

Allotment Land

The allotments has dominated a lot of Parish Council staffing and meeting time over the past year the following information presents the facts and a timeline of events.

Background Information

- The Parish Council has a statutory duty to provide allotments if there is sufficient demand and has rented the small area of land adjacent to the Playing Fields for many decades to provide this service.
- In 2012/2013 the former landowner passed, and the land was transferred to Mr Graham Stephens.
- The 2011-2015 Council Administration made every effort to contact the new landowner and continued to pay the ground rent due of £30.00 p.a., until payments went uncashed. The 2011-2015 Council Administration obtained an informal land valuation of £2,500 and decided to put this and ground rent monies into the budget where it was earmarked.
- The council has continued to enjoy uninterrupted use of the land for the provision of allotments.
- The allotment land is not regarded as a source of a 'profit' income for the Parish Council but is a service to the local community.
- There was no contact between EPPC and the landowner until September 2020 when the landowner issued EPPC with a Notice to Quit the land. Whilst the landowner has insisted that the land was not for sale; he indicated when he joined the Parish Councils November meeting that he might be willing to sell at the right price.
- In November 2020, the present Council Administration decided that it would engage Lambert and Foster to provide a land valuation and that it would consider all possible outcomes.
- The Parish Council has been seeking advice from KALC's Legal Advisor and Allotment expert, TMBC and our Auditor.
- The matter was first raised with allotment holders at the 2020 AGM held at the beginning of October 2020.

Extracts from the councils' minutes (October 2020 to May 2021)

Extract October 2020 PC Minutes

219/20.3 Allotments

- Allotment tenancy renewal process had almost been completed and vacant plots were in the process of being reallocated.
- The Allotment Holders AGM was held on 02 October via Zoom. M. Ferguson, T. Fryer and the Clerk represented EPPC and were joined by 6 allotment holders.
- The landowner had issued a notice to quite effective from September 2021. Whilst the grounds rent had been paid it had been returned by the landowner. The landowner had been advised that the Parish Council was interested in purchasing the land and the Clerk was in the process of obtaining a land valuation so that EPPC could agree the offer that would be put to the landowner.

Extract November 2020 Minutes

237/20 Allotment Land: M. Barton advised that with great disappointment the Parish Council had received a notice to quit the site effective from 24 September 2021. This was the first contact with the present landowner. M. Barton thanked Mr Stephens for joining the meeting and advised him that the council was keen to secure a mutually acceptable outcome for him as landowner, the parish council and for allotment holders.

Mr Stephens was advised that no evidence had been found within Parish Council files of the council being provided with his details following the transfer of the land to him on the death of his father without which the council was unable to send annual allotment ground rent monies. It was noted that The Parish Council had received no correspondence or invoices from Mr Stephens and in September 2020, immediately after a letter had been received from Mr Stephens a payment for the sum of £210.00 was issued which covered the ground rent due for the years 2014-2020, that payment has been returned.

It was noted that previous council administrations had put money into reserves to cover not only grounds rent but also funds that could be put towards the potential purchase of the allotment land. The landowner

advised on 31 October that he would engage with the council on one matter only and that was to ensure the councils exit from the allotment land and that the land was not for sale. However, it was noted that since September 2020, the landowner had asked how much the parish council would be willing to pay for the land.

The Clerk had sought advice from KALC who agreed that the best outcome would be for the Parish Council to purchase the land which would allow the Parish Council to take control directly by ownership.

A discussion took place between the landowner and members, following which, Mr Stephens was thanked for attending the meeting, and agreed that there might be a way forward in the Parish Council purchasing the land from him. Following the discussion, it was proposed by M. Barton, seconded by M. Ferguson and:

RESOLVED: That Lambert and Foster would be engaged to provide a land valuation

It was further:

RESOLVED: That the Parish Councils legal options and remedies would be clarified with KALC's Allotment Consultant.

Extract 07 December 2020

256/20 Allotment Land

Advice from KALC

KALC believed it made sense for the Parish Council to take control directly by ownership and that if the council was unable to come to an agreement with the landowner it might want to explore other options such as compulsory purchase.

Advice from KALC's Allotment Expert and Solicitor: EPPC had been advised as follows

- Every piece of land which adjoined existing residential development had "hope" value in addition the value based on its existing use. If the land were put up for auction the bids would be on the basis that there was a hope of some planning at some stage in the future. The largest drawback was the access question but if there was sufficient value on development it could be overcome.
- In considering the possible price the Council had to be realistic and whilst any offer might initially be based on agricultural value, it must be prepared for a higher figure.
- If the Parish Council made an offer to purchase the land and the landowner refused to sell, then the Parish Council could proceed with a compulsory acquisition of the site.

Lambert and Foster Valuation and Report: Lambert and Foster had advised on the current marketing values of the allotment land which formed the HM Land Registry Title K476469. Lambert and Foster had by way of background researched the history of the land, such that it was available on the HM Land Registry website and had drawn attention to the following:

- The land previously formed part of a larger block of land which was sold by Norman Stephens in December 1990.
- The land had no access other than on foot. Whilst the original land holding enjoyed a right of access off Church Lane adjacent to Brook Farm Cottages that no right of access was reserved over the land when it was sold to Wards Construction to retain access to the area now of interest to the Parish Council. Lambert and Foster had assumed therefore that no rights of access were reserved. It was possible however, to gain access to the land over a public footpath.
- The land had been valued on the basis that there was **NO** vehicular access available to the ground. This would have a significant bearing on the land's value and in particular, any development value that someone might consider the property to have. Given its proximity to the village, it is reasonable to consider development possibilities, but these would be significantly limited by the lack of vehicular access and part of the site falls across the boundaries of Flood Zone 1 and Flood Zone 2 according to the Gov.uk Flood Zone Map.

Due to the sensitive nature of this information, the land valuation and full contents of the valuation report would not be disclosed within the publicly available minutes. Following a discussion and having

considered the advice of KALC, the KALC Allotment Expert and Lambert and Foster, it was proposed by D. Fairless, seconded by M. Barton and:

RESOLVED: That in the first instance the Parish Council would seek advice from the KALC Allotment Expert as to whether the Parish Council had obtained any land occupancy rights through long term continued unhindered use of the land

It was further

RESOLVED: That the Parish Council could consider making an offer to the landowner for the purchase of the land

It was further

RESOLVED: That the allotment holders would be informed and advised that the council hoped that it would not be necessary for possession of the land to be given and that it was doing everything it could to retain occupation of the land.

It was further

RESOLVED: That, if necessary, all legal remedies would be explored.

It was further:

RESOLVED: That new information would be considered at the next meeting.

Extract 14 December 2020

269/20.5 Allotment Land

Asset of Community Value: Following a discussion, it was:

RESOLVED: That EPPC would apply to TMBC for the allotment land to be listed as an Asset of Community Value.

IIA Advice: The IIA had suggested that EPPC try and reach agreement with the landowner and his recommendation was for the council to initially offer 50% of the land valuation.

Communication with Allotment Holders: The Allotment Holders had been advised and without exception all had expressed their support and gratitude to EPPC for keeping them informed and for all it was doing.

Communication with KALC Allotment Expert: EPPC had been advised as follows:

- If the land were listed as an asset of community value, it would afford EPPC the opportunity of buying it if the landowner wanted to sell on the open market in the future but would not give the EPPC preferential terms and EPPC would have to match the terms on which the land was being offered.
- The Parish Council would only have acquired rights if at least 12 years had elapsed since trying to pay rent and there had been no communication with the Landlord during that time

Proposed purchase of allotment land: following a discussion and having taken all the advice detailed into account, it was proposed by E. Wilkinson, seconded by S. North and:

RESOLVED: That an offer of £30,000 would be made to the landowner for the purchase of the land.

It was further

RESOLVED: That the landowner would be asked to confirm whether he would accept the offer by 04 January 2021.

It was further

RESOLVED: That in the interests of openness and transparency, a copy of the Lambert and Foster valuation report would accompany the offer.

It was further

RESOLVED: That the Clerk would prepare a draft letter to the landowner which would be circulated to members prior to despatch.

Extract 18 January 2021

024/21 Allotment Land: The landowner had advised that having consulted his solicitor and agent, he had been advised to obtain his own land valuation and had asked if EPPC would pay the costs of him doing so. The landowner had further advised that the cost of the valuation would be in the region of £600 plus disbursements and VAT. (The Parish Council was charged £549 by Lambert and Foster which included disbursements and VAT). Following a discussion, it was:

RESOLVED: That the landowner would be offered 10% on top of the council's original offer to cover all costs payable on completion of the land transfer.

It was further:

RESOLVED: that the landowner would be asked to respond by 01 February 2021

It was further:

RESOLVED: That TMBC would be asked to initiate compulsory purchase proceedings.

Extract 01 February 2021

037/21 Allotment Land: The landowner's legal team had advised that the landowner wished to obtain up to date advice from a surveyor and his own land valuation and had asked if the Parish Council would deposit with them a sum sufficient to cover the fees. Following a discussion, it was:

RESOLVED: That the Parish Councils fair and reasonable offer of £30,000 for the land plus up to an additional 10% on completion would not be varied.

It was further

RESOLVED: That if the landowner were unwilling to sell the land or there were further delays; the Parish Council would progress Compulsory Purchase Proceedings with TMBC.

Extract 15 February 2021

037/21 Allotment Land

- No new information had been received from landowner or his legal team.
- TMBC had confirmed receipt of EPPC's application for the allotment land to be listed as an ACV.
- TMBC had confirmed that the decision to make a CPO would require a member decision, in this case the Cabinet of TMBC and that the starting point would be for EPPC to make a formal resolution to request the TMBC to make a CPO. On receipt of this request TMBC would place a report before Cabinet for them to consider at the next available Cabinet meeting which was likely to be on 16th March. It was noted that the costs for the CPO would be in the region of £5,000 which would be in addition to the cost of the land, the costs of the CPO inquiry if one were to be triggered and any land tribunal hearings which might follow. Following a discussion, it was proposed by M. Ferguson, seconded by M. Barton and:

RESOLVED: That TMBC would be asked to proceed with the CPO and for the matter to be put before cabinet on 16 March 2021.

It was further

RESOLVED: That the landowner and his legal team would be notified and informed that if they wished to stop the CPO process the Parish Councils offer must be accepted with exchange of contracts taking place soon after. The landowner would also be advised that EPPC had applied for the land to be listed by TMBC as an ACV.

Extract 15 March 2021

071/2021.1 Allotment Land: On 26 February, the landowners legal team asked for patience whilst they and the landowner considered EPPC's offer and the CPO situation. TMBC would be progressing the CPO on EPPC's behalf and that it was due to be considered by cabinet on 16 March 2021.

Extract 12 April 2021

082/21 Allotment Land.

It was reported that TMBC had agreed to support EPPC in respect of the CPO and was in the process of engaging solicitors Thompson Snell & Passmore who were currently doing some background checks to ensure that there was no conflict of interests which would prevent them from acting on this, once these checks had been concluded they would provide TMBC with an engagement letter, which would be shared with EPPC.

It was noted that TMBC required authority from EPPC to start incurring fees on this matter, whilst TS&P would (assumed) be billing TMBC directly, EPPC would be approached for payment of all costs in connection with the CPO (as provided for in the Allotments Act).

It was further noted that TMBC's Cabinet decision was conditional upon there being a satisfactory CPO costs indemnity agreement being in place and TMBC had proposed that this be drafted by TS&P. Regarding the indemnity agreement whilst TS&P would be acting *solely* for TMBC, given the statutory position, it would be an uncontroversial document, but it might still be prudent for EPPC to run the draft past the KALC legal team. Whilst this was in train it seemed sensible to carry out some preparatory work and in particular TS&P could provide some initial advice regarding likely timescales, process, and the steps involved to get us to an "effective" CPO which TMBC could act upon if the landowner did not engage with EPPC regarding the land purchase. It would also be helpful for EPPC to understand whether, given that there was only a single land interest in this case, there was any likelihood that an objection to the Order would trigger a requirement for a public inquiry.

Owing to leave commitments at TMBC and TS&P it had been proposed that a meeting take place during week commencing 19 April 2021, members would be advised of the date and time of the meeting in order that they could attend.

It was noted that there had been no contact from landowner and / or his legal team as at 12 April 2021. Following a discussion, by a unanimous show of hands, it was:

RESOLVED: That EPPC would approve the appointment of TS&P by TMBC and that TMBC would be indemnified for costs associated with the CPO incurred on EPPC's behalf.

Extract 19 April 2021

094/21.1 Allotment Land: No new information received

Extract 24 May 2021

135/2021 Allotment Land Update: Attention was drawn to the following:

- On 03 May 2021, an email had been received from the landowners' legal team, copied below
" 1. My client has taken professional advice and the valuation from your surveyor is not agreed. Also, my client commented that back in 2012 you made an offer of £2,000 which at the time my client considered to be derisory. Whilst you have increased the offer it is still below my clients' expectations.
- 2. The original eviction notice which expires in September 2021 stands and my client expects you to arrange for the occupiers to vacate
- 3. If you wish to go ahead with the compulsory purchase order via TMBC my clients view is that the market price which will have to be paid will still be higher than your offer. The purchaser will also have to pay my clients professional fees.
- 4. My client is puzzled as to why you are seeking to list the land as an Asset of Community Value when it is already shown in the local plan as allotments. If you make the application, it will be strongly defended by my client."

- TMBC advised on 07 May 2021 that the land would be registered as an Asset of Community Value and that they would be informing the landowner who had 8 weeks to request a review of the decision.
- In April, EPPC attempted to pay the landowner the 2021/2022 ground rent. This was returned on 07 May 2021 uncashed with the comment "Please contact me via Bailey & Cogger, Tonbridge".
- T S & P were dealing with the CPO on behalf of TMBC. EPPC had not yet been invited to attend a meeting with them.

Following a discussion, members believed it was unlikely that this matter would be resolved until after September and it was:

RESOLVED: That the Allotment holders would be provided with an update and advised that whilst EPPC was doing all it could to retain occupancy of the land, the outcome might not be determined before September 2021.

It was further

RESOLVED: That TMBC would be advised again of the immediacy of the situation, to provide a progress report and feedback from their communication with the landowner.

Where are we now?

CPO Update: TSP were having some issues with Land Registry which prevented them from completing their conflict checks. The relevant requests have now been submitted and they have received the "all clear". On 15 June, a Scope of Works was sent by TSP to TMBC, EPPC was asked to confirm acceptance of the terms which we have done and TMBC has again been advised of the immediacy of the matter.

ACV Update: The landowner requested a review of the decision to accept the Allotment Land in TMBC's List of Assets of Community Value. TMBC has confirmed that the area is of community value and is required to accept the nomination. The decision notice is as follows:

Review of a Decision to Accept a Nomination of land to be included in the Council's List of Assets of Community Value – East Peckham Allotments

Review carried out by: TMBC's Head of Legal and Democratic Services

1. On 27th April 2021, the Council accepted a nomination of the East Peckham Allotments to the Council's List of Assets of Community Value.
2. I have reviewed the Decision Notice issued by the Chief Executive and the Annex to that Decision Notice setting out the reasons for that decision.
3. The Council is required to accept a nomination if the criteria in s.90 Localism Act 2011 are met. These are:
 - a. That the land nominated is in the Council's area and.
 - b. That the land is of community value
4. Land is of community value if *in the opinion of the Council*:
 - a. An actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
 - b. It is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.
5. I have considered the submission made by the nominator about the benefits of allotment gardens and that they have a role in fostering community development and cohesiveness, providing an open space to the local community and improvements to biodiversity and contribution to climate change.

Social interests include in particular cultural, recreational and sporting interests and it is for the authority to determine what it considers falls within the phrase. It is a “highly contextual question, depending upon all the circumstances of a particular case”¹

6. The benefits to biodiversity and climate change, and the provision of a community space in this way have been found by the First Tier Tribunal to be sufficient to amount to benefits of community value, in the tribunal cases cited in the Annex to the Decision Notice. Furthermore it is my view that the fostering of community development and cohesiveness as referred to by the nominator also furthers the social wellbeing of the local community in this particular case. There is in my view therefore an actual current use of the land that is not an ancillary use which furthers the social wellbeing or social interests of the local community.
7. I understand that the Parish Council has been negotiating a lease renewal with the landowners. Since the nomination was made and accepted, the Council has also resolved to make a Compulsory Purchase Order with regard to the land, which when made will result in the land being vested in the Parish Council for the purposes of the provision of allotments.
8. I therefore agree with the previous conclusions of the Chief Executive that there is no indication that the community use will not continue.
9. Land which is owned by a Parish Council for use as Allotments under the Allotments Act 1925 is specifically excluded from the ACV regime. However, the land is not, at this point in time, owned by the Parish Council, it is privately owned. The land is not therefore excluded from listing.
10. It follows that I agree with the conclusions of the Chief Executive that the property is in the Council's area and is of community value. The Council is therefore required to accept the nomination.

Final Thoughts

The Parish Council is throwing all it at this matter to hopefully bring it to an amicable solution beneficial to everyone, up to now our focus has been on engaging with the landowner and his legal team, seeking advice from experts, the CPO and ACV but there are other options that could be considered such as:

- Allotment holders can petition the landowner directly. He might be willing to lease the land to them as a collective body rather than EPPC.
 - If the landowner does not want to sell to the EPPC but is willing to sell to the East Peckham Community, whilst the legalities would have to be investigated potentially EPPC could set up an East Peckham Allotment Trust to purchase the land and run the allotments. EPPC could gift the £33,000 which has been set aside for the land purchase together with the earmarked reserves of £1,828 (at 31.03.21) to the trust with conditions that the land was for allotment use only and would return to the parish council if it were no longer used for allotments.
 - Some allotment holders have held their plots for many years and whilst it would be unfair for them to move and set up elsewhere, if most allotment holders prefer; EPPC could create a new allotment site and might abandon the CPO and instead put the £33,000 towards the creation of new allotments on the adjacent playing fields.
 - There is a big question mark over the existing allotment land. It would only need the landowner to purchase one property on the allotment side of Russett Road which could be demolished allowing access to the land behind for future development.
 - Regardless of the outcome EPPC will not be billing the allotment holders for 2021/2022 and although the landowner is expecting EPPC to give vacant possession if the matter is not resolved by September, we may go no further than taking the parish councils lock of the gate and relocating the shed and noticeboard.
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