

LTO2 ITEM 17

Your ref:
Our ref: DE/LC
Please ask for: Mr. D. Edwards
Direct dial no: 01424 787840
Date: 22 August 2006



Rother

District Council

.....Working towards Excellence

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



Resources Directorate
Joy Cooper DipSW DMS
Director

Town Hall
Bexhill-on-Sea
TN39 3JX

Dear Richard

ALLOTMENTS AT RYE

I read in the Observer for 18 August that your Council is taking a Legal Opinion on the above. Possibly you have discussed this with some of my colleagues, but it came as rather a surprise to me. Assuming that you have to use a private practice Solicitor to draft the instructions, I hope that your proposed budget will be sufficient. Even so, it is important that your Counsel answers the right questions, and does not simply refer to paragraph 9 of Schedule 29 to the Local Government Act 1972.

As I see it, whilst this Council is able to provide informal allotments under S.2 of the Local Government Act 2000, an Order by the Court that it should not would not result in this land being handed over to your Council. All that would happen would be that this Council would have to find some alternative use for the land, such as public open space, and your Council would then have to acquire alternative land at market value to accommodate displaced allotment-holders.

I suspect that you will not find a specialist in allotment law, but I respectfully suggest that there are important property law issues here and the Counsel you select needs to be able to deal with them. You may wish to send your Counsel the attached copies of my letters of 7 December 2005 and 11 January 2006 to Mr Parks of the Allotments Association. I would, in particular, draw your attention to paragraph 10 of the later letter. Our Land Registry entries are a matter of public record.

I do hope you appreciate the spirit in which this letter is written and that it enables your Council to obtain Counsel's Opinion regarding the legal realities of this situation.

Yours sincerely

David Edwards
Legal Services Manager

DE/LC/3/7/5
Mr. D. Edwards
01424 787840
7 December 2005

Mr B Parks
37 South Undercliff
RYE
East Sussex TN31 7HN

Dear Mr Parks

ALLOTMENTS AT RYE

I thank you for your letter of 6 December. You refer to my last letter being discussed at Rye Town Council which I find somewhat surprising. If Rye Town Council has an interest in this matter then I would expect it to correspond with me itself via its Town Clerk.

I have already agreed that Rye Town Council is an allotments authority and as such is under an obligation to provide allotments to meet need. That is essentially a matter for the Town Council although, in assessing need, it would obviously have regard to temporary allotments provided by this Council. Where a Town Council wishes to compulsorily acquire land, it is normal to ask the District Council to act on its behalf although if the land in question is owned by the District, it would obviously be preferable for the County to act. Rye Town Council would have to pay the costs involved in making the CPO, including defending it at a Public Inquiry if there were an objection, and the compensation for the land taken. Of course, in accordance with usual practice, the compensation would not just be the value of the land in its present use, but its value for the most advantageous use which might be possible by virtue of a certificate of alternative development. If Rye Town Council wish to explore this issue further, then I think they should write to me direct. I am sure you appreciate that any decision by this Council would be taken by Cabinet.

You proceed to make further comments about events in 1976, which seem to me to be completely irrelevant. I am sorry if my last letter caused offence, but the plain truth is that it is not possible at this stage to unpick transactions which occurred almost 30 years ago.

You proceed to ask various questions, which you are entitled to ask under the Freedom of Information Act 2000. We have established a procedure for dealing with Freedom of Information requests and I am allocating the remainder of your letter to that procedure. Insofar as the information you request is still available to us, and not covered by any statutory exemption, it will be supplied in due course.

Yours faithfully

David Edwards
Legal Services Manager

DE/LC/FOI 105
Mr. D. Edwards
01424 787840
11 January 2006

Mr B Parks
Rye Allotments Association
37 South Undercliff
RYE
East Sussex TN31 7HN

Dear Mr Parkes

FREEDOM OF INFORMATION ACT 2000

With reference to your request received on 7 December about Rye Allotments Sites, I would respond to your questions as follows:-

1. No information is held by this Council.
2. No information is held by this Council. The earliest correspondence file commences in 1980.
3. The information available to the Council on this issue is set out in paragraph 6 of a Proof of Evidence by Sarah Anderton to the recent Rother Local Plan Inquiry (copy attached).
4. The Council holds no information on this point, as stated its earliest correspondence file begins in 1980.
5. This is begging the question in the sense of assuming the point being raised. No information on this issue is held by this Council. Rye Town Council is itself subject to the Freedom of Information Act and a (rephrased) question could be addressed to them.
6. No documentary information is held but a Principal Accountant states that to the best of his knowledge there would not have been any financial consideration.
7. The Council's computerised Estates Terrier shows land in Council ownership in map form and does not identify the purpose for which Council owned land is held. The Council's Asset Register shows the current use of all assets owned by the Council, it shows the current use of both the land at Love Lane and the South Undercliff site as "allotments" and does not elaborate on whether they are temporary or statutory. The formal purpose for which land is held is not recorded on the Asset Register.
8. A survey of allotment use as part of the preparatory work for the 1995 Consultative Draft Rother District Local Plan revealed significant spare capacity at both the Love Lane and South Undercliff allotments. As a consequence, no deficiency in provision was identified for Rye in the published document.

cont'd/...

9. There was no categorical evidence at the time of the Consultation Draft Local Plan's preparation to confirm the status of either Love Lane or South Undercliff allotments. Their status was therefore not specified on page 461 of that document.
10. No specific statutory power is referred to in any of the documentation held by this Council; it may be that the acquisition was under the general power in S.120 Local Government Act 1972. Both areas of land are registered at the Land Registry under Title Nos ESX 62521 and ESX 65343 (together with other land). The Land Certificates do not state that the land is held for any particular purpose (e.g. the Allotments Acts) and merely provide that no disposition is to be registered unless made in accordance with the Local Government Act 1972 or some other Act or Authority. Copies of the Land Certificates are available from the Portsmouth Land Registry. No pre-registration documents of title exist; this is not unusual with a registered title. There are, however, copies of various Agreements between Rye Borough Council and East Sussex County Council before Local Government reorganisation. These relate to the transfer of areas of land to the County Council and also the grant of rights of way to the County Council over land retained by Rye Borough Council. These documents make it clear that the County Council is acting in its capacity as an education authority, but do not state the capacity in which Rye Borough Council held the land. In particular, there is no recital that the land transferred to the County Council is surplus to requirements as allotments which would be usual in a disposal of land held as statutory allotments.
11. Please refer to the response to question 9.
12. Where, as here, statutory provisions do not apply, the relationship between a landlord and tenant is still governed by common law. Unless prevented by other legislation, it is possible for parties to a transaction which is not subject to particular legislation e.g. the Allotments Acts, to stipulate that their rights and obligations under the transaction should be the same as if the legislation did apply. That is the legal effect of the agreement to which you refer. As regards the practicalities, if individual plot holders fail to pay fees or to maintain their plots, the eviction would be confirmed in writing and signed by the Head of Amenities. If however the re-entry related to the whole site it would be referred back to Legal Services.

I have treated this as a formal request for information under the Freedom of Information Act 2000. In that context it would be inappropriate for me to respond to the comments and arguments in your letter, particularly the words in italics. My refusal to respond should not be interpreted as any concession or admission on behalf of the Council.

You may use our internal complaints procedure if you are dissatisfied. If you are still dissatisfied you may appeal to the Information Commissioner. Please contact Anne Bruin, Customer Services Manager, if you wish to complain.

Yours sincerely

David Edwards
Legal Services Manager

enc