

Rosalind/Richard,

Thanks for copying me in on these e-mails, but I really don't think they or Mr Pugh's letter take this matter any further forward. I have made the position in relation to this land clear in previous correspondence.

In my letter of 22 August 2006 I discussed the possibility of Rye Town Council obtaining Counsel's Advice. If they do, I will be happy to consider it

Regards,

David.

David Edwards

Legal Services Manager, Rother D.C.

Town Hall, Bexhill TN39 3JX Tel: 01424-787840

www.rother.gov.uk



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**National Society of
Allotment & Leisure
Gardeners Limited**

Registered Office:
O'Dell House
Hunters Road
Corby, Northants
NN17 5JE

**Mr R Farhall, Clerk
Rye Town Council
Town Hall
Rye
East Sussex TN31 7LA**

5th July 2007

Dear Mr. Farhall,

I thank you for your recent letter.

As I emphasised to you in my previous letter : the obligation to provide allotments is in **s. 23 (1) Small Holdings and Allotments Act 1908**. There is no obligation to provide in **s. 2 LGA 2000** regardless of how hard any attempt is made at a purposive or teleological interpretation of the said **s.2**. Hence it is my opinion that the DC, here, engages in casuistry.

It follows that the DC has put the TC in Breach of its (the TCs) obligation to provide and to let allotments, pursuant to the provisions of the said **s. 23 (1)**.

It seems to me feasible for the TC to make application to the High Court for a declaration that the DC is obliged to transfer control of allotments to the TC, in accordance with the provisions of **para 9 (1) of Schedule 29 to the LGA 1972**.

Rye TC has, in any event, powers of compulsory hiring of land for allotments which derive from **section 39 subsection (2) Small Holdings and Allotments Act 1908**. As to the mention of 'market rate', any such hiring would be at agricultural, not development, rents.

I trust this information will be of some help to you.

Yours sincerely

Bryn Pugh

Bryn Pugh BA (Law) LL.M., Legal Consultant, NSALG

Tel: 01536 266576 Fax: 01536 264509 Email: natsoc@nsalg.org.uk Web: www.nsalg.org.uk

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Rye Town Council LTO2 ITEM 21

Richard Farhall
Town Clerk

Phone 01797 223902
Fax 01797 227706
Email townhall@ryetowncouncil.gov.uk



Town Hall
Rye
East Sussex
TN31 7LA

Bryn Pugh
National Society of Allotment & Leisure Gardeners
O'Dell House
Hunters Road
Corby
NN17 5JE

28 June 2007

Dear Mr Pugh

Allotments at Rye, East Sussex

Thank you for comprehensive response to my letter of 6 June.

I am able to add a little more to the District Council's position in this matter: it believes it has the power to provide 'informal allotments' under s.2 of the LGA 2000 and has suggested that an Order by the Court that it should not would not result in the land being passed to Rye Town Council. Rother DC, it is suggested, would then find some alternative use for the land (if you recall Rother DC does not accept that the allotments are 'statutory') and Rye TC would then have to acquire alternative land at market value to accommodate displaced allotment holders.

This Council should appreciate your opinion on this point and also your guidance on how it should pursue this matter further.

Yours sincerely

Richard Farhall



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C702 ITEM 21

Registered Office:
O'Dell House
Hunters Road
Corby, Northants
NN17 5JE

Mr R Farhall, Town Clerk
Rye Town Council
Town Hall
Rye
East Sussex
TN31 7LA

25 JUN 2007
19th June 2007

Dear Mr. Farhall,

In response to your letter and attachments of 6th inst.

It is my opinion that when the Love Lane and South Undercliff sites were transferred to Rother DC, the land was acquired by the said Rother DC as land for allotments.

Hence the sites under examination were "land acquired for allotments" by Rother DC, within the meaning of **section 8 Allotments Act 1925**. The claim that the said land is held pursuant to **unstated** provisions of the Local Government Act 1972 is, in my opinion, specious.

I should require cogent evidence to the effect that the said sites are anything other than Statutory allotments land within **section 8 Allotments Act 1925**.

I am of further opinion that the provisions of **paragraph 9 sub-paragraph (1) of Schedule 29** to the **Local Government Act 1972** can only reasonably be construed as saying that the District Council, here, is under obligation to pass control of the said sites to the appropriate Parish Council. Nor does the said sub-paragraph make any mention of compensation, or any other monetary payment, in respect of any such mandatory transfer.

The Titles referred to make reference to transfer pursuant to the Local Government Act, which lends weight to my argument above as to the effect of **para 9 sub-para (1) of Schedule 29** to that Act. In any event, failure or neglect by the DC to make the said transfer places the PC in breach of two Statutory and hence mandatory duties which derive from the provisions of **section 23 subsection (1) Small Holdings and Allotments Act 1908** :

- please see over -

- to provide a sufficient number of allotments; and
- to let these to folk who wish to take them.

I am of further opinion that the said **Small Holdings and Allotments Act 1908** falls within "some other Act" referred to in the Titles.

It seems to me that if the PC were to have Action taken against it by an aggrieved person or aggrieved persons, in Breach of Statutory Duty where **s. 23 (1)** is concerned, the DC might be joined as co-Defendant, since its inaction in transfer, above, as stated, places the PC in Breach of the Statutory Duties to provide, and to let, allotments.

It is arguable that the PC might pursue the DC in Breach of Statutory Duty, and seek at least a Declaration that the DC is obliged to transfer the sites under consideration to the PC, pursuant to the provisions of **para 9 sub-para (1)** of **Schedule 29** to the **LGAct 1972**.

Sections 25 and 39 Small Holdings and Allotments Act 1908 confer powers of compulsory acquisition of land for allotments on the PC. It follows that the duties of provision and letting in **s. 23 (1) *ibid.*** are absolute, and admit of no defence. There is no express or implied reference to compensation in respect of any such acquisition in the Act of 1908.

I hope this information will be of some help to you. Should you wish to discuss these matters further, I am at your instructions. I have 'copied in' Mr Godwin, Secretary, Rye Allotments Association, to this letter.

Yours sincerely



Bryn Pugh BA (Law) LL.M.

Legal Consultant, NSALG

Cinque Port Town of Rye

Rye Town Council

Richard Farhall
Town Clerk

Phone 01797 223902
Fax 01797 227706
Email townhall@ryetowncouncil.gov.uk



Town Hall
Rye
East Sussex
TN31 7LA

Geoff Stokes
Secretary
National Society of Allotment & Leisure Gardeners
O'Dell House
Hunters Road
Corby
NN17 5JE

6 June 2007

Membership No. S2453A

Dear Mr Stokes

Allotments at Rye, East Sussex

My Council should appreciate the Society's guidance in relation to the legal status – and lawful ownership – of Rye's two remaining allotment sites: Love Lane and South Undercliff.

During the last major reorganisation of local government (1972-74) these sites were transferred from Rye Borough Council (now defunct) to the newly created Rother District Council, which has managed them ever since. Rye Town Council - the successor to Rye Borough - was created in 1974.

The essence of Rye Town Council's dispute with Rother District Council (RDC) is as follows:

- 1 RDC contends that at the time of the transfer of the sites no documentary evidence was provided indicating that the sites were acquired or held under section 8 of the Allotments Act 1925. According, it maintains that the land is held and subject to the provisions of the Local Government Act 1972.
- 2 In relation to the Love Lane site, the plan attached to the Land Registry entry for the site (Title no. ESX65343) shows clearly the land marked as 'Allotment Gardens'. In respect of South Undercliff (ESX62521), 'allotment gardens' are mentioned explicitly within the Property Register, as well as the plan. Both Titles show RDC as the Proprietor with the Restriction following: 'Except under an order of the registrar no disposition by the proprietor of the land is to be registered unless made in accordance with the Local Government Act 1972 or some other Act or authority.'
- 3 Another of your Society's members, Rye Allotments Holders' Association (which supports the transfer of the sites to RTC) has provided RDC with

evidence that the sites were used for the purpose of providing allotments prior to 1925 (South Undercliff can be traced to 1893 and Love Lane 1884).


- 4 RTC has argued that under Part II of the LGA 1972 – Sch 29 9(1) it is the proper allotments authority for the parish. RDC accepts that it is not the allotments authority but maintains that under the general provisions of the LGA 1972 it is the lawful owner of the land and is providing 'temporary allotments' on the two sites. It has suggested further that if RTC wishes to provide allotments on the existing sites it will need to consider acquiring them compulsorily, asking the County Council to assist in this instance, rather than the District, which considers itself to be the legal owner of the land. RDC's Legal Services Manager has intimidated that it is likely RDC would expect to be compensated for the consequent 'unavailability' of the land.
- 5 RTC's contention is that the sites are qualified for being considered as 'statutory allotments' (thereby affording them a degree of protection from development) and that as the lawful allotments authority for the parish the sites were transferred inappropriately to RDC.

This is a brief summary of the current situation. Documentary evidence – much of which has been sourced with the invaluable assistance of the Allotment Holders' Association – can be provided if required.

The Town Council should appreciate an informed opinion on whether:

- (a) the sites may be considered 'statutory'
- (b) it has a sound case for pursuing the transfer of the sites from Rother District Council
- (c) there is a reasonable expectation that (b) would be successful.

Yours sincerely



Richard Farhall