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Secretary	<a href="#">Jon Willis</a>	East Ward			

## 2023 Summer Newsletter

### Lease negotiations

Dear Members

Further to when we last met [at the ALM](#), this is a summary of where we are with the main outstanding elements of the proposed Lease and the key responses we will be making to the Council.

It is very likely that we will be coming back to all ODFAA members in due course for a more formal indication of your views on the next draft once we have heard back from the Council.



### Allotment Site Rents

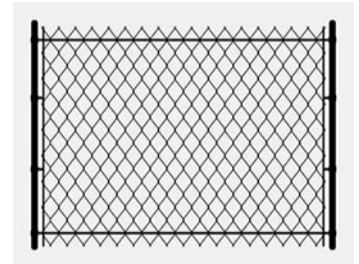
- We have previously agreed with the Council that, as before, the annual insurance premium will be refunded by OCC from the rents received, and that 50% of the balance remaining will be made available to reinstate grant funding to associations. The remaining 50% will be used to fund the Council's expenditure and, notably, tree work on the allotment sites.
- Despite assurances on two occasions that the rent figures that had been proposed for starting in 2021 would **continue to be the basis** for the new lease, whenever it commenced; OCC have now told us an increase will be applied, based on the Retail Prices Index (RPI). All future increases that might be proposed at the 7-year intervals, will also be based on RPI. The proposed new block rental figure (for all Oxford allotment sites combined) of £15,237.23 is £3134.62 higher than the £12,102.61 proposed cumulative rental for 2021. That is a **25.9% increase**. This partly illustrates why RPI is an unacceptable basis for allotment rent calculations.
- An Allotment Lease is neither a commercial nor a residential lease. It is akin to a Common Law tenancy – (in general a common law tenancy is covered by the agreement you make with your landlord. It is not a statutory tenancy, which means your rights do not come from any specific laws.) – but unlike the generality of the definition, elements of the Allotment Acts 1908 - [1950](#) impact on the substance and performance of an Allotment Lease. [Agricultural tenancies](#) (the closest analogue in the case of an Allotment lease) do not use RPI or CPI.
- ODFAA **does not accept RPI** as a basis for current and future rent calculations. Our legal adviser was quite clear, it cannot be imposed as it is a matter for negotiation. As alternative, ODFAA proposes retention of an '[open market' review approach](#), and if an independent surveyor is needed/used, the cost be split between OCC and ODFAA. This is in fact what is stipulated in the old/current Site Rules.
- We also want to see retained a per-hectare figure standardised for each site, as this is clear and accommodates any future changes in site size. This was, in fact, the point of the **rent evaluation exercise** undertaken in 2019 – to establish once and for all, a fair and equitable 'per hectare' rent for allotment land across the city. We would not want to abandon this concept now.



- We wish to see it written into the terms of the new lease (or elsewhere available) a statement that OCC will commit to **provide an annual financial breakdown** of how allotment income to OCC (including the various utility rental streams) has been spent, and on what. This seems only fair and something that we have been seeking for many years – to no great success.
- OCC has always agreed that allotment provision should be a **zero-sum activity** – not generating income to the Council, but rather able to demonstrate clearly that all rental income accrued is spent on allotments either as insurance cover, allotment maintenance or, if they are reinstated, as direct allotment grants.

## Boundary Fences and Gates

- The Council continues to stipulate that associations will be responsible for **all maintenance of boundary fences and gates**, but have offered what they consider a significant concession. That being, that fences and gates should be maintained in no better condition than at commencement of lease.
- In addition, where ownership of the boundaries is uncertain, the association concerned will draw this to the Council's attention, at any time, prior to the grant of the new lease and the Council will assist in identifying responsibility. This a positive offer.
- Where boundary fences do not exist (and this causes a problem) or are already in poor condition, the association concerned will draw this to the Council's attention, at any time and the Council will consider repair or replacement but only prior to the grant of the new lease. The Council will endeavour to find an equitable solution but does not undertake to provide new fencing. This is mostly welcome but does seem to be a bit half-hearted.
- In the case of the all-metal fencing and gates across the allotment sites we believe there is no real difference in effect between a *'full repairing'* lease, and one stipulating *'retain in the same condition as at the outset'*. Damaged panels/stretches of fencing, **effectively uninsurable**, have to be replaced and are high-cost items. So, we do not see any great concession in the Council's position.
- If this liability is accepted and then not fulfilled, the Council can hold the association not to be *'in compliance'* and can serve notice with a prescribed timetable for repairs to be made. If that is ignored, the Council can enter the site, make the repairs, and charge the Association. This then becomes a debt against the association (i.e., the 'Trustees' or the Company/Coop - see below). Interest on such a debt can accrue interest at a daily rate. A payment plan could be agreed as per practice in debt recovery, but only payment in full or cancellation by the Council removes this liability.
- While the Council may state at present it has no intention to exercise the full range of penalties at its disposal, they would remain available and, we believe, are **too onerous for associations to accept** as future liabilities.
- Options we have considered:
  1. Reject entirely - certainly the best option from our/association perspective
  2. Accept qualified *'retention of existing condition'*:
    - Must add the phrase – *'subject to fair wear and tear'*
    - A proper Schedule of Condition, with photographs, for each site agreed between Association and OCC at the outset
    - Agree absolute ceiling figure for each site based on size/current costs of replacement



- OCC pays into a contingency fund every year, which is used for 'repairs' – anything unspent rolls over into next period.
- NOTE. This contingency fund might be a *quid pro quo* for relinquishing the proposed grant funding again, with the equivalent of what would have been available as grants paid into the contingency each year.

- We would want a realistic projection of likely costs per site and clear criteria against which a site might claim from the contingency fund

## Land Registry Compliant Plans

- As the new Lease will be for a term over 7 years, all leaseholders are obliged to [register their new lease with the Land Registry](#). In order to do so you will have to submit a site plan of a certain quality and accuracy.
- The Council has finally agreed to provide a Land Registry Compliant Plan at the grant of the new lease.
- However, where the size and configuration of the allotment gardens is disputed and the previous lease plan does not relate, then the associations concerned will have to identify their concerns to the Council prior to the grant of lease.
- We are happy with this but see 2. above – Schedule of Condition and pictures of all Council owned fencing and gates.
- It also needs a timetable of actions by OCC to cover the steps to be taken clarifying the disputed or uncertain elements.



## Dispute Resolution

- The Council has said – *“enforcement of the allotment rules and the payment of the plot fees shall be the responsibility of the allotment associations. Where a dispute occurs, it should be resolved between the allotment association and the individual allotment holder. If necessary and appropriate, further guidance and assistance will be provided by the ODFAA, in an advisory capacity only. In extreme circumstances, disputes may be referred to the Council (the Green Space Development team forming part of the Council’s Community Services Department) whose decision will be final.”*
- We agreed a complaints and disputes procedure with OCC in 2021 and this isn’t the same. However, it is good that OCC have agreed to be a part of the penultimate stage. This might mean potential rogues will go quietly, but if not, then legal action remains the only option. (See below).
- OCC’s statement continues - *“Where the problem cannot be sensibly resolved and eviction is the only solution, this will be conducted by the allotment association as landlord, (and this has to be the case as the Council is not contracted to the allotment holder) with professional and financial assistance from the Council, as appropriate.”*
- The experience at Minchery Farm West, based on this non-intervention by OCC, demonstrated that unless an association is incorporated in some way, it cannot pursue a legal action of any kind in the courts. This is because it has **no formal legal standing**, whereas a company or Coop does.



## Incorporation

- As a direct result of this experience, the Council says it will now **require all associations to incorporate**, either as Company or Coop, before it will grant them a new lease. ODFAA has long been recommending such a step to remove the personal liability of so-called 'trustees', who would otherwise be the legal leaseholders. The renewed interest in this step is to ensure that associations can take legal action so that it doesn't end up back at the Council's door.
- The offer of professional (legal) and financial assistance from OCC in support of any association forced to take court action is welcome. Obligatory incorporation might not be as welcome, although the Council have said that where this causes hardship, application can be made to the Council to **continue as an unincorporated body**, and this will be allowed provided the 'trustees' obtain suitable indemnity insurance. However, this notion of 'trustees' does not meet the normal [Charity Commission definition](#) and no indemnity insurance is available so this will have to be clarified.
- ODFAA asked our legal adviser about the implications for associations becoming incorporated in the light of other elements of the lease that are changing – and it got complicated, so I (Phil B) hope I have got this all right.
- In the first instance it probably hasn't been tested as to whether any local authority can require incorporation for the reason OCC are giving before granting a lease. On the assumption they can do this, what might happen in future?
- The Association is incorporated (Company or Coop) so the Lease is with the legal entity not individual signatories. The agreement with each plot holder might be kept as a [Licence to Occupy](#), not a full sub-tenancy – which means it is theoretically easier to end that agreement and remove a miscreant plot holder. If, after exercise of the full dispute procedure, the plot holder refuses to go, legal proceedings can be instigated by the Company/Coop and taken to the possible conclusion of Court Order/bailiffs etc.
- If the Committee/Directors of the Company/Coop decline to take this on they can all resign, but the registered Lease remains and continues to its intended completion as long as the Company/Coop does. At this point, there is nobody left at the Association to pursue any legal action, but because the Lease remains, there is no legal liability on the Council to take any action either. Only by dissolving the Company/Coop can the Lease be terminated, and liability be automatically 'returned' to the Council.



## Allotment Site Rules

- To be prepared by the ODFAA in conjunction with Caroline Chanides and reviewed by Legal Services, as appropriate.
- We started out on this in 2019/20 on the understanding that the lease document was to be as short as possible and everything else put in the Rules.
- Each successive time ODFAA submitted a draft to OCC, Legal said much of it had to be in the lease! We will probably have to start again once the lease is nearing completion.



There are some other points to mention as follows:

## Minchery Farm West

- The site remains under direct Council management, and we are trying to get confirmation of a proper programme and schedule of what they are actually going to be doing.

## Ingle Close

- This is a very small, disused site on the boundary of Headington Cemetery. ODFAA and the Council made a site visit earlier in the year and the overall situation and condition are poor. It is now likely to be declared 'abandoned' and alternative use as mixed wildlife/community garden considered.
- The Council is looking for sites to develop a biodiversity land bank which coincides with the managed wildlife habitat theme. It will mean formal redesignation and removal of Allotment status to change to this and, in the first instance, ODFAA has proposed a form of use that might not require it.



## Denny Gardens

- A simple row of expletives would best sum up our feelings about this. After years of waiting, a fixed water supply has been installed and agreement reached that the ground will be cleared (again) and prepared for allotment use.
- ODFAA had proposed that a joint committee for Denny Gardens and Minchery Farm West be recruited, given the small size of the former. Lack of resolution at Minchery Farm means that is not an option now, so we have proposed some joint steps with OCC to try and get Denny Gardens up and running by the end of the year.



## South Ward

- Over a long period of time the number of plot holders on the 'Redbridge' site has dwindled due to continuous nuisance and threatening behaviour by boys and youths from the Traveller site.
- It reached a critical point this year and ODFAA and South Ward Chair, Emma Tinker, wrote a joint letter to County and City Councillors and County Council Officers with special responsibility. This has given rise to action by the latter group and the situation at the site might now improve somewhat.
- An area of about five acres, one of the older sites in the City, is not one we can afford to lose. With a notable lack of interest from their landlord while all this has been going on, we are very grateful to Emma and her fellow committee members for hanging in there, and we are watching anxiously to see the situation improve and plot holders return.



Best wishes for a decent Summer season and a good harvest.

The ODFAA Committee

