names Old Hythe and Old Heath appear to have been interchangeable and used alternatively to describe both places. For example, in Bucke's 'Prospect' of the town (1741), which shows a picture of the Hythe, the church is described as St. Leonard's-at-ye-Heath, while in a series of 19th-century deeds relating to the Bell Inn public house, the property is identified as being at the Old Hythe.⁵

The manorial rights relating to Old Heath were divided between the manors of Battleswick and West Donyland, with the boundary separating the two manors following a similar line to the present Old Heath Road. Although the manor of West Donyland was by far the larger of the two, it held less land and enjoyed fewer rights in Old Heath than did Battleswick, the lands of which extended eastward from the main road to the river.⁶

Old Heath 1800-1810

By the onset of the 19th century, Old Heath had still experienced little commercial growth and remained a relatively obscure district of the town. Even so, it had developed its own identity as a small, but flourishing,

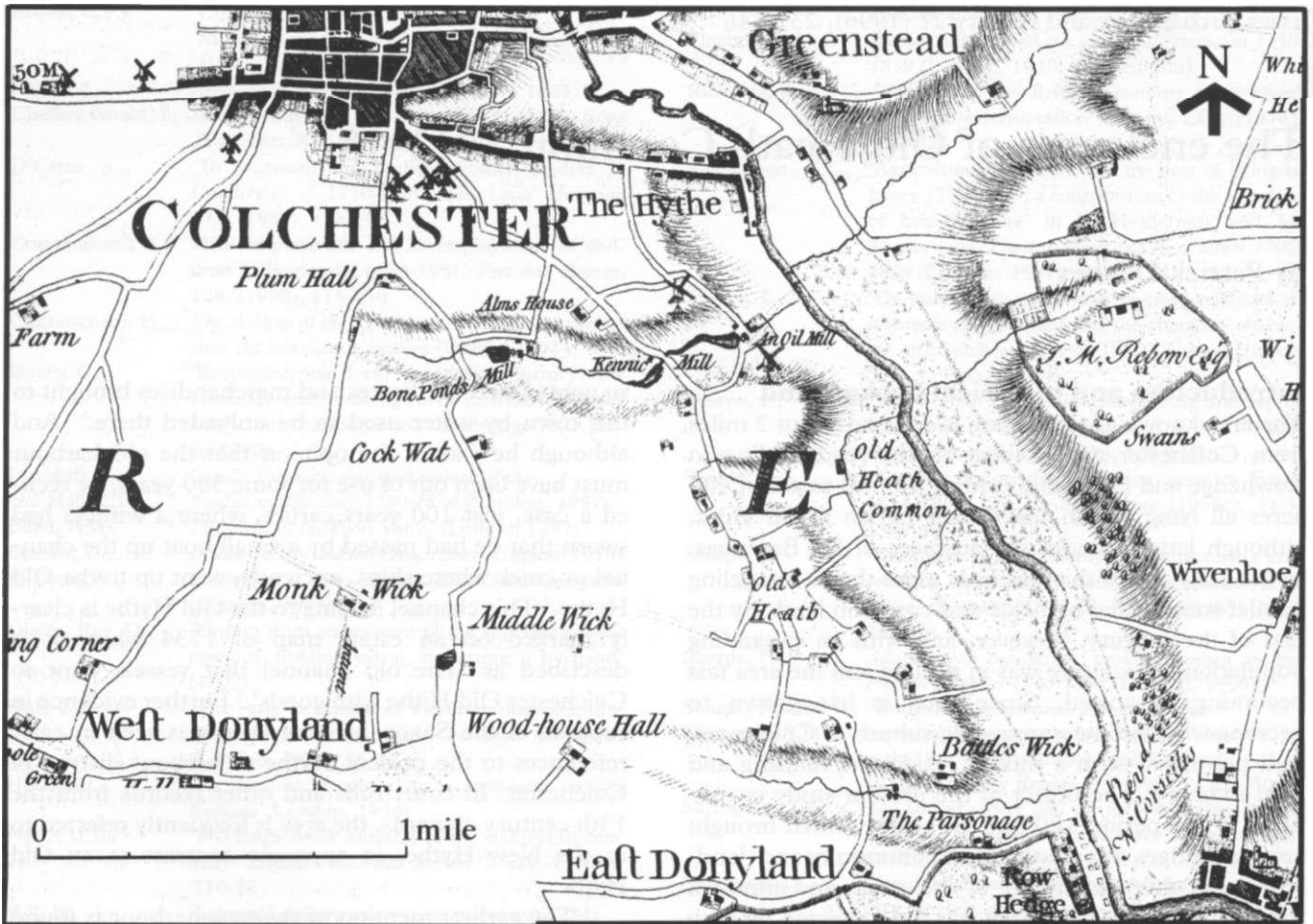


Fig. 1 The area of Old Heath Common on Chapman and Andre's map of 1777.

agricultural community. What is less certain, however, is the size of the community at this time. Because Old Heath had never existed as a parish or village in its own right, it had seldom figured as a separate entity in official records. Early census returns, for example, list population figures in complete parish or village order only. Thus the Colchester return for 1801 shows St. Giles parish to have a population of 1,106 but this is made up from residents of Old Heath and others living elsewhere in the parish.⁷ In fact, there are no official population figures for Old Heath until the 1841 census, so in order to arrive at a satisfactory figure for the earlier period it has been necessary to derive information from a variety of sources.

The land tax returns provide a comprehensive listing of the major property owners in the area, although in most cases the owners' names are listed alphabetically, giving no clue to their geographical location. However, from a study of other records, including property deeds and estate maps, it is possible to build up a fairly accurate picture of the local land owners and, by comparing these names with those included on the earlier returns, which are not listed alphabetically,

one is able to identify those relating to the Old Heath area, which in the main appear together as a separate block at the end of the return. For example, in 1778 the Old Heath landowners number about 35, and although the entries refer primarily to land ownership and not dwellings only, we can safely assume the number of occupied properties to be in the region of 25-30."

Further evidence comes from early maps and plans of the area. The earliest detailed map of Old Heath is the 1777 Chapman and Andre survey." Buildings are clearly marked and total 38, including what are apparently a number of farmyard buildings. This compares with 46 on the first O.S. map of Essex in 1805." After making allowances for agricultural buildings, we can assume a figure of 25 occupied properties for 1777 and 32 for 1805. These figures compare favourably with a listing of manorial tenants from both the manors of Battleswick and West Donyland." Assuming therefore a total of say 30 occupied properties for 1801, and using a multiplier of 4.5, this gives a population for Old Heath of around 135, or 12% of the parish total.

The approach to Old Heath was by the main

Colchester-Donyland Road, which led to a gate at the edge of the common. From here an ancient track wound its way across the heath before rejoining the Donyland Road.¹² Over the years this large tract of land, extending to perhaps 200 acres, had been gradually enclosed until finally being reduced to about 75 acres, comprising about one-third heath and waste, the rest marsh.

The bulk of the enclosed land was divided between 8 farms, ranging in size from about 40 to 140 acres. Those lying within the manor of Battleswick included the manor farm itself, extending to a little over 100 acres, Clevelands Farm, Place Farm and Burnthouse Farm, while in west Donyland there was Middlewick Farm, St. Runwald's Farm, Whitehall Farm and Old Heath Farm. It appears that the common lands, although lying chiefly in Battleswick, were enjoyed by proprietors and tenants from both manors." The rights to graze sheep and cattle on the common was apparently determined by the size of the individual holdings. This is borne out in a letter dated 1784 written by Alexander Carter, a tenant farmer of West Donyland, to the lord of the manor, Ralph Ward. It seems that a dispute had arisen concerning the grazing rights of the copyhold tenants, and a meeting to discuss the problem had been convened at the *Bell Inn*. The meeting confirmed various individual grazing rights ranging from about three head of cattle for a small cottager to 25 head for a farmer of 100 acres.¹⁴ Similar rights were extended for the grazing of sheep, with the cottager being allowed to feed about 15 and the larger farmer 85.¹⁵

In the early years of the century, thousands of acres of common land in Essex still remained unenclosed. For the most part this comprised waste land and heaths, although in the extreme north-west of the county there were large tracts of arable commonfields. In the borough of Colchester alone, hundreds of acres of commonfields lay scattered around the town walls. These, however, were known as Lammas or Half Year

lands, and were grazed and farmed in strict rotation. Grazing rights could only be enjoyed from Lammas Day, 12 August, to 13 February. Even then the right to graze the lands was only extended to the Free burgesses of the borough. Unlike the system used at Old Heath, where grazing rights were determined according to the size of an individual's holding, the burgesses each enjoyed the same right of commonage, that is 'three hedd of greate cattle, or in leiu of everye of the said three head ten shepe'.¹⁶

According to Chapman and Andre's map of 1777, the county was littered with similar tracts of common and heath, although by the 1820s most had been enclosed. Vancouver's 1795 estimate of the amount of such land then remaining in the county was over 14,000 acres, which if enclosed would increase in value more than threefold. Figures taken from the same report show the average value of unenclosed common land in the Colchester and Tendring areas to be about 4 or 5 shillings an acres, while the price for enclosed arable land was nearer 15 shillings." It is well known that from about 1760, the rate of enclosure was beginning to accelerate; between 1760 and 1780 over 1,000 enclosure Acts were passed nationwide, and at the time of the Napoleonic wars, between 1793 and 1815, a further 1,500 Acts. These figures, of course, refer only to enclosure by private Acts of Parliament and take no account of the various Public Acts or enclosures by private agreement.¹⁸ Although the majority of Acts referred to above were concerned with the enclosure of open fields, about one third were devoted entirely to commons and wastes. This was particularly the case during the Napoleonic period when high cereal prices were encouraging farmers to convert more land to the plough. According to research carried out by W.E.Tate, of the 40 or so enclosure Acts passed in Essex between 1760 and 1840, 27 were concerned solely with commons and wastes, with about half that number being passed during the period 1800-1815 (Table 1).

Table 1 Enclosures by Private Act of Parliament
(compiled from W.E. Tate's *Domesday of English Enclosure Acts and Awards*)

County	1700- 1760	1761- 1780	1781- 1800	1801- 1815	1816- 1830	1831- 1845	Total	1700- 1760	1761- 1780	1781- 1800	1801- 1815	1816- 1830	1831- 1845	Total
Beds			1	2		1	4	2	13	28	31	3	5	82
Berks	2	2		4			8	5	13	10	52	7	3	90
Bucks				5	3	1	9	3	34	30	23	9	4	103
Cambs	1	1	3	3		4	12		3	14	53	7	25	102
Cheshire		5	8	18	6	2	39				1			1
Cornwall				1	2		3							0
Cumberland		13	5	40	16	4	78		3		2	1		6
Derbys	4	17	13	13	9	6	62	3	21	22	18	6	1	71
Devon			2	18	6	5	31							0
Dorset		3	3	10	3		19	2	4	10	20	7	5	48
Durham	4	13	5	10	2	1	35		1	3	1			5
Essex		3		14	8	2	27			2	8	2	1	13
Gloucs	1	3	2	7	4	1	18	14	34	28	37	7	9	129
Hants	5		1	21	8	3	38	8	3	23	14	9	1	58

County	Enclosure of common and waste land only						Enclosure of land including open fields						Total		
	1700-	1761-	1781-	1801-	1816-	1831-	1700-	1761-	1781-	1801-	1816-	1831-			
	1760	1780	1800	1815	1830	1845	1760	1780	1800	1815	1830	1845			
I.o.W.				1										1	0
Herefordshire		4	2	9	5	1			5	20				21	25
Herts	1	2		5				4	7	13	3			8	27
Hunts			1				3	17	16	25	2	4		1	67
Kent	1	1		11	3	1								17	0
Lanes	7	12	19	22	8									68	0
Leics	1	1	1	2			22	81	35	10	2	1		5	151
Lines	3	9	14	14	3	1	12	120	56	62	11	1		44	262
Middx		3		6				2	5	14	4			9	25
Monmouthshire				3				1						3	1
Norfolk	4	10	22	44	16	2	3	17	26	117	16	8		98	187
Northants		6	5	4	1	1	22	97	23	33	11	7		17	193
Northumberland	6	12	8	12	3	1	2	2	4	3		1		42	12
Notts		6	5	4	1	1	12	39	36	23	5	2		17	117
Oxfordshire			1	3	2		6	43	29	29	11	9		6	127
Rutland							0	8	9	2	1			0	24
Shropshire		8	10	16	4	4	42	2	2	1	2			42	7
Somerset	3	11	47	22	5	5			14	21	8	2		93	45
Staffs	6	12	15	25	6	3	67	6	10	6	1	1		67	24
Suffolk	1		7	23	4	1	36	1	2	6	29	7	3	36	48
Surrey		1	3	14	3		21	1	3	14	3			21	21
Sussex		3	4	4	2	3	16		1	17	7	1		16	26
Warwickshire		3	4	11	3	2	23	35	51	21	17	7	2	23	133
Westmoreland		13	1	23	6	4	46			3	1			46	4
Wiltshire	2	2	3	15	9	2	33	5	20	34	42	15	1	33	117
Worcestershire	1	8	6	7	8	1	31		30	8	27	4	1	31	70
East Riding	5	6	3	5	1		20	11	75	22	29	8	4	20	149
North Riding	6	16	14	28	5	1	70	7	16	11	17		1	70	52
West Riding	11	37	29	44	23	5	149	5	39	50	53	13	3	149	163
TOTAL	75	240	263	540	191	67	1376	187	818	639	887	200	107	2838	

Part of the land enclosed during this period, without recourse to Act of Parliament, included several hundred acres of common fields or Lammas lands, already referred to, belonging to the borough of Colchester. The decision to sell off the lands, or to be more precise the rights of common over them, was first made in 1803 in a somewhat desperate attempt by the Corporation to offset its ever-increasing debt." In 1807, a team of 4 conservators was appointed to survey and assess the value of the land and to accept proposals from prospective owners. It had been agreed beforehand that the meadow land was to be sold for around £30 an acre and the arable land £20 an acre.²⁰

One of the men appointed was Henry Thorn, resident of the town, and described in a local directory as a silversmith. In 1800, after the death of his father James Thorn, he had received a legacy of £800 together with Checkleys Farm at Aldham, which extended to 117 acres, and was at the time let to a Mr Joseph Ward. He also owned property in the centre of Colchester and in numerous other documents is further described as a rag merchant, dealer and chapman.²¹ It is perhaps not too surprising, therefore, to learn that after spending less than a year immersed in the sale of the borough fields, and becoming fully acquainted with the procedure and profits to be made out of the conversion of such land to full arable use, we find that Thorn is negotiating with Mr Joseph Ward to purchase the lordship

of the manor of Battleswick at Old Heath which of course included a sizeable tract of common land, just ripe for enclosing.²² Unfortunately, the writer has been unable to confirm whether the Joseph Ward at Checkleys Farm, Aldham was the same Joseph Ward who was lord of the manor at Battleswick, but it must remain a strong possibility. Thorn concluded the purchase for the lordship of the manor in September 1808 for the agreed sum of £800, which he obtained by mortgage from Mr John Gosnall of Colchester. Joseph Ward had purchased the manor from the Godschall family in 1804 for the sum of £3,250. This included the manor farm and adjoining demesne lands, which were not transferred to Thorn.²¹ In fact, as it stood, Thorn had little to show for his money, save the usual manorial fines and rentals, and, of course, the possibility of receiving a sizeable allotment of the common lands were they to be enclosed.

Enclosure of Old Heath common

In the event, it seems that Thorn wasted little time before proceeding in this direction, for by 25 May 1811 he had successfully petitioned for an Act of Parliament to enclose the common and waste lands of his new manor.²⁴ It is not clear, however, from the surviving evidence whether he had previously envisaged having

to go to the expense of obtaining an Act of Parliament to fulfil his ambitions, or whether he had simply intended striking up a suitable agreement with the other land owners and tenants. If this latter was the case, he had obviously misread the situation and failed to foresee a major stumbling block in the form of Ralph Ward, lord of the manor of West Donyland, who had laid claim to parts of the land to be enclosed." It seems unlikely, however, that Thorn would have failed to enter into some kind of negotiations with Ward or his representatives at an early date, and one must therefore presume that he felt confident enough of achieving his aims even with the added expense of obtaining an Act of Parliament. The only clue suggesting some kind of confrontation in the early stages is found in the Enclosure Award of 1818 where, after mentioning that the dividing and allotting of land would be of great advantage to all concerned etc., it continues 'such a division could not be effected so as to answer the above purposes without the aid and authority of Parliament.'^{26*} However, judging by the number of other enclosures that proceeded in a similar manner, it cannot be considered unusual.

The Battleswick Act closely followed the procedures laid down in the General Enclosure Act of 1801, and named Benjamin Strutt, Esquire, of Colchester as the sole commissioner charged with executing its contents. Strutt was very much involved in local affairs and served as Chamberlain of the borough of Colchester. Thorn would undoubtedly have been quietly confident at this stage of the whole affair running a smooth course; the commissioner would have been well known to him in his dealings with the Corporation, and one of the major landowners supporting the enclosure, Jacob Verlander, was a fellow 'conservator' with Thorn, involved in the sale of the borough half-year lands. In fact, Strutt later appointed Verlander as the official surveyor responsible for establishing the new roads over the enclosures.²⁷ His first move, however, was to hold a meeting for interested parties 'at the house of Daniel Powell, known by the sign of the Bell at the Old Hythe,' on Monday, 29 July 1811.²⁸ There is also some evidence to suggest that Strutt might well have seen himself as a kind of professional enclosure commissioner, as his name appears on numerous other enclosure Acts in a similar capacity. Having established what he considered to be the official boundaries of the manor and lands to be enclosed, he proceeded to publish his findings on 20 August 1811.²⁹ Unfortunately, no record has yet been found respecting any of these early meetings, although the Act did stipulate that all meetings were to be advertised in a local newspaper and a notice affixed to the door of the principal church of the parish.

Neither has any evidence been found regarding the individual claims that would undoubtedly have been made to Strutt from persons seeking an allotment of land. The fact that there would have been a fair amount of correspondence can be deduced from the requirement that everyone making a claim respecting

any rights of common had to do so in writing. It appeared that Strutt continued to ignore any claims made by Ward respecting the boundaries of the manor, for on 30 September 1811, Ward officially notified Strutt of his intention to pursue the matter through the courts. The case was brought before a judge and full jury at the Essex Assizes, Shire Hall, Chelmsford, on 28 July 1812. The Enclosure Act had allowed for any person dissatisfied with the commissioner's decision to instigate proceedings through the courts whereby they would bring an action, upon a feigned issue, against the person in whose favour the decision had been made."

The hearing, which attracted considerable interest from the landed gentry, commenced at 2 p.m. and lasted until after midnight. Thorn had argued that the lands in question, with the exception of about 8 acres, had been adjudged by Mr Strutt as belonging to his manor of Battleswick, while Ward had claimed that the greater part of the land lay within his manor of West Donyland. The feigned issue had been contrived to determine the rights of both parties but, to be consistent with the Act, could not be framed in any other form than to claim an exclusive right to the whole, first for the plaintiff and second for the defendant. Ward had, in fact, earlier proposed that both parties enter into an agreement whereby they both exercise equal and joint control over the land. A vast body of documentary and verbal evidence was gone into, which satisfactorily established that tenants from both manors had jointly exercised manorial rights over the common for the previous 400 years, confirming the justice of the plaintiff's proposal for an equal division of them. After hearing the evidence, the jury found that neither party could claim exclusive rights to the whole, thereby reversing the adjudication of the commissioner and leaving the lords of both manors in the same equal undivided possession which had been enjoyed by their predecessors.³¹

It appears that Thorn had been ill advised over the whole matter; firstly by Mr Strutt and secondly by his attorney William Francis, who incidentally was also employed by Strutt as his clerk.³² The records show that by this time Thorn was heavily in debt. He had borrowed money to purchase the lordship of the manor in 1808, in 1810 he had secured a further mortgage on the property for £400, possibly to fund the obtaining of the Act, and now he was to be saddled with further, crippling litigation costs. It appears that his attorney's bill to bring the matter to court may well have been in excess of £400, for in 1814 he again had to mortgage his property, this time for the sum of £417 in favour of a William Francis, almost certainly his attorney. From hereon things appear to have gone from bad to worse and after getting even further into debt to the tune of another £600, Mr Samuel Blomfield of Brightlingsea successfully filed a petition to have him made bankrupt, in May 1815, over an unpaid bill of £100.³³

Following the court case at the Essex Assizes, Benjamin Strutt proceeded with the matter of enclosing Old Heath Common. After a delay of more than a

year, a notice was placed in the *Chelmsford Chronicle* on 14 August 1812 informing interested parties of a meeting to be held at the Bell Inn at the Old Hythe, pursuant to the Act of Enclosure and to receive claims from persons claiming rights of common. Strutt began by having the land accurately surveyed and found the total area to be enclosed amounted to 75 acres, 2 rods and 8 perches.³⁴ His first concern was to set aside a sufficient quantity of the land for making up two new public roads and one private road. The former were to follow the course of the ancient tracks across the common and were to be kept to a minimum of 30 feet wide. The private road, giving access on to Old Hythe marsh, was to be slightly narrower at 20 feet.³⁵

Following this allotment, the Act called for the commissioner to allocate a further portion of land to be set aside for getting stone and gravel for the repair of the new roads. The Award reveals that 'no piece of ground containing any gravel or stone in any quantity could be found so no such allotment was made.' Being aware of the geology of the site, and knowing that, over the years, thousands of tons of sand and gravel have been excavated from the area, this decision seems puzzling. However, less than 25% of the Awards inspected made such an allotment and one can only assume that they either did not expend too much energy in looking, or that the gravel was too deep or contained too much sand to be economically excavated.

After making allotments for the roads and any source of stone and gravel, the residue of the land was to be apportioned amongst the freehold and copyhold owners who could demonstrate legal entitlement to rights of common over the land in question. The first of these allotments was to be made to the lord of the manor in respect of his right of soil. However, in the Battleswick case, as neither party had been able to prove ownership of the soil, no allotment in this respect was made. Thorn did however receive a generous allotment in respect of various rights of common amounting to over 17 acres.³⁶ This was equal to about 22% of the area enclosed, and may have been Strutt's way of trying partly to redress the earlier upset. Although the majority of enclosure Acts stipulated the percentage, or value, of the land to be awarded to the lord of the manor by way of compensation, in practice the amounts varied considerably. This is shown in Table 2, where the percentage of land awarded to various lords of the manor varies from 5% to 83%. Of course, much would have depended upon the size of their individual holdings, but even so the imbalance is substantial.

The cost of effecting an enclosure was also a factor to be considered, and in many cases, particularly in the early 19th century, this was achieved by selling off a portion of the lands to be enclosed. This certainly appears to have been the preferred method in Essex, for of the twelve enclosures listed in Table 2, nine had opted for this arrangement. Alternatively, of course, the commissioner could simply have raised the money directly from those benefitting from the enclosure.

The former method had the obvious advantage of reducing the overall costs as far as the recipients were concerned, but had the disadvantage of also reducing the land available for allotment. With regard to the enclosures of open fields, this arrangement may not in fact have worked in favour of the local land owners, for

Parish	Date of Act	Date of Award	Acres enclosed	To Lord of manor	% of total	Roads (acres)	Gravel (acres)	Acres	Allotments	Claimants	Land sold to defray charges (acres)	Value (£)	Cost of enclosure (£)	Cost per acre (£)
Old Heath	1811	1818	75	17	22	6	0	34	14	10	18	?	?	
Bradfield	1814	1819	110	12	11	?	0	98	84	43	26	1144	4757	30
Gt Bentley	1812	1818	87	6	7	10	0	41	77	27	30	?	?	
Elmstead	1822	1843	71	21	29	?	0	22	33	22	28	?	?	
Pattiswick	1821	1826	94	6	6	9	0	79	31	24	70	1489	?	
Lexden	1820	1821	296	150	50	?	3	141	143	76	93	?	2111	7/5/0
Gt Bromley	1843	1846	323	51	22	?	0	199	199			?	?	
Gt Totham	1804	1805	427	222	51	?	11.5	193.5					592	1/7/6
Tolls Major	1801	1807	114	6	5	4	0	20	34	23	90	1813	?	
Laver Heath	1848	1849	42	20	48	?	0	17	21	13	5	300	100	2/7/6
Laver	1801		199	166	83	?	0	33	17	14		?	?	
Gt Leighs	1820	1822	229	49	21	10	1	103			66	1840	2728	12

while they would undoubtedly have benefitted from the creation of new, compact holdings, they may, at the same time, have ended up with less land than they started with. In most cases, detailed expenses of individual enclosures were rarely recorded, making it difficult to draw any firm conclusions either way." However, the majority of historians are of the opinion that the full burden of the cost of enclosure fell upon the local landowners. This may or may not have been the case but it begs the question - just how many enclosures, open field or otherwise, were financed either wholly or partly from the sale of land, or by some other means, thereby reducing the financial burden on the landowners.

The Old Heath commissioner did however follow this procedure and, in accordance with the Battleswick Act, in order to defray all charges and expenses relevant to carrying out the enclosure did 'with all convenient speed, sell and dispose of such part of the said lands by public auction...' In fact, 18 acres, nearly a quarter of the total, was eventually sold off in two separate auctions at the *Red Lion Inn* in October and December 1813."

The records are silent as to how much money was raised from the sales but in the absence of any further references to the matter, one can assume that the total sum raised was sufficient to cover the costs. From a study of similar transactions in other enclosure Awards, it would appear that the average price paid for land at this time was in the region of £26 an acre. On this reckoning, the sale of land would have raised about £470 and, if indeed it was enough to cover the total costs, would have meant the cost of enclosure being between £6 and £1 an acre which, although perhaps a little high, is comparable with other findings of the period.¹⁰

After the sale of land to meet the cost of enclosure, and of setting aside a sufficient quantity of land for the new roads, there remained only 50 acres of so to be apportioned among 11 claimants, including the now bankrupt Henry Thorn (Table 3). The list reveals one or two surprises, both of people who, perhaps, should have been included but are not and vice versa. Rather surprisingly there is no representation from 4 of the 8 farms in Old Heath. Joseph Ward of Battleswick had of course relinquished his rights of common to Henry

Table 3
An Act of Parliament to inclose common and waste lands in the manor of Battleshall
(compiled from the *Battleshall enclosure award* E.R.O. Q/RDc 17a)

Date of Act - 25 May 1811
Date of Award - 2 December 1818
Commissioner - Benjamin Strutt Esq
Acreage enclosed - 75 acres 2 roods 8 perches
Lord of the Manor - Henry Thorn

<i>Land sold to defray costs of enclosure</i>				
Name	Condition	A	R	P
Jacob Verlander	Marsh	10		
Joseph Cooke	Marsh	3	3	8
James Osborn Purkiss	Heath	1		22
James Osborn Purkiss	Heath		1	4
Benjamin Firmin	Heath	2	3	
TOTAL LAND SOLD		17	3	34

Lands allotted

Henry Thorn	Battleshall	17	1	28
Ralph Ward	West Donyland	4		35
William Cook	West Donyland	1	2	20
William Cant	West Donyland		1	20
James Larter	West Donyland			20
Bawtree and Savill	(Battleshall/W. Donyland)	5	2	8
Jacob Verlander	Battleshall	8	3	
Jacob Verlander	Battleshall	2		2
Joseph Cooke	Battleshall	3	3	6
Joseph Cooke	Battleshall	1	1	27
Joseph Cooke	Battleshall	1	2	34
Mary Barnes	Battleshall		2	30
John Ward	Battleshall		1	10
James Waynman	Battleshall	2		29
James Waynman	Battleshall	1	1	3
TOTAL ALLOTMENTS		51	1	26
LAND FOR NEW ROADS		6		28
TOTAL ACREAGE		75	2	8

Thorn, but also there was no allotment in respect of Clevelands Farm, owned by Benjamin Firmin, the boundaries of which actually bordered upon the common. Neither are the owners of Middlewick Farm or St Runwalds Farm represented, and if one tries to justify their omission by the fact that both lie some distance from the common, the same could be said regarding Whitehall, which was represented. It is possible, therefore, that not all occupiers of land and buildings, even large farms, had rights of common attached to their tenancy or freehold.

One of the main criticisms of the enclosure movement, especially with regard to the division of the common and waste lands, was the fact that the lowly cottager, who more often than not depended upon having free access to the commons, perhaps to graze a few animals, suddenly found these ancient rights denied him. In fact, Young had much to say on the subject, and in 1801 proposed that all Acts of Parliament for the reclamation of wastes should attach enough land to every cottage to provide summer and winter keep for a cow.⁴¹ These recommendations were based on his own observations of the labouring classes who, in his estimation, suffered injury in 19 enclosure acts out of 20. Certainly, in most cases it would appear that the needs of the poor were given scant attention, while the richer classes increased their property.

This was the case at Old Heath, where most of the land was divided among the wealthier landowners. Even the smaller allotments, of half an acre or less, were made to those with some standing in the community. As far as the law was concerned, the cottager was often in a helpless situation, for unless he was an owner-occupier, any allotment made in respect of common rights attached to his dwelling would have gone to his landlord. Even in a situation where he was entitled to receive an allotment, it would probably have been too small to have been of much use, and he would most likely have sold out to a larger landowner, rather than incur the costs of fencing. The writer has been unable to draw any firm conclusions as to what effect the Battleswick enclosure had upon the poorer section of the community, for much would have depended on the use they made of the common beforehand. However, it would appear from the little evidence that has survived, that the common and wastes were seen by some as a valuable addition to their properties. In a letter, already referred to, written by Alexander Carter to Ralph Ward, lord of West Donyland, reference is made to one cottager who it would seem made extensive use of such rights. In fact, the letter reveals that in some cases the cottagers may have enjoyed substantially

more grazing rights than they were legally entitled to. In bringing the matter to his lord's attention, Carter illustrated his point by citing the following example: '...there was one Bennett, lived upon the common that used to buy and sell Cattell, he fed full three parts of it for many years, though it was suppos'd he had but a very small right ...'⁴² This mention of 'full three parts of it' probably refers to the three individual pieces of waste that the common consisted of, and may suggest that different owners exercised grazing rights over different parts of the common. The land tax return for 1781, three years before the above letter was written, reveals that John Bennett was an owner-occupier with a rental of just one shilling, indicating the probable occupation of a small cottage.⁴³

Apart then from a few poorer cottagers losing their right to graze the common, which in most cases would have been enjoyed by the grace of their landlords anyway, it would appear that the Old Heath enclosure made little or no difference to the farming community in general. The small owner-occupier or peasant farmer who would have eked out a living on a few acres simply did not exist at Old Heath, and in all probability had given way to larger, and in many cases absentee, landlords generations earlier. And as far as the cottager was concerned, it is unlikely that that he would have earned his living entirely from the common; he would more likely have been employed on one of the local farms. However, this was not necessarily the case in other areas, and of the examples in Table 2, it is of interest to note that all are seen to have divided and allotted their lands among a greater percentage of the population than was the case at Old Heath. This may well indicate a higher number of owner-occupiers, which could be confirmed from the appropriate land-tax records. For example, with regard to the cost of enclosure, less than half the Awards include this information, and when it is known, costs per acre vary from as little as £2 7s 6d to £30 an acre.

By the time the Battleswick Award had been finalised in 1818, seven years after its conception, time and unforeseen occurrence had left their mark. The Napoleonic Wars had ended, bringing a sharp fall in the price of grain, Henry Thorn, the instigator of the enclosure, had gone bankrupt and his opponent in court, Ralph Ward, had died. The years that followed brought a flurry of activity to the district; land was bought and sold, new maps drawn up and the scene set for a new generation of entrepreneurial activity.

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Appendix - Manorial History

The Battleswick manor seems to have derived from an estate in Donyland, formerly held with Tendring. According to Morant,⁴⁴ in the latter part of the 13th century, the Tendring manor passed from Sir Andrew Blunt to his daughter Catherine who was married to Richard Bataille, lord of Wivenhoe, and the man responsible for

naming the Colchester manor. The Battleswick estate, for it was not referred to as a manor until the 16th century, continued to descend with Wivenhoe until 1624, when it was sold to Robert Buxton of Colchester.⁴⁵ He was an alderman of the town and served as mayor in 1645. Following the siege of Colchester in 1648, when the town became embroiled in the civil war and was occupied by royalist

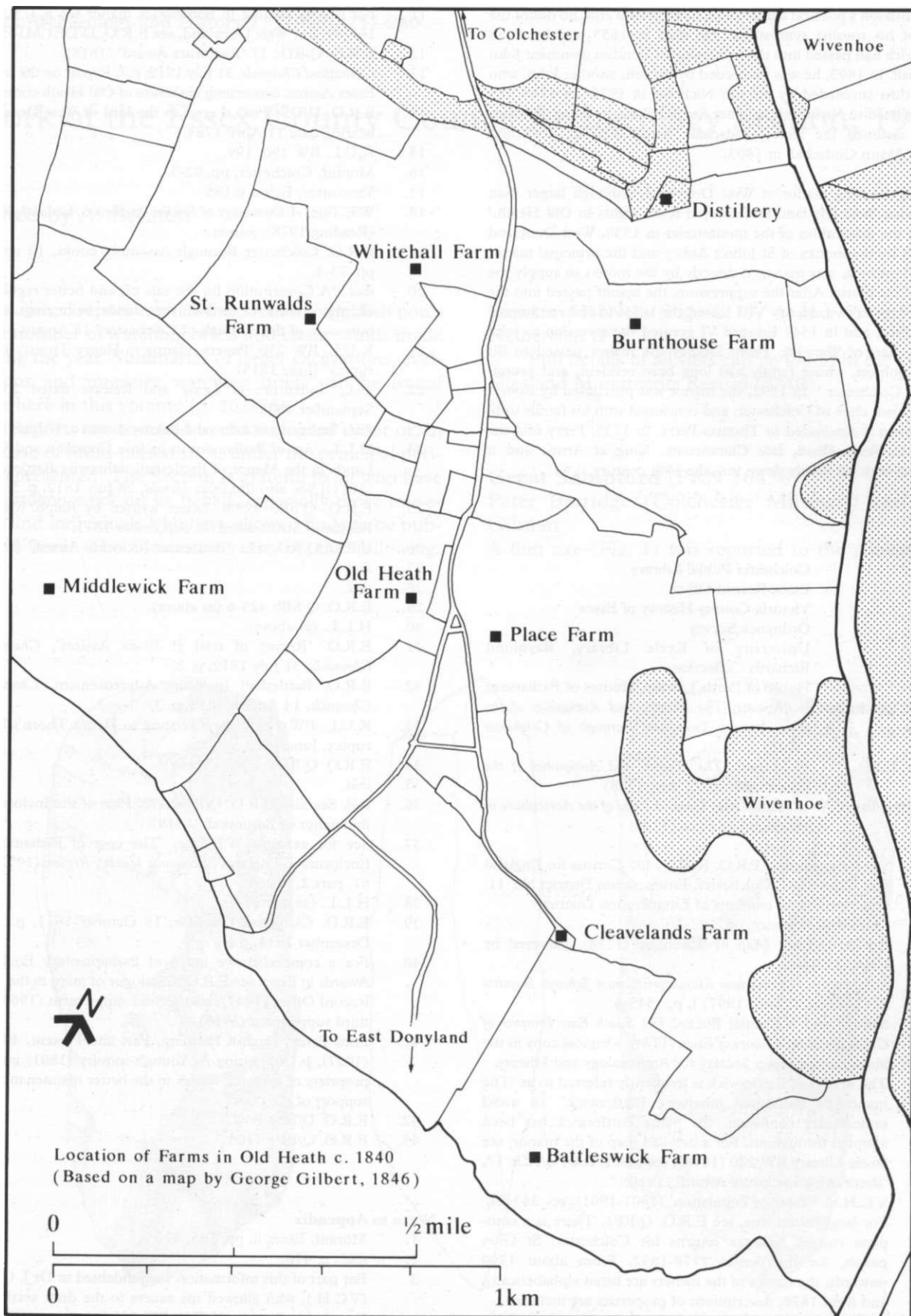


Fig. 2 Farms in Old Heath c. 1840 (based on map by George Gilbert 1846).

troops, Buxton's political career came to an abrupt end, no doubt the result of his royalist sympathies. He died in 1655 and by 1658 Battleswick had passed into the ownership of London merchant John Godschall. In 1693, he was succeeded by his son, another John, who was in turn succeeded by his son Nicholas in 1725. In 1748, the manor passed to Nicholas' daughter Sarah, whose husband, William Mann, assumed the name Godschall. Sarah died in 1792 and William Mann Godschall in 1803.

The neighbouring manor of West Donyland, although larger than Battleswick, held less land and enjoyed fewer rights in Old Heath.' Prior to the dissolution of the monasteries in 1539, West Donyland was held by the monks of St John's Abbey and the principal manor farm, Monkwick, was managed directly by the monks to supply the needs of the house. After the suppression, the manor passed into the hands of the crown. Henry VIII leased the lands to Robert Stepnie of Stratford, and in 1547 Edward VI granted the reversion to John Dudley, Earl of Warwick. From Dudley the manor passed to Sir Francis Jobson, whose family had long been resident, and prominent, in Colchester.' In 1592, the manor was purchased by Robert Barker, town clerk of Colchester, and continued with his family until 1718, when it descended to Thomas Perry. In 1735, Perry sold the manor to Knox Ward, late Clarancieux, King at Arms, and it remained with his family down into the 19th century.

Notes

Abbreviations

C.P.L.	Colchester Public Library
E.R.O.	Essex Record Office
V.C.H.	Victoria County History of Essex
O.S.	Ordnance Survey
K.U.L.	University of Keele Library, Raymond Richards Collection
H.L.L.	House of Lords Library, Houses of Parliament
Morant, Colchester	P. Morant, <i>The History and Antiquities of the most Ancient Town and Borough of Colchester</i> (1748)
Morant, Essex	P. Morant, <i>The History and Antiquities of the County of Essex</i> (2 vols, 1768)
Vancouver, Essex	C. Vancouver, <i>General View of the Agriculture in the County of Essex</i> (1795)

1. See for example - P.R.O. RG12/1407 Census for England and Wales 1891. Colchester, Enumeration District No. 11. Description and contents of Enumeration District.
2. Morant, Colchester, pp. 122-3.
3. E.R.O. D/DSm Map of Wivenhoe (1734), surveyed by Hayward Rush.
4. S.A.Moore, *Cartularium Monasterii Sancti Iohannis Baptiste de Colecestri*, (2 vols, 1897) I, pp. 545-6.
5. Samuel and Nathaniel Bucke, *The South East Prospect of Colchester in the County of Essex* (1741). Original copy in the library of the Essex Society for Archaeology and History.
6. The manor of Battleswick is frequently referred to as 'The manor of Battleshall otherwise Battleswick.' To avoid unnecessary confusion, the name Battleswick has been adopted throughout. For a detailed map of the manor, see Keele Library BW 240 (1818); see also E.R.O. Q/RDc 17, 'Battleswick Enclosure Award' (1818).
7. V.C.H. ii, 'Table of Population' (1801-1901), pp. 343-54.
8. For land-tax returns, see E.R.O. Q/RP1. There is a complete run of land-tax returns for Colchester, St Giles parish, for the period 1778-1832. From about 1790 onwards, the names of the owners are listed alphabetically, and from 1826, descriptions of properties are included.
9. C.P.L. John Chapman and Peter Andre, 'A Map of the County of Essex' (1777).
10. C.P.L. O.S. 1-inch 1st edition (1805).

11. For rentals relating to Battleswick manor see K.U.L. BW 163-99. For West Donyland, see E.R.O. D/DE1 M135-40.
12. E.R.O. Q/RDc 17 'Enclosure Award' (1818).
13. *Chelmsford Chronicle*, 31 July 1812, p.2. Report on the trial at Essex Assizes concerning enclosure of Old Heath common.
14. E.R.O. D/DSr F6/2. Letter to the lord of West Donyland bearing date 11 April 1784.
15. K.U.L. BW 190, 199.
16. Morant, Colchester, pp. 92-3.
17. Vancouver, Essex, p. 185.
18. W.E.Tate, *A Domesday of English Enclosure Acts and Awards* (Reading 1978), *passim*.
19. E.R.O. Colchester Borough Assembly books, 10 vols, ix pp. 73-4.
20. *ibid.*, 'A Constitution for the sale of, and better regulating of, the commons or half year lands belonging to the burgesses of the borough of Colchester,' 18 August 1807.
21. K.U.L. BW 230 'Papers relating to Henry Thorn's bankruptcy' (June 1815).
22. *ibid.*, 'Indenture of Lease and Release dated 23, 24 September 1808.'
23. *ibid.*, 'Indenture of Lease and Release dated 16, 17 June 1804.'
24. H.L.L. 'Act of Parliament to Inclose Common and Waste Lands in the Manor of Battleshall, otherwise Battleswick,' (1811). See also the *Essex Herald*, 28 July 1812, p. 3.
25. E.R.O. Q/SBb 425/6. Letter written by Ralph Ward to Benjamin Strutt dated 30 September 1811.
26. E.R.O. Q/RDc 17a. 'Battleshall Inclosure Award,' (1818).
27. *ibid.*
28. *ibid.*
29. E.R.O. Q/SBb 425-6 (as above).
30. H.L.L. (as above).
31. E.R.O. 'Report of trial at Essex Assizes', *Chelmsford Chronicle*, 31 July 1812, p. 2.
32. E.R.O. Battleshall Inclosure Advertisement, *Chelmsford Chronicle*, 14 August 1812, p. 3
33. K.U.L. BW 230. Papers relating to Henry Thorn's bankruptcy, June 1815.
34. E.R.O. Q/RDc 17a (as above).
35. *ibid.*
36. *ibid.* See also E.R.O. Q/RDc 17b. Plan of the Inclosure of the manor of Battleshall (1818).
37. See for example W.E.Tate, 'The cost of Parliamentary Enclosure in England', *Economic History Review* (1952/53), 67, part 2, p. 265.
38. H.L.L. (as above).
39. E.R.O. *Chelmsford Chronicle*, 15 October 1813, p.1; 24 December 1813, p.1.
40. For a comprehensive index of Parliamentary Enclosure Awards in Essex see E.R.O. Catalogue of maps in the Essex Record Office (1947); also second supplement (1964) and third supplement (1968).
41. Lord Ernie, *English Farming, Past and Present*, 4th edn (1927), p. 305, citing A. Young's inquiry (1801) into the propriety of applying wastes to the better maintenance and support of the poor.
42. E.R.O. D/DSr F6/2.
43. E.R.O. Q/RP1 1108.

Notes to Appendix

1. Morant, Essex ii, pp. 185, 470.
2. *ibid.*, p. 470.
3. For part of this information I am indebted to Dr J. Cooper (V.C.H.), who allowed me access to the draft section for Donyland. See also K.U.L. BW 230 'Abstracts of Title to the Manor of Battleswick.'
4. Morant, Colchester, p. 137.