

REPORT OF THE CLERK TO: STAPELEY & DISRICT PARISH COUNCIL
DATE: 18 DECEMBER 2017
SUBJECT: DUTY TO PROVIDE ALLOTMENTS

1 INTRODUCTION

The Parish Council has previously considered one request from a resident who requested the provision of allotments in the parish. The Clerk was asked to invite an appropriate Officer from Cheshire East Council (CEC) to attend a meeting to advise on the legal position.

Although CEC agreed that an Officer could attend the December meeting, the Officer who had planned to attend had reviewed his position and considered it more appropriate for a member of the Legal Team to attend. Subsequent to that, the Clerk was informed that, unfortunately, CEC is not insured to provide advice to the Parish Council and there will, therefore, not be a CEC Officer in attendance.

The Clerk has prepared this report based on her own knowledge of, and research into, the legal position of local councils to provide allotments for residents. The Clerk acknowledges that she is not an expert in this field, but hopes that the information will be helpful to Members if the Parish Council decides that it wishes to provide allotments for residents.

Members should note that although one resident has requested the provision of allotments, the Council is under no duty to provide them unless and until six residents who are registered electors, submit a written request. This does not, necessarily, prevent the Council from providing allotments, if it considers it would be of benefit to the parish.

2 THE LAW ON ALLOTMENTS – A SUMMARY

There is no fixed definition of an allotment. The technical definition is a piece of land allocated or allotted to a person as the result of an inclosure award (Inclosure Act 1845). There is a substantial amount of allotment land which was created in this way, usually for the benefit of the 'labouring poor' in compensation for the loss of rights of grazing etc. on the common fields which were inclosed and divided up by inclosure awards.

Modern allotments are generally regulated under the Allotments Acts 1908-50. These Acts contain two definitions of 'allotment' which encompass most allotments owned or managed by production of vegetable or fruit crops for the consumption by himself or his family local councils. These are:

(a) an allotment garden – *an allotment not exceeding 40 poles [1,012 sq. metres] in extent which is wholly or mainly cultivated by the occupier in the production of vegetable or fruit crops for consumption by himself or his family* (Section 22(1) Allotments Act 1922);

(b) an allotment – *an allotment garden as defined in the 1922 Act, or any parcel of land whether attached to a cottage or not, of not more than two acres in extent, held by a tenant under a landlord and cultivated as a garden or farm, or partly as a garden and partly as a farm* (Section 1 Allotments Act 1925).

Allotment Authorities

Whilst some allotments are provided by private individuals, charities or trustees, most are provided by local authorities, i.e district, unitary, town and parish councils¹ and parish meetings.

In England, district/unitary councils cannot provide allotments in areas where there is a parish council or a parish meeting.

¹ Note: in legal terms, a town council has the same status as a parish council; titled differently, but with no greater powers.

Provision of Allotments

All allotment authorities have power to provide allotments. They also have a duty to do so if there is a sufficient demand for allotments (Section 23, Allotments Act 1908). The duty is confined to the provision of allotment gardens (in the case of a district with a population of 10,000 or more, the duty extends only to allotment gardens not exceeding 20 poles).

Whether or not such a demand exists is for the authority to decide, but it must take into account any representations in writing made to it by any six electors or council tax payers resident in the area, to the effect that the circumstances of the area are such that it is the duty of the authority to take proceedings for the provision of allotments (Section 23(2) Allotments Act 1908). It is believed that this procedure is rarely, if ever, used.

When faced with a statutory demand, or otherwise wishing to provide allotments, the council must use its best endeavours to acquire suitable land. It has power to acquire land, freehold or leasehold, by agreement, or, if necessary, by compulsion. (*Note: there is some doubt about whether a local council has the power to compulsorily purchase land. This might, of necessity, be through Cheshire East Council; however, it is understood that the funding for purchase of the land would fall to the Parish Council*). It may also take a lease or tenancy of land for the same purpose; however, the council may find it impossible to acquire land on reasonable terms, in which case it cannot meet the demand for allotments. Whilst in theory, a failure to meet such a demand could be challenged by way of judicial review in the High Court, such a challenge is extremely unlikely. High Court proceedings are very expensive, and the outcome is always uncertain. In any event, the council would have a defence by arguing that, taking into account the interests of the local community as a whole, the provision of allotments on unreasonable terms would not be the best use of its resources. Therefore, if the only suitable land was designated for residential or other development, the price of the land would have to reflect that value and the cost of acquisition would outweigh the benefit to the community as a whole.

Certain types of land can only be acquired by compulsory purchase using the expensive and complicated special parliamentary procedure. This includes property belonging to a local authority, common land, open spaces, village greens and field garden allotments.

The use of land for allotments is treated as an agricultural use for planning purposes and does not require planning permission (if the previous user of the land was an agricultural user)². Similarly, sheds and other structures, used in conjunction with allotment land do not normally require planning permission³ as long as they do not exceed a certain size (4 metres in height or 200 cubic metres in capacity).

The Borough Council could make the provision of allotments a planning condition when new developments are approved.

Letting of Allotments

As a general rule, the letting of allotments is governed by the ordinary law and not by statute. This means that the terms of a tenancy are a matter for agreement between the council and the tenant; however, most councils offer standard terms in a printed document which tenants simply accept. The main contents of a tenancy agreement are likely to be:

- Names and addresses of the parties
- Date
- Duration (usually from year-to-year with no fixed termination date)
- Amount of rent and date payable
- Obligations of tenant (eg conditions as to cultivation)
- Obligations of the council (eg to pay rates and other outgoings, if any)
- Termination provisions (governed by statute)
- Compensation provisions

² This will need verification as the Clerk has used two different sources, each of which conflicts with the other.

³ This will also need verification as the Clerk has used two different sources, each of which conflicts with the other.

- Signatures by, or on behalf of, the parties.

It is essential that every tenant has a written tenancy agreement. Allowing a tenant onto land on the basis of an oral agreement is likely to cause difficulties because the precise terms of the tenancy will almost certainly be forgotten or misunderstood. There is also the danger that the tenant may claim to be an agricultural tenant and subject to the security of tenure provisions in the Agricultural Holdings Act 1986 or the Agricultural Tenancies Act 1995.

Rent

The maximum amount of rent which can be charged for an allotment garden tenancy is such rent 'as a tenant may reasonably be expected to pay for the land if let for such use on terms (other than the terms as to rent) on which it is in fact let' Section 10(1) Allotments Act 1950).

In practice, rents for allotment gardens are low, ranging from £1 a year to £50 per year for a plot. Many councils run their allotments at a loss. The rent is fixed by the tenancy agreement which means that it cannot be altered without the consent of the tenant. There is nothing, however, to prevent a tenancy agreement including a rent review clause allowing an alteration of rent after a period of notice; for example, 12 months' notice.

Obligations of the tenant

Tenants are obliged to pay the rent, cultivate the land and keep the land tidy. To avoid creating an agricultural tenancy or a farm business tenancy, it is essential that the tenant is permitted to cultivate the land only to produce fruit and vegetables for personal consumption and not for business purpose. A tenant has a statutory right to keep hens, rabbits and bees for non-business purposes if they do not cause a nuisance or health risk (Section 12 – Allotments Act 1950).

3 CONCLUSION

This report is intended for information only, but if the Parish Council wishes to pursue the creation of allotments in the parish, notwithstanding that there has been no statutory request for such, further information about the procedure, maintenance and potential availability of land will need to be provided.

The Clerk has now purchased a book 'The Law of Allotments' which may prove to be a useful source of information.