

Minutes of a Meeting of the Town Council held at the Town Hall, Rye, on Monday 27 September 2010

PRESENT Councillors Granville Bantick, John Breeds (**Mayor**), Jonathan Breeds, Brian Elliott, Bernardine Fiddimore, Lorna Hall (**Deputy Mayor**), Sonia Holmes, Jo Kirkham, Paul Osborne, Frank Palmer, Ian Potter, Shaun Rogers, Mary Smith, Sam Souster

IN ATTENDANCE Richard Farhall - Town Clerk; 27 members of the public

The meeting commenced at 7.10

The Mayor paid tribute to former Mayor, George Shackleton who had passed away recently – and asked those present to join him in observing a minute’s silence in his memory.

61 APOLOGIES

Apologies for absence – and the reasons logged with the Clerk – were accepted from Councillors David Russell and David Wright.

62 DISCLOSURES OF INTEREST

Cllr Sonia Holmes	<i>prejudicial</i>	item 65	RDC Member
Cllr Paul Osborne	<i>prejudicial</i>	item 65	RDC Member
Cllr Frank Palmer	<i>personal</i>	item 65	Rye allotment plot holder
Cllr Shaun Rogers	<i>personal</i>	item 65	Rye allotment plot holder
Cllr Mary Smith	<i>personal</i>	item 65	Rye Allotments Association Committee member & Rye allotment plot holder

63 COUNCIL MINUTES

RESOLVED To adopt the Minutes of the Council meeting held on 16 August 2010 (C5).

64 COMMITTEE MINUTES

a) Planning & Townscape

RESOLVED Adoption of the Minutes of the meetings held on 16 August 2010 (PT07), 31 August 2010 (PT08) and 13 September 2010 (PT09).

b) Policy, Committee & General Purposes Committee

RESOLVED 1

Minute 18 – Freda Gardham Playing Field

Not to accept the rent increase recommended and to agree that the rent payable by Rye Rugby FC for the next 5 years shall be frozen at £500pa.

RESOLVED 2 Adoption of the Minutes of the meeting held on 31 August 2010 (PR02) with the exception of the recommended rent rise at Minute 18.

c) **Public Services**

RESOLVED Adoption of the Minutes of the meetings held on 13 September 2010 (PS02)

65 ALLOTMENTS: APPLICATION FOR A RESTRICTION

Cllrs Holmes and Osborne both re-stated their prejudicial interest in this item and - in accordance with the Code of Conduct and Standing Orders – made the statements following:

Cllr Osborne This issue (the transfer of the allotment sites from RDC to RTC) was raised during his Mayoralty. RTC had chosen not to accept a 125-year lease and had instead run up legal fees of over £6,000. Assuming RTC had accepted a lease and subsequently negotiated a management arrangement with the Allotments Association then the Rye Special Expense could have been significantly reduced by now. Even RTC's own solicitor had, on a number of occasions, indicated that the lease offer should be afforded serious consideration. Furthermore, the signing of a lease would have protected both sites from development for its duration. He added that he was somewhat disadvantaged by having to declare prejudicial interests at meetings of both authorities.

Responding to Cllr Smith's suggestion that the matter would have been much simpler had RDC transferred the allotments back to RTC, Cllr Osborne stated that RTC voluntarily passed the sites to RDC and that RDC is the registered freeholder of the land.

Cllr Osborne left the Chamber.

Cllr Holmes considered that it was ridiculous that she, Cllr Osborne and Cllr Russell were not permitted to be present for the discussions on this matter. If RDC had returned the allotment sites earlier the legal fees incurred would not have been so high. Both morally and lawfully the owner of the land should be RTC.

Cllr Holmes left the Chamber.

In accordance with the Code of Conduct and Standing Orders, the Mayor asked the members of the public if they wished to make any statements on the item. The contributions from the Public Gallery included the comments following: 50% of Rye allotment land had been sold off already; a 2008 Cabinet Briefing paper prepared by the Director of Resources stated that RTC was the Allotments Authority, RDC is prohibited from proving allotments under the Allotments Acts – and clearly suggested that RDC considers both of the Rye sites to be 'developable'.

Members noted that:

- (a) The amount of legal fees actually paid in pursuit of the Town Council's claim for the return of the Rye's two remaining allotment sites was £2,300 (Gordon Nardall - £1,750; Hedleys - £550);
- (b) The legal fees outstanding as at 14 September 2010 were c£4,000 plus disbursements;
- (c) Rother District Council has lodged an Objection to the Town Council's application to register a Restriction on the Title to the South Undercliff allotments site;
- (d) The Land Registry has given the Town Council until noon on 8 October 2010 to decide whether or not to continue with the application;
- (e) If the Town Council decides to proceed and both it and Rother District Council can not – or will not - negotiate a settlement, the matter is automatically referred to the Adjudicator to HM Land Registry (at this point an application cannot normally be withdrawn);

- (f) The Adjudicator would then decide whether to hear the matter himself or to make a direction requiring one party (usually the applicant) to start court proceedings;
- (g) The adjudication procedure entails costs and the Adjudicator has the power to make an order for costs against either party;
- (h) The Town Council's solicitor has cautioned that the Town Council is reaching the point of 'rising costs' – citing £205 per hour for his time, Counsel's fees, court or adjudication fees and costs in cause (the winning party receiving their costs from the loser)

Cllr Smith read out a statement (see **Appendix**) on behalf of the Rye Allotments Association Committee.

RESOLVED To withdraw RTC's application to register a Restriction on the land comprising the South Undercliff Allotments on the grounds of the likely cost.

Clerk

The Clerk was asked to distribute a copy of the statement to all Members.

Clerk

Cllr Fiddimore thanked the Association for its clear and sensible approach to the matter.

66 URGENT ITEMS

There were no urgent items to consider.

The meeting ended at 7.56

Date Chairman

CG APPENDIX

Statement by Councillor Mary Smith to Rye Town Council 27 September 2010

Last year, on 31 March 2009, Rother District Council failed to comply with a request from Rye Town Council that it relinquish all functions concerning the management of Rye's two remaining statutory allotment sites. Since then, Rother District Council officials have become ever more deeply entrenched. On their side therefore is the legal adviser to Rother District Council, and, as far as can be ascertained, only him. Rother District Council signally refused to ask for a second legal opinion. When the Rye Allotments Association referred this to the Ombudsman for Local Government, the lady case officer first refused to consider it on the grounds that she had no jurisdiction, and then, on appeal, sided with RDC when they persuaded her that they were prepared to offer RTC a 99-year lease on its own property. She then closed the case. At no time was the point of the matter – a second opinion – addressed.

On Rye's side are Hedleys, the firm of specialist solicitors who first looked into the legal ownership of the sites some years ago, Mr Gordon Nardall QC, an expert in the field, and Mr Bryn Pugh, the legal adviser to the NSALG. In advice to the Rye Allotments Association, Mr Pugh has pointed out that there have been two court cases in recent years virtually identical to Rye's, and in both cases the parish (that is, the Town Council) won. The problem, of course, was that the costs of the cases fell on the local taxpayers, which is exactly what Rye Town Council is trying to avoid.

This natural desire by responsible members of RTC to avoid landing the people of Rye with a legal bill estimated at about £100,000 has been unscrupulously exploited by RDC officials and their supporters; every initiative by RTC has been met with a rejection by RDC amounting to "Take us to court". RDC's claim to title seems to rest solely on the fact that it registered itself as the owner with the Land Registry many years ago. Two years ago, a member of the Rye Allotments Association recommended putting a caution on the two entries at the Land Registry to warn anyone thinking of buying any allotment land that ownership was legally disputed. It was enquiries by the Association that unearthed the fact that East Sussex County Council had taken no "due diligence" before buying the large slice of the Love Lane site on which the primary school now stands. It is understood that RDC received £1.6 million for land it does not own.

When RDC learnt that RTC intended to put a caution on the sale of South Undercliff land for building purposes, the response was immediate objection. Since the idea was first mooted, the law relating to entries at the Land Registry has changed significantly. In order to discourage frivolous cautions, new and legally strict rules have been introduced. As we now know, both the costs of what is now a legally enforceable restriction on the sale and use of land, and the consequences of applying for it, have changed dramatically. Apart from the issue of escalating costs spelled out by Hedleys, there is the problem of an adjudicator weighing the issues and ordering Rye Town Council to go to Court – which is exactly what RTC is trying to avoid. No wonder Rother District Council is resisting the restriction. Rye Town Council must notify the Land Registry by 8th October if the application for the restriction is to be withdrawn, and the Rye Allotments Association is supportive of this action. It must not be forgotten that withdrawing an application for restriction now does not prevent such action in the future, especially since there are two sites.

There is a way out of all this. We are currently awaiting a reply by Mr Eric Pickles, the Secretary of State for Communities and Local Government. He is being asked to reverse the unlawful transfer of 1976. He has been approached by Hedleys on behalf of RTC, and also by Ms Amber Rudd who has passed on to him cogent arguments in favour of the reversal put forward by the Rye Allotments Association.

If he decides in Rye's favour, we suspect that RDC, being so deeply entrenched, will appeal. On the other hand he might decide that he cannot intervene in what RDC is representing as a complex legal issue when in fact it is a simple moral and political one; in other words, only a Court of Law can decide. But until we know his decision, no action can be taken, and it goes without saying that he has been approached by RDC officials.

Accordingly, those who are fighting to have the management of Rye's two remaining allotments sites returned to Rye have decided that the optimum course of action is as follows:

First, notify the Land Registry that the application for a restriction on the South Undercliff site is being withdrawn on grounds of costs.

Second, again on grounds of costs, impose a moratorium on further legal action.

Third, step up the campaign being organized by the Rye Allotments Association. It must be made absolutely plain that this is not a party political matter. However, the overwhelming majority of Rother district councillors all belong to one party.

Fourth, use procedures now legally available to the people of Rye such as a Community petition. The Association has, over a number of years, proved itself capable of a high degree of organisation, and such an approach is well within its capabilities.

And fifthly, keep in reserve perfectly legal actions about which RDC officials and their supporters have no inkling – but we will cross that bridge when we come to it.