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2024 Year End Update

Lease negotiations

Dear Members

Another gardening year draws to close, if they ever actually stop, and the sensation of being here before returns once more. After the flurry of exchanges over the last draft Lease, Rules and Plot Holder Agreement, we passed the key points from your various comments to OCC as a 'heads up' to start with.

We approached the same firm of solicitors we used previously in 2022 for initial advice, not all firms have the specific competence in agricultural tenancies let alone Allotment Law, but the quoted cost of more detailed advice was prohibitive. We are very grateful, therefore, to Paul Roblin at Eden Drive for taking the time to access expert advice from NAS.



The response from NAS confirmed that the local authority landlord was entitled to require use of a more formal sub-lease as the basis for the plot holder agreement as they meant tenants on all of the allotment sites would be on a level playing field and the council can be satisfied with how the plots are being used. However, NAS now generally advise against these as they rule out specific elements that a particular site committee might need to add, and also prevent the agreement from being modified quickly if new issues arise in the future.

NAS agreed that any rent increase should be based on some form of costings exercise to consider how the rent compares to that in neighbouring areas, the extent of the allotment service from the council etc. Insisting on a different review process that might be a more arbitrary increase each time would lead to a rent that would eventually be considered "unreasonable".

The advice supported the council's use of all the 'termination' clauses in the main Lease, albeit they are unlikely to be invoked if the terms are followed, as these derive directly from Allotment Law.

Taking the above into account, we have responded to OCC by making the key points:

1. There are errors that need correcting in the Appendix covering the nature and use of the annual rent payments to cover Insurance premiums, OCC tree work and the new 'boundary repair' fund.
2. While the council may choose to use CPI as a first measure of increasing costs, we don't accept this as being a non-negotiable figure when setting new rents – in fact initial legal advice was that RPI/CPI was not an enforceable measure for allotment tenancies.
3. We accept that OCC are able to require a sub-lease as the standard plot holder agreement, but we still would urge use of a simpler 'licence to occupy' that enables some local site additions. In any eventuality, we must have plain English versions of both the main lease and any sub-agreement to avoid discriminating against certain groups.
4. The OCC Site Rules should have a standard blank section at the end for Associations to make necessary, non-contradictory, additions.

We are now waiting for a further response from the council.

In the meantime, may we wish you all seasons' greetings and a much drier spell of weather!

With best wishes

The ODFAA Committee