Neutral Citation Number: [2018] EWHC 3042 (Ch)

Case No: PT-2018-000120

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/11/2018

Before :

MS SARAH WORTHINGTON QC (HON)

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Between :

Ramsgate Town Council	**Claimant**
- and -	
Thanet District Council	**Defendant**

- -
- -

Ms Estelle Dehon and Mr John Fitzsimons (instructed by **Wellers Hedleys**) for the **Claimant**
Mr Tim Buley (instructed by **Thanet District Council**) for the **Defendant**

Hearing dates: 16 October 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Ms Sarah Worthington QC (Hon)

Sarah Worthington QC(Hon :

1. The question at the heart of this matter is what is needed to constitute an effective appropriation of land from one designated use to another, and in particular from designated use as allotment land to land able to be used for other purposes. The answer is crucial in the present context, because it determines whether certain land is legally owned by the Claimant or by the Defendant.

2. The question arises as a result of the reorganisation of the District of Thanet and the creation of the Ramsgate Town Council ("**the Claimant**"). The claimant town council was formally constituted on 1 April 2009 under article 1(2) of District of Thanet (Reorganisation of Community Governance) Order 2009 ("**the Reorganisation Order**"). One of its new functions related to the maintenance of allotments under a body of legislation commonly referred to as "**the Allotments Acts 1908-1950**". Those functions were previously exercised by the Thanet District Council ("**the Defendant**"). Pursuant to regulation 9 of the Local Government (Parishes and Parish Councils) (England) Regulations 2008 ("**the 2008 Regulations**"), any land held by the Defendant on 1 April 2009 for allotment functions would automatically be transferred to and vest in the Claimant.

3. The land in question ("**the Land**") is at Manston Road, Ramsgate, Kent, CT12 6AY. Both parties agree that if this Land was held by the Defendant for allotment purposes on 1 April 2009, then the Claimant is entitled to a declaration that the Land transferred to and vested in the Claimant pursuant to regulation 9 of the 2008 Regulations. If this Land was not held by the Defendant for allotment purposes on 1 April 2009, then the Claimant's claim will fail.

The relevant statutory provisions

4. This case turns on the construction of the relevant statutory provisions. I was referred to very few authorities, and none that concerned the interpretation of these provisions.

5. First, the 2008 Regulations, noted earlier, provide in regulation 9 that land shall "transfer to and be vested in" the Claimant where, immediately before the effective date of the Reorganisation Order (i.e. 1 April 2009), the land "(a) is held by [the Defendant] for any purpose of the Allotments Acts 1908-1950 ["**allotment purposes**"]; or (b) is vested in [the Defendant] and used for those purposes". Since the Land in question was not being used for allotment purposes at the relevant date, the question in issue is simply whether the Land was "*held … for [allotment purposes]*" by the Defendant on 1 April 2009. There is no dispute about the operation of this regulation, and significant parcels of land were accordingly transferred.

6. Secondly, a local authority is empowered by section 122 of the Local Government Act 1972 ("**the 1972 Act**") to appropriate land held by it for one purpose to any of its other permitted purposes provided it is satisfied that the land is "no longer required" for the original purposes for which it is held:

> "(1) Subject to the following provisions of this section, a principal council may appropriate for any purpose for which the council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before

> the appropriation; but the appropriation of land by a council by virtue of this subsection shall be subject to the rights of other persons in, over or in respect of the land concerned."

There are no particular statutory formalities attendant upon such appropriation.

7. Thirdly and importantly, however, where land is held by local authorities for allotment purposes, the use of that land for different purposes requires the consent of the relevant Secretary of State, as a result of section 8 of the Allotments Act 1925 ("**the 1925 Act**"), which provides:

> "Where a local authority has purchased or appropriated land for use as allotments the local authority shall not sell, appropriate, use, or dispose of the land for any purpose other than use for allotments without the consent of [the relevant Secretary of State] and such consent may be given unconditionally or subject to such conditions as the Minister thinks fit, but shall not be given unless the Minister is satisfied that adequate provision will be made for allotment holders displaced by the action of the local authority or that such provision is unnecessary or not reasonably practicable."

8. Finally, the Small Holdings and Allotments Act 1908 ("**the 1908 Act**") – a component of the Allotments Acts 1908-1950 – provides in section 32 that allotment land may be sold when it is "not needed for the purpose of allotments", but the section makes plain the continuing protection intended both by way of adequate provision of allotment land and the discharge of any debts and liabilities in relation to such land, these being explicitly given first call on the proceeds of any sale of allotment land. Section 32 provides:

> "(1) Where the council of any borough, urban district, or parish are of opinion that any land acquired by them for allotments or any part thereof is not needed for the purpose of allotments, or that some more suitable land is available, they may . . . sell or let such land otherwise than under the provisions of this Act, or exchange the land for other land more suitable for allotments, and may pay or receive money for equality of exchange.
>
> (2) The proceeds of a sale under this Act of land acquired for allotments, and any money received by the council on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the council in respect of the land acquired by the council for allotments, or in acquiring, adapting, and improving other land for allotments, and any surplus remaining may be applied for any purpose for which capital money may be applied . . . ; and the interest thereon (if any) and any money received from the letting of the land may be applied in acquiring other land for allotments, or shall be applied in like manner as receipts from allotments under this Act are applicable."

Background facts

9. The facts are largely uncontested. At some point the Land in question was held for allotment purposes, but by 2003 it had fallen into disuse.

10. The Land in issue in these proceedings was adjacent to other dedicated allotment land ("**the Wider Site**"). In 2003 the relevant Secretary of State, through her official representative the Government Office for the South-East ("**GOSE**"), gave permission for disposal of the Wider Site subject to certain conditions. Those conditions included a requirement that further works be done on the Land for the purpose of its continuing use for allotments ("**the 2003 Condition**"). The Wider Site was sold in 2007 and a proportion of the proceeds was dedicated to servicing the Defendant's then remaining allotment provision.

11. In 2006 there were further communications between the Defendant and GOSE. Those communications requested particular consents for dealing with the Land. The Defendant's contention is that as a result of these consents, the Land was then no longer held by the Defendant for allotment purposes. The Claimant disagrees.

12. The crucial facts relating to these 2006 communications between the Defendant and GOSE and the later chronology relating to the Land can be reduced to the following:

(i) An initial request by the Defendant to GOSE in relation to the lifting of the 2003 Condition eventually resulted in a formal application for permission to dispose of the Land. That application required the Defendant to demonstrate that the Land had become surplus to allotment requirements. That it did on 8 August 2006 by supplying GOSE with the Council's draft Allotments Policy (just before it was approved by the Council), this indicating lack of need for allotments, and supporting that with a letter from the Ramsgate District Leisure Gardens Society confirming that lack of need. Rather than holding the land for allotment purposes, the Defendant indicated it wished to "develop this site" for "mixed tenure housing" either "through partnership, or direct disposal of the site".

(ii) GOSE responded on 11 August 2006, indicating that it was satisfied by the Council's "thorough assessment" that the Land was "surplus to [allotment] requirements", and asked if the Defendant's letter should be taken as a formal request for GOSE to lift the 2003 Condition and grant consent to "dispose" of the Land.

(iii) The Defendant's affirmative reply on 22 August 2006 asked for "consent to enable disposal" and for lifting of the 2003 Condition. It enclosed the requested plan of the site and added, in response to a request for further information from GOSE, that

> "In terms of the proposed use of the land, I feel it is likely that there will not be an immediate disposal. [The Land] is presently outside the built confines, as identified on the new Thanet local plan, and therefore may initially remain in a form of agricultural use pending a general review of landholdings based upon Asset Management and Planning Policy considerations."

(iv) On 26 September 2006 GOSE formally granted the consent required under section 8 of the 1925 Act, its letter specifically referring to the Defendant's letters of 22 August 2006 and 8 August 2006, and concluding that "[i]n pursuance of her powers under section 8 of the Allotments Act 1925, The First Secretary of State hereby consents to the disposal of the land in question." The 2003 Condition was also specifically removed. The letter reminded the Defendant of the conditions set out in section 32(2) of the Small Holdings and Allotments Act 1908 concerning "the application of the proceeds of the sale".

(v) The Land seems then to have been used on a temporary basis for agriculture, but effectively returned to nature.

(vi) On 18 September 2008, the Defendant's Cabinet resolved to dispose of the land.

(vii) On 1 April 2009 the Claimant came into existence.

(viii) Although the Claimant's view of the legal status of the Land does not affect the determination of the position at law, the Defendant nevertheless notes that for many years the Claimant did not seek to contest the status of the Land; that communications between the parties even in October 2016 are only consistent with the Claimant regarding the Defendant as entitled to sell the Land, provided only that the proceeds were deployed subject to the restrictions in section 32 of the Small Holdings and Allotments Act 1908; and only in 2017, when the Defendant was organising the auction of the Land, did the Claimant threaten an injunction to prevent the sale, although the Claimant then agreed to allow the sale to proceed provided the proceeds were held pending the resolution of this present issue at trial.

(ix) The Defendant resolved again on 17 November 2016 to dispose of the Land. The property was auctioned in October 2017 and the sale completed on 30 November 2017.

The parties' submissions

13. The Defendant's case is simply that in 2006 (a) the Land had not been used for allotment purposes for some time, (b) the Defendant had decided it was surplus to requirements, (c) the Defendant had formally sought the Secretary of State's consent to sale on the basis that it was surplus, and (d) the Secretary of State accepted that the Land was surplus and gave consent. Thereafter, the Land was not held as allotment land, but was simply held pending sale. Alternatively, if the Secretary of State's consent was not sufficient to change the basis on which the Land was held, then the status changed when the Defendant formally decided to sell, in 2008, and thus appropriated the land to be held for sale, as it was permitted to do given the 2006 Consent. In either case, regulation 9 of the 2008 Regulations did not apply to the Land in 2009.

14. The Claimant's case, by contrast, is that the Secretary of State has given consent to disposal of the Land (and not to any other of the possible consents indicated in section 8 of the 1925 Act), and that, until such active disposal by way of sale, the Land continued to be held as allotment land. Since such a disposal did not take place until 2017, regulation 9 of the 2008 Regulations did apply to the Land in 2009.

Application of the law

15. Given the relevant law and the substantially uncontested facts, this claim would seem amenable to disposal in relatively short order, perhaps in a number of different ways but all leading to the same conclusion.

16. Take the simplest approach first, focusing on the effect of the Secretary of State's consent under section 8 of the Allotments Act 1925. If the Land is "held" by the Defendant for allotment purposes on 1 April 2009, then the Claimant succeeds. It is common ground that in 2003 the Land was held for such purposes. On one straightforward view, it might be said that the Land will continue to be held for such

purposes unless a formal application is made to the Secretary of State for permission to hold the Land for other purposes (as required by section 8 of the Allotments Act 1925). Once that permission is given, the Land can be and is then held for different purposes. Those different purposes are the purposes set out in the application, subject to any conditions imposed by the Secretary of State. Those conditions might in some cases delay the release of the land from its designated use for allotment purposes until other adequate provision is made, but they did not do that here. On the facts here, then, the Land is released from its designated use as allotment land when the Secretary of State granted permission for such release on 26 September 2006. It follows that the Defendant did not hold the Land for allotment purposes on the critical date of 1 April 2009. The particular different purposes for which the Land might then have been held by the Defendant are immaterial to the Claimant's application, which turns simply on whether the Land was held for allotment purposes.

17. This approach has the advantage that the protective provisions in section 8 of the Allotments Act 1925 have a clear and transparent operation. The status of land as allotment land (or not) is evident on the face of the relevant consent documents. In support of that approach, it would also seem contrary to common sense to have the Secretary of State agree with a local authority that it was neither necessary nor useful to have particular land designated as allotment land and yet still insist that it remain subject to the provisions of the Allotment Acts 1908-1950 until some later rather indeterminate date, such as the date of sale, a date that would create a good deal of uncertainty, and would create significant practical problems for potential purchasers and any affected tenants (although there are no such tenants here).

18. The Claimant suggests, to the contrary, that if there is any ambiguity as to the date at which the Land is no longer held for allotment purposes, then it ought to be resolved so as to preserve the protections associated with allotment land. However, in circumstances where the Secretary of State has held that the Land is not needed as allotment land, to preserve it as such would seem counter-productive. The protection inherent in the statutes is not so much the protection of allotment land as the protection of actual and potential allotment holders, and they are protected by section 32(2) of the 1908 Act.

19. The Claimant further suggests that this suggested approach to the effect of the Secretary of State's consent would be an absurd approach, since tenants *in situ* at the date of the section 8 consents would then immediately become people with tenancies on land no longer "held" for allotment purposes. But that ignores the Claimant's own point that land not "held" as allotment land can nevertheless still be "used" as allotment land. And any decision of the Defendant to appropriate the land to another use under section 122 of the 1972 Act is expressly "subject to the rights of other persons in, over or in respect of the land concerned", so the tenancies would have to be terminated in accordance with those rights, as is frequently done. In any event, on the present facts there are no such tenants.

20. Finally, the Claimant suggests this would fundamentally undermine the protections afforded to allotment land by the legislative scheme, since local authorities could obtain consent under section 8 of the 1925 Act and then do nothing for years or decades, but still treat the land as no longer held for allotment purposes. This is correct. But that outcome is premised on the Secretary of State having found the land was not needed for allotment purposes. If the local residents decided in the future that more land was

needed for such purposes, then there is provision in the Acts for ensuring that demand is met. In the meantime the residents have the protections set out in section 32(2) of the 1908 Act associated with the treatment of designated proceeds.

21. Alternatively, the same conclusion might be reached by focusing not on the effect of the Secretary of State's consent but instead on the Defendant's successful re-appropriation of the Land to a different use. Again, the starting point is the common ground that in 2003 the Land was held for allotment purposes. It can only be held by the Defendant for different purposes if the Defendant successfully appropriates the Land for a different use. The Defendant has the power to make such an appropriation to a different use under section 122 of the 1972 Act provided it is satisfied that the Land is "no longer required" for the original purposes for which it is held (i.e. for allotment purposes). The Defendant plainly did a lot of formal work in 2006 to satisfy itself that the Land was no longer required for allotment purposes, and that instead it should be developed in other ways. However, given that the original use was for allotment purposes, the Defendant faced a further hurdle: it could not appropriate this particular Land to other uses without also satisfying the Secretary of State that the Land was surplus to requirements as allotment land or that other adequate provision would be made (section 8 of the Allotments Act 1925). That it also did in 2006, showing that the Land was surplus to requirements and no further allotment provision was needed.

22. As a result of that additional consent, the Defendant was then free to appropriate the Land to other uses subject to any conditions imposed by the Secretary of State. In this case the conditions imposed by the Secretary of State related only to the use of the proceeds of sale as prescribed by section 32(2) of the Small Holdings and Allotments Act 1908, a matter that is not in issue in these proceedings.

23. Since there are no statutory formalities required for an effective appropriation, such an appropriation ought sensibly to be regarded as having been made when the Defendant put on formal record its intention to behave henceforth in a particular way, and seeks the necessary consents to enable it to do so legitimately. Once those consents have been received, the appropriation of the Land to another use is effective unless the imposed conditions make other provision, e.g. for continued use as allotment land for a further period before the consent to another use is effective. There were no such conditions imposed in this case, so the appropriation to another use occurred, on this analysis, on 26 September 2006 when the Secretary of State gave consent to alternative use of the Land.

24. This limited view of what is needed for a formal and effective appropriation to a different land use is reinforced by the comments of Dove J in *R (Goodman) v SSEFRA* [2016] PTSR 1523 at 1535, citing Mr Terence Cullen QC in *Oxy-Electric Ltd v Zainuddin* (unrep 22 October 1990).

25. If some further formal act of the Defendant were needed, then the Defendant's own confirmation on 18 September 2008 of its decision to sell meets that test. That too is before 1 April 2009.

26. The Claimant suggests that this approach too suffers from the fatal flaw that it fails to provide for the rights of any tenants *in situ*. But that ignores the statutory point that section 122 is "subject to the rights of other persons in, over or in respect of the land concerned", and otherwise my earlier comments apply.

27. Finally, and as a third route to the same ends, even on the Claimant's own analysis that the Land was held for allotment purposes until it was actually used for the purposes specifically permitted by the Secretary of State's section 8 consent, the same result would obtain. The Claimant suggests that the Secretary of State's consent permitted the Defendant to take certain steps in relation to the Land that it would not otherwise have been able to take, but until those steps had been taken – i.e. until there had been some active step constituting a "disposal" of the Land – the Land remained held as allotment land. However, and to the contrary, I would hold that on the facts here the Secretary of State not only consented to a "disposal" or sale of the Land, but also to its delayed sale and interim use as agricultural land, and indeed perhaps to its redevelopment by the Defendant itself: see the terms of the consent letter of 26 September 2006. This letter referred specifically to the Defendant's August letters which had supplied the Secretary of State with answers to questions specifically raised, including the 22 August 2006 letter setting out the Defendant's proposed use of the Land, and indicating it "may initially remain in a form of agricultural use pending a general review of landholdings based upon Asset Management and Planning Policy considerations." In the face of this indication that a range of development options were in contemplation, the Secretary of State imposed no conditions requiring continued use or designation of the Land as allotment land until that decision was settled. Indeed, such a condition would have been contrary to the Secretary of State's finding that the Land was surplus to allotment needs. This lack of conditionality in the Secretary of State's consent, and the focus instead on whether the Land was needed for allotment purposes or not, also further supports my favoured approach that the Land was no longer held for allotment purposes once the Secretary of State gave consent to a request that holding it as such was no longer necessary.

28. By way of aside, I noted earlier that the Claimant consented to the sale of the Land subject to preservation of the proceeds. That was no doubt done to meet the Defendant's forceful claims of the potential liability the Claimant would face if the threatened injunction turned out to be unwarranted. The Claimant has to balance risk within the envelope of limited budgets, so I make nothing of the fact that the consent thus granted is inconsistent with the Claimant's own primary case: if the Land is still allotment land, then the Claimant cannot simply agree to its sale without first obtaining the permission of the Secretary of State under section 8 of the 1925 Act. However, as indicated earlier, the legal and practical protection of allotment holders would have been met by dedicating the proceeds to the needs of allotment holders had my findings gone the other way.

Conclusion

29. In conclusion, for the reasons set out above I find that the Land was not held by the Defendant for allotment purposes on 1 April 2009, and I therefore dismiss the claim and refuse the declaration sought by the Claimant.