

**TOWN CLERK BRIEFING NOTE****58 ALLOTMENTS**

The Department for Communities and Local Government takes the view that the issue of ownership of Rye's allotments is a matter for the RTC and RDC to resolve.

I would suggest that – more especially in the current funding climate – local taxpayers would take a dim view of one local authority taking legal action against another.

Members might like to consider the following (sequential) possible courses of action:

1 Asking Amber Rudd to review the dispute, form an opinion and (assuming she is well disposed towards the Town Council's position) make representations to the Secretary of State, Eric Pickles (directly) and RDC.

*If this does not bear fruit:*

2 Support any member of the community wishing to bring public pressure to bear on RDC through its Petitions Scheme.

RDC's Petitions Policy is rooted in the Local Democracy, Economic and Construction Act 2009 and the Local Authorities(Petitions)(England) Order 2010 (SI2010/898).

Under RDC's scheme any Rother resident – or person studying or working in Rother - can submit a petition if it includes 10+ signatures. I would suggest that it would be desirable for the petition organiser to aim to secure 1,500 signatures as this would trigger automatically a full Council debate. Under the 2009 Act signatories do not have to have attained 18 years of age.

Although I could assist with the construction of a petition, given RTC's clearly stated position on the question of ownership of the two allotment sites I would suggest it would not be appropriate for a RTC Member or employee to be the petitioner.

Although the Act requires local authorities to respond positively to petitions they are not required to take action in response to a petition if it considers it is 'vexatious, abusive or otherwise inappropriate'. Communities and Local Government guidance states 'the types of petitions which local authorities may consider inappropriate include those relating to matters which are part of *ongoing* legal proceedings . . . ' Therefore, in order to minimise the risk of RDC declining to take action in response to a petition, it would be necessary for RTC to advise RDC that (for example) in view of the current pressures on public sector expenditure it has decided not to pursue a legal remedy in support of its view that ownership of the sites properly rests with RTC.

## **Rye Town Council**

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**From:** "Ian Davison" <I.Davison@hedleys-solicitors.co.uk>  
**To:** "Tom Foster" <Tom.Foster@communities.gsi.gov.uk>  
**Cc:** "Rye Town Council" <townhall@ryetowncouncil.gov.uk>  
**Sent:** 10 August 2010 11:47  
**Subject:** Rye allotments  
Tom

Thank you for your letter and for your further explanation.

While I do not agree with the analysis in the penultimate paragraph of your letter because the power in s 254 is widely drawn to enable the Department to do exactly what I have asked (and, indeed, this is just the use to which the Department put the power in 1976), I can understand that the Department would not wish to act in the absence of the agreement of the parties.

I have informed the Town Council of the Department's view.

Ian Davison  
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Mr Ian Davison  
Hedleys Solicitors  
6 Bishopmead Parade  
East Horsley  
Surrey KT24 6SR

Dear Mr Davison

Thank you for your letter of the 27th July concerning allotment land at South Undercliff and Love Lane Rye and its proposed transfer back from Rother District Council to Rye Town Council for use as allotment land .

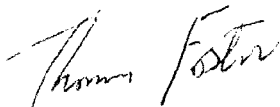
We consider this to be a matter for the councils to resolve between themselves.

In any event the power under section 254 is only to make incidental, consequential, transitional or supplementary provisions necessary for a purpose of the 1972 Act. If you would like the Secretary of State for CLG to use this power, you will need to set out the relevant purpose(s) and why the use of the power is necessary and appropriate

We do not consider that paragraph 9 of Schedule 29 to the 1972 Act is a relevant provision in this case. It is there to resolve any conflict that may arise over which authority can exercise certain functions. It does not relate to the ownership of land or demonstrate a purpose of the Act beyond the purpose of avoiding ambiguity.

I hope you find this information useful.

Yours sincerely



Tom Foster

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Communities and Local Government  
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SW1E 5DU

Date: 27 July 2010  
Our ref: IRD/RYE0011  
Your ref: Tom Foster

Dear Mr Foster,

**LAND AT SOUTH UNDERCLIFF AND LOVE LANE RYE EAST SUSSEX**

Thank you for your helpful letter which I received on 21 July 2010.

I am sorry that my letter was not sufficiently clear about what the Town Council is seeking to achieve.

The two parcels of land became vested in the Town Council by virtue of the Local Authorities (England) (Property etc) Order 1973/1861 with effect from 1 April 1974 because the Town Council was the sole allotment authority from that date pursuant to sch 29 paragraph 9 to the Local Government Act 1972 . That general order was made under s 254(1), (2) of the Local Government Act 1972. However in 1976 the Town Council wished to divest itself of the land. The Secretary of State therefore made a specific order under s 254(1) of the 1972 Act (to which the general order of 1973 took subject (see Article 5 of the 1973 Order)). So far as I can ascertain the Order only transferred to the District Council the land and not the function of providing allotments. Since 1976 the District Council, while using part of the land transferred for non-statutory allotments, has over the years transferred parts of the allotment site to third parties.

The Town Council as statutory allotment authority now wishes to recover the remaining part of the allotment land for use as and to safeguard the same for allotments.

I realise that a freehold transfer can and ideally should be effected but that requires willing parties. The District Council does not wish to transfer the freehold of the sites.

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The District Council has, however, offered long leases of the sites but the Town Council does not wish to take a lease or leases.

The Secretary of State has power to make an order under s 254 to restore (the remaining balance of) the allotment land to the Town Council for the purpose of giving effect to sch 29 para 9 to the 1972 Act. There is no requirement for the District Council's agreement.

I look forward to hearing from you.

I have sent a copy of this letter to the Town Council and to the Solicitor to Rother District Council.

Yours faithfully

Ian Davison  
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