

## **Report on Allotment Responsibilities**

### **Walberswick Parish Council – December 2022**

**All local authorities have a mandatory obligation to provide allotment provision under Section 23 of the 1908 Small Holdings and Allotments Act.**

**This has also been backed up in legislation via the Allotments Acts of 1922 and 1950.**

### **Allotments authorities**

While some allotments are provided by private individuals, charities or trustees, most are provided by local authorities. District, unitary and parish councils and parish meetings are the relevant authorities in England.

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

### **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.

Whether or not such a demand exists is for the authority to decide, but it must take into account any representation in writing made to it by any six electors or council tax-payers resident in the area.

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. It may also take a lease or tenancy of land for the same purpose.

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

### **Letting of allotments**

As a general rule, the letting of allotments is governed by the ordinary law and not by statute.

**It is essential that every tenant has a written tenancy agreement.**

### **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 the terms (other than the terms as to rent) on which it is in fact let" (section 10(1), Allotments Act 1950).

### **Obligations of the tenant**

The basic obligations of the tenant are to pay the rent, to cultivate the land and to 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, i.e. for non-business purposes.

A tenant has a statutory right to keep hens and rabbits for non-business purposes so long as they do not cause a nuisance or a health risk (section 12, Allotments Act 1950).

### **Termination provisions**

The tenancy of an allotment garden can be terminated only by:

(1) the landlord giving the tenant a notice to quit of at least 12 months expiring on or before 6 April or on or after 29 September in any year. This overrides any different contractual provisions;

(2) the tenant giving the landlord notice to quit. No specific period is laid down by statute, but it is sensible for the statutory provision in (a) to be applied to the tenant's notice;

(3) re-entry in accordance with a power in the tenancy agreement where the land is required for another purpose. This provision does not usually appear in a tenancy agreement for an allotment garden;

(4) re-entry for non-payment of rent or breach of any term of the agreement or where the tenant becomes bankrupt or compounds with his creditors;

(5) one month's notice to quit if the rent is in arrears for at least 40 days, or the tenant is not observing the rules relating to the allotment (if any), or the tenant goes to reside more than one mile outside the parish or district for which the allotments are provided.

Paragraphs (4) and (5) apply to all types of allotment.

### **How this pertains to Walberswick**

I am aware that the land used for allotments in the village is leased from a landowner. I have not seen this lease so I am unaware of the specifics of it and the Parish Council's responsibilities. This would need attention before any management plan is discussed or approved. The Parish Council would have a legal responsibility to comply firstly with the terms of the lease.

In addition to the above the Parish Council only has a legal responsibility to provide land, it is up to the tenant (allotment holder) to cultivate this land and keep in a good condition. However, best practice might mean that the Parish Council chooses to devote time, staffing or resources to maintaining the security and condition of the area as a whole.

Costs for the above would have to be precepted for and therefore incur a cost to the tax-payer. A further discussion would have to take place regarding the fairness of devoting a disproportionate part of the precept to a small group of residents.

Empty plots do cause a nuisance to existing plot holders as weeds are likely to grow and spread over plot boundaries. It would be in the interest of the Parish Council to maintain these vacant plots (or fill them as soon as possible). In order to keep up the quality of the land.

### **Recommendations**

I would recommend the following:

1. That the lease is located and examined to find out the responsibilities of the Parish Council toward the land owner.
2. That the Parish Council encourage the existing plot holders to form an Allotment Holders Association (with non-mandatory membership) to enable a clear communication path between the Parish Council and the plot holders.
3. That a meeting is arranged before the start of the new financial year between WPC and any allotment holders who wish to meet, to agree a way forward.
4. That the Tenancy Agreement is distributed and signed annually.
5. That the Allotment Management Year runs from 1<sup>st</sup> October to 30<sup>th</sup> September so that fee considerations can take place before the budget is set.

**Mark Knight – Parish Clerk – December 2022**