

Report to	-	Cabinet
Date	-	7 December 2009
Report of the	-	Director of Resources
Subject	-	Rye Allotments

Recommendation: It be **RESOLVED** that the action taken in respect of the allotments at Love Lane and South Undercliff, Rye is noted.

Head of Service: Suzanne Grisbrook

Lead Cabinet Members: Councillors Jenkins and Russell

Introduction

1. A report was submitted to Cabinet on 9 June 2008 outlining a proposed course of action over the allotments in Rye (Minute CB08/17 refers).
2. Following agreement at Cabinet there have been ongoing discussions with Rye Town Council (RTC) regarding management of the allotments, which culminated in a without prejudice/subject to lease offer from Rother District Council (RDC) of a long lease at a peppercorn rent (my letter dated 12 March 2009 attached at Appendix 1 refers).
3. RTC wrote to RDC on 23 September 2009 (copy attached at Appendix 2) declining the offer of a lease and informing RDC that it would be examining the option of taking legal action to reclaim (sic) the allotment land.
4. A further letter was sent to RTC on 1 October 2009 (copy attached at Appendix 3) expressing concern over the stance taken by the Town Council, restating Rother's view and urging them to reconsider their position. An email sent by the Town Clerk on 29 October reaffirmed the Town Council's position and stated "...Having now categorically rejected any notion of a lease – and in furtherance of the Town Council's desire to secure the return to it of the two sites – I have been asked to revert to the Town Council solicitors with a view to obtaining further advice, including 'best estimates' for the likely costs of arbitration/mediation and litigation...".

Background

5. The land in question was transferred to RDC as a consequence of the 1974 local government reorganisation, when RDC succeeded to most of the functions of the former Rye Borough Council, whilst RTC was set up to perform the role of a Parish Council in the former Rye BC area, which had not previously had a Parish/Town Council. The basis of RTC's claim is that the land should have been allocated to them in 1974 and there was an undocumented arrangement between the two Councils which they are now purporting to revoke. It was considered by Officers that the land was regarded

as ultimately suitable for development with use for allotments being temporary only and therefore the land came to Rother District Council, as the successor to Rye BC (which was a multi-purpose local authority with Housing, Planning, Environmental etc functions), and not the new Rye Town Council. RDC transferred Rye BC's Town Hall to the new RTC which uses it as a base, and it has cultivated historical associations with the Rye BC that was abolished in 1974 and the previous Corporations going back to medieval times. It is valuable that RTC, in addition to functioning as a Parish Council, preserves Rye's civic traditions, but its doing so may have caused confusion with calls for RTC (which did not exist before 1974) to "take back" assets of the former Rye BC which passed to RDC on reorganisation. Rother's title to the land does not just depend upon its use and occupation of the land since 1974; since 1980 it has been registered as the freehold owner of the land comprising the allotments and other land at the Land Registry, with no reference being made to RTC having any interest in the land. This is inconsistent with the agreement that RTC alleges.

6. RTC did seek Counsel's opinion at an early stage and, while the view was that there may be some merit in a claim (based on the alleged but undocumented agreement), it was suggested that the Town Council should seek a negotiated settlement of the matter.
7. Furthermore, RTC claims that they are the allotment authority for Rye and should therefore have the land in question. RDC does not dispute this claim and the Town Council are of course at liberty to purchase land for that purpose. RDC has its own powers under general well being (under the Local Government Act 2000) and has always been able to provide temporary allotments generally and also statutory allotments within Bexhill, where there are a number of sites. The operation of the allotments at Rye by RDC is therefore not ultra vires.
8. It is not this Authority's wish to enter into a legal dispute with one of its Town Councils as, at the end of the day, local taxpayers will foot the bill, whoever wins. Therefore, in line with many other such arrangements with Parish Councils, an offer was made, subject to contract, of a long term lease at a peppercorn rent which, as stated previously, has been declined. This offer would enable RTC to use the land to provide allotments for the duration of the Lease, e.g. 99 years, but they would not be able to sell the land for development, so to that extent the allotments would be even more secure.
9. RTC have said they wish to explore the costs of arbitration and legal action. Officers have expressed the view that arbitration is not a cheap alternative to legal action and would still entail the public purse in considerable expense, and that only the Courts would be able to determine what seems to be merely a point of legal principle for RTC. Furthermore, it is the view of Officers that the offer made to RTC is reasonable and in line with our practice with other Parish Councils. Rother will therefore not agree to arbitration.
10. Much of the drive against the Town Council accepting Rother's offer appears to be coming from the Rye Allotment Association, and it appears that RTC would not undertake management of the allotments itself, but would pass them on to this association. That in itself is a cause of concern in relation to issues such as allocation, and the Lease would ensure that these aspects were dealt with by the Town Council itself as a public authority subject to

Equalities legislation. The Association have pursued the situation on the basis that RDC 'claim' to own the land in question, as if its ownership were presently undetermined. This argument can be dismissed by a simple check of the Land Registry records that will show that RDC is the registered owner of the land in question and therefore does not claim to own the allotment land; it actually does own it, as can be seen from the Land Registry entries attached at Appendices 4 and 5.

11. The Allotment Association have also taken RDC to the Local Government Ombudsman. The Ombudsman's view was that the case fell outside their remit but did express the view that, "...the Council has offered to lease the land to you...and if you felt able to accept this offer, it would avoid expensive legal action. In my view this represents a compromise which I cannot say is unreasonable."

The Way Forward

12. Now that RTC has formally rejected the offer of a lease it is proposed that Rother discontinues any further discussion on the issue and that the offer of a lease is formally withdrawn, but that I remain authorised to renew it in order to achieve a settlement. It will then be for RTC to take such action as they consider appropriate. If proceedings are commenced, they will be defended.
13. Rother will continue to operate the allotments as it does now and therefore there will be no change in service delivery to the Rye allotment holders.

Malcolm Johnston
Director of Resources

Risk Assessment Statement

There is a risk that Rye Town Council will instigate legal proceedings against Rother District Council. It is the view of Officers that Rother's case would prevail and we would of course seek full costs. The financial risk to this Council is therefore low, but if RTC embarked on litigation at a total cost (for both parties) approaching £100,000 their own finances would be destabilised leading to an increase in Rye residents' Council Tax of up to £50 for a Band D property.

C8 ITEM 97

Dear Richard

As a resident of Rye and an allotment holder I have been following the debate over the ownership of the allotments with interest. I attended the Rye Town Council (RTC) meeting on 26 October and was pleased that the Rother District Council (RDC) offer was rejected. However, I am concerned that the worry expressed by several Councillors over potential costs (not yet quantified) may result in a decision that would prejudice Rye's claims to these properties.

I wonder therefore, if RTC has considered the merits of registering a caution at HM Land Registry (HMLR) against the allotment property titles. As I understand the process if there is a dispute involving land registered at HMLR a party can register a caution. This has the effect of stopping the registered owner dealing with that property until they can satisfy HMLR that there is no case to answer. I do not believe there is a cost in registering a caution or if there is it is minimal. (Details from: http://www1.landregistry.gov.uk/docs/html/practice_guides/lrpg019.htm#2.1notices)

I would suggest that RTC register a caution setting out the facts concerning the transfer. In effect the land was transferred by RTC to RDC in 1976, but the then councillors had not taken into account the provisions of the Local Government Act 1972. The National Society of Allotment and Leisure Gardeners (NSALG) have advised that:

*'Pursuant to the provisions of **paragraph 9 sub-paragraph (1) of Schedule 29 to the Local Government Act 1972 and Regulation 10 Statutory Instrument 199/545**, where there is a DC and a PC (TC) for the same go-municipal area, a DC has neither power nor authority where allotments are concerned'.*

Thus RTC did not have the power to transfer the asset at that time, nor did RDC have the authority to run the allotments.

If this is accompanied by the evidence that the Allotment society obtained from the County Records Office showing that the land was specifically purchased for Allotments (thus proving that they are Statutory Allotments under the 1925 Allotment Act), RDC would have a very difficult job in lifting the caution, thus safeguarding the sites from disposal pending a satisfactory outcome of RTC's claim.

If the caution is successful it may stiffen the resolve of the RTC Councillors to pursue this matter. If nothing else it may result in the HMLR amending the Charges Register to the effect that the land relates to Statutory Allotments. Thus if, or when, RDC come to sell/transfer any land solicitors would be alerted to the need for the Secretary of State's approval.

As this is a no or low cost option I should imagine that there would be sufficient support from RTC councillors to pursue this further.

Perhaps once you have considered the above perhaps you could give me a ring to discuss the merits of this course of action.

Yours sincerely

Nigel Jennings
3 November 2009

16 Love Lane, Rye TN31 7NE
Tel: 01797 226603 (Home)
0300 060 4787 (Work)
Email: nigel.3djennings@homecall.co.uk