

C10 ITEM 127

Rye Town Council

From: "Ian Davison" <I.Davison@hedleys-solicitors.co.uk>
To: <Contactus@communities.gsi.gov.uk>
Cc: "Richard Farhall" <ryetowncouncil@btconnect.com>
Sent: 23 March 2010 09:09
Subject: FW: Rother District Council Transfer Order September 1976
Please see the attached message to which I have not received a reply.

I look forward to hearing from you by return.

Ian Davison

Hedleys Solicitors LLP

01483 284567

Privacy and Confidentiality Notice

This e-mail message is sent on behalf of Hedleys Solicitors LLP (a limited liability partnership registered in England no. OC310564 at 6 Bishopsmead Parade, East Horsley, Surrey KT24 6SR) and is strictly confidential and intended solely for the person or organisation to whom it is addressed. It may contain privileged and confidential information and if you are not an intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received this message in error, please notify us as soon as possible (tel. +44 (0)1483 284567 or reception@hedleys-solicitors.co.uk) and delete it and any attached files from your system.

From: Ian Davison
Sent: 08 March 2010 14:01
To: 'Contactus@communities.gsi.gov.uk'
Subject: Rother District Council Transfer Order September 1976

I have been instructed by Rye Town Council in connection with land currently held by Rother District Council, East Sussex.

Before 1974 and between 1974 and 1976 the land was held by the Town Council and its predecessor Rye Borough Council. In 1976 various parcels of land (including some of historical property and others of allotment land) were transferred from the Town Council to the District Council by an Order in Council made by the Secretary of State. The date of the Order was around September 1976. The Order was preceded by an agreement dated 31 March 1976 and made between (inter alios) the Town Council and the District Council providing for the transfer of responsibilities in advance of the Order. The agreement recited that so far as the allotment land was concerned it was the intention that the land would be used for concurrent functions.

The Town Council is anxious to clarify (a) the status of the allotment land (b) the purposes for which it is held and to which statutory purpose it is to be or may be put and (c) to secure if possible the retransfer of the land.

I should be grateful if you could let me have a copy of the order as a first step in these processes or details of the Order sufficient to enable the Town Council to ascertain whether there are any restrictions as to user. If you have any other information which may be of use, I should be glad to hear.

To assist you in your search, I have a copy of a letter from the Department dated 13 May 1976 (your reference LG4/5207/185/1) and another dated 25 October 2000 from Colin Lovegrove of Regeneration Division 1, Urban Environmental Regeneration Branch, which refer to these matters.

I look forward to hearing from you.

Ian Davison

Hedleys Solicitors LLP

01483 284567

Privacy and Confidentiality Notice

This e-mail message is sent on behalf of Hedleys Solicitors LLP (a limited liability partnership registered in England no. OC310564 at 6 Bishopsmead Parade, East Horsley, Surrey KT24 6SR) and is strictly confidential and intended solely for the person or organisation to whom it is addressed. It may contain privileged and confidential information and if you are not an intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received this message in error, please notify us as soon as possible (tel. +44 (0)1483 284567 or reception@hedleys-solicitors.co.uk) and delete it and any attached files from your system.

C10 ITEM 127

Rye Town Council

From: "Ian Davison" <I.Davison@hedleys-solicitors.co.uk>
To: "Richard Farhall" <ryetowncouncil@btconnect.com>
Sent: 12 March 2010 13:15
Subject: RE: RYE0011 letter to Clerk 9.3.10
Richard

The costs involved in a retransfer are tricky to estimate because of the two-stage process: agreeing and documenting any deal with the District Council and then dealing with the Secretary of State. I suggest that you put £1,500 into your budget in the hope that the costs will fall short of that.

If RDC does not agree to the retransfer or any other steps then we are where we are now. The restriction route is a unilateral action.

Presumably the Town Council will have made appropriate provision for the management and the costs of managing the allotments if they returned to the Town Council.

If you want me to take up matters with either RDC or the Secretary of State or both, please let me know.

Ian Davison
Hedleys Solicitors LLP
01483 284567

Privacy and Confidentiality Notice

This e-mail message is sent on behalf of Hedleys Solicitors LLP (a limited liability partnership registered in England no. OC310564 at 6 Bishopsmead Parade, East Horsley, Surrey KT24 6SR) and is strictly confidential and intended solely for the person or organisation to whom it is addressed. It may contain privileged and confidential information and if you are not an intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received this message in error, please notify us as soon as possible (tel. +44 (0)1483 284567 or reception@hedleys-solicitors.co.uk) and delete it and any attached files from your system.

-----Original Message-----

From: Richard Farhall [mailto:ryetowncouncil@btconnect.com]
Sent: 12 March 2010 11:55
To: Ian Davison
Subject: RE: RYE0011 letter to Clerk 9.3.10

Hello Ian

Option C: Assuming RDC agreed to the 're-transfer' (by no means certain!) could you estimate how much the Town Council might need to spend on legal advice/representation?

Also, what are the implications - especially cost - of RDC not agreeing to the re-transfer?

Thank you

Richard

From: Ian Davison [mailto:I.Davison@hedleys-solicitors.co.uk]
Sent: Fri 12/03/2010 09:35
To: Rye Town Council
Subject: RE: RYE0011 letter to Clerk 9.3.10

Richard

Thank you for your message.

I am grateful for your confirmation about the future intended use.

Option (d) refers to a restrictive covenant affecting the freehold and would bind RDC. What RDC would have been looking for would have been a leasehold covenant binding The Town Council.

I shall await your instructions re (e).

Option (c) essentially replicates the 1976 transaction in reverse. If an agreement were actually necessary then I anticipate that it could be as simple as that of 1976. If the parties were agreeable to the retransfer, then resolutions by the two authorities followed by letters to the Secretary of State would be sufficient. The 1976 agreement preceded the order by several months (presumably) to record the transfer of responsibilities from the beginning of the financial year.

I await your further instructions.

Ian Davison

Hedleys Solicitors LLP

01483 284567

Privacy and Confidentiality Notice

This e-mail message is sent on behalf of Hedleys Solicitors LLP (a limited liability partnership registered in England no. OC310564 at 6 Bishopsmead Parade, East Horsley, Surrey KT24 6SR) and is strictly confidential and intended solely for the person or organisation to whom it is addressed. It may contain privileged and confidential information and if you are not an intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received this message in

15/03/2010

error, please notify us as soon as possible (tel. +44 (0)1483 284567 or reception@hedleys-solicitors.co.uk) and delete it and any attached files from your system.

From: Rye Town Council [mailto:ryetowncouncil@btconnect.com]
Sent: 10 March 2010 10:12
To: Ian Davison
Subject: Re: RYE0011 letter to Clerk 9.3.10

Hello Ian

My understanding is that there was a disposal of allotment land to the County Council for 'educational use'. The Town Council has no desire for the two allotments sites to be used for anything other than allotments!

As far as the options are concerned:

(d) RDC has already offered to agree formally not to use the land for anything other than allotments but I believe its preference is to insert a clause within the (unacceptable) proposed 125-year lease. However, there is no harm in asking!

(e) I anticipate that the Town Council will support this course of action and will return to you as soon as I have confirmation.

(c) Of all the options I would envisage this is the one the Town Council will wish to give serious consideration. You have mentioned that the Secretary of State is unlikely to proceed if there were a dispute. There clearly is - so, if we were to seek 'an order to give effect to an agreement', the question Members will ask is 'what form might the agreement take?' - followed by: 'how much is this likely to cost?!' Could you address these two questions please?

I am looking to put this information to Members no later than their meeting scheduled for 29 March and would be aiming to publish the agenda 22 March.

Thank you

Richard

Richard Farhall
Clerk to Rye Town Council
Town Hall
Rye
East Sussex
TN31 7LA

Date: 09 March 2010

Our ref: IRD/RYE0011

Your ref:

Dear Richard,

RYE ALLOTMENTS

I refer to our previous correspondence in this matter and apologise for the delay in giving you further advice. Thank you in particular for your candid and helpful message of 4 February 2010.

It is undeniable that Rother District Council holds the two parcels of land and has good title to them.

While I have still not had sight of the transfer order itself (although I have written to the Department for Communities and Local Government requesting a copy), the paving agreement of 31 March 1976 is instructive. The agreement would have been spent upon the Order's taking effect. However, it recites two matters:

- (a) that the District Council will take on the concurrent functions and
- (b) that the District Council will assume responsibility for the historical property.

I assume that the historical property comprises: the Landgate, Ypres Tower, the town wall and the cistern and pump.

I also note that the land apparently being used as allotments at Love Lane (1.179 ha?) is now significantly less than that which was transferred under the Order (3.346 ha). Is my understanding correct? Was the balance sold to the County Council in 1993?

The District Council is not the statutory allotment authority under the Allotments Act 1908-1950 in parished areas and cannot therefore exercise a concurrent function as such. However, a

Offices at Bookham and Croydon

Members/Partners: Roger S Taylor (Notary Public) Christopher Hughes (Notary Public) Sarah E Christmas

Consultant: Ole H Lav Associates: Anne Bott Ian Davison Lewis J Hulatt Kate Jackson Conveyancer: Sonia Gould (FILEX)

Hedleys Solicitors LLP is a Limited Liability Partnership Registered in England No OC310564

Registered office at 6 Bishopsmead Parade, East Horsley, Surrey, KT24 6SR

Hedleys Solicitors LLP is regulated by the Solicitors Regulation Authority reference no. 420576

A member of the International Practice Group

District Council may provide allotments on land held for other purposes e.g. under the Local Government Act 1972, the Public Health Act 1875 or the Housing Acts. To this extent a District Council can exercise a concurrent function of providing allotments albeit under other powers. Of course, land held under these various other provisions can be appropriated to other purposes and the District Council can, subject to any specific requirements, dispose of such land.

Your account was illuminating in that there is:

- (a) a hangover from 1974
- (b) a feeling that the Town Council was rather hasty in divesting itself of its assets
- (c) that there is a (somewhat familiar) feeling of remoteness from the District Council and a political tussle over the delivery of functions on a more local basis
- (d) a genuine concern over double taxation
- (e) parish councils are becoming (and are being encouraged to become) more muscular in their activities and to seek and to obtain the devolution of functions from county and district councils, see e.g. the quality council scheme and the consequences of the Local Government and Public Involvement in Health Act 2007
- (f) some suspicion about the District Council's intentions over the future of the allotment sites.

I pose a question about the Town Council's real purpose in wanting to secure the land if only to allay any suspicion: is it to preserve the land for allotments or is there an ulterior motive? I am aware that certain of the land may have been transferred by the Town Council to the County Council for education purposes as long ago as 1958 and by the District Council to the County Council in 1993. This may throw doubt on the importance of the land as allotments, although times and the demand and need for allotments have changed. I would find it difficult to pursue a way forward if the real motivation were other than to secure the land for allotments. It is not, of course, improper for the Town Council to seek to recover the land for other purposes but the Council should be clear and transparent about such action in the public interest and in any event must be certain about it wants to achieve.

It seems to me that the Town Council has the following options:

- (a) to seek a transfer of the land from the District Council (i.e. buy it). The District Council is empowered to transfer for a nominal consideration subject to the terms of the General Consent;
- (b) to seek a long lease (e.g. 125 years) from the District Council. This has been offered. Again, this can be for a nominal consideration;
- (c) to ask the Secretary of State to make a fresh order transferring the land. While I have not taken up the matter with the Department for Communities and Local Government, the Secretary of State is unlikely to proceed if there were a dispute but might be persuaded to make an order to give effect to an agreement;
- (d) to invite the District Council to enter into a restrictive covenant whereby the District Council agrees not to use the land other than as allotments. Such an agreement will be protectable in the charges register of the title;
- (e) to register a notice or restriction on the titles. A notice is essentially a warning to anyone wishing to deal with the land that there is a third party interest to be protected. A restriction prohibits the making of an entry in the register of a disposition or a disposition of a specified kind;
- (f) to offer to act as the District Council's agent to manage the allotments. This would not affect the District Council's ability to deal with the land or its ability to withdraw any agency;

- (g) to suggest to the District Council that the District Council acts as the Town Council's agent in the exercise of the Town Council's powers under the Allotment Acts;
- (h) do nothing.

I have requisitioned fresh official copies of the titles as the last versions are nine years old and I have also drafted forms of restrictions. The Land Registry's fees alone for the applications for the registrations of restrictions are £100 each. I cannot say that such applications will be successful. As soon as I have all the relevant information to hand, I shall proceed to make those applications unless you instruct me otherwise.

Frankly, I would urge the Town Council to take a considered and pragmatic view about what it wants to achieve; if it wants to protect the land for allotments, it should concentrate on this objective.

If you wish to discuss any of the points which I have made, please feel free to call me.

Yours sincerely

Ian Davison
Hedleys Solicitors LLP
Email: i.davison@hedleys-solicitors.co.uk