

Hughenden Community Support Trust (formerly the Allotments for Labouring Poor) and the Hughenden Parish Council Chronology

The history of the Allotments for the Labouring Poor and its relationship with the Hughenden Parish Council is a long, complex and often confusing one. Statutes governing charity/trust law are at times contradictory. The judge in the first instance case of Snelling and another v Burstow Parish Council 2013 described these as “rather tangled statutory provisions”. The following chronology signposts some of the more significant events which have shaped the history of this matter. This is very much truncated and simplified but is nevertheless believed to be accurate.

1855 Inclosure Award. Land which included the Windmill Lane Allotments, what became the site of the Widmer End Combined School (Brimmers Hill), an area forming what is play area and part of the recreation ground on Great Kingshill Common and what was originally the Common Road Allotments in Great Kingshill and is now an open space amenity area was given to the Church Wardens and Overseers of the Poor of the Parish of Hughenden to be administered as allotments for the labouring poor.

1862 Inclosure Award. Land which included the Walters Ash Allotments, the Louches Lane, Naphill Allotments and land which was in the 1970’s exchanged for what is now the North Dean Allotments was similarly given to the Church Wardens and Overseers of the Poor of the Parish of Hughenden to be administered as allotments for the labouring poor.

1894 The Local Government Act 1894 set up a systems of Parish Councils whose functions were intended to replace those of the church wardens and overseers of the poor. The first meeting of the Hughenden Parish Council (“HPC”) was on the 31st December 1894 and the legal title of the land comprised within the 1855 and 1862 Inclosure Awards was transferred to HPC subject to any existing trusts, HPC’s ownership being that as custodial trustee for the Allotments for the Labouring Poor (“AfLP”)

1927 Under the provisions of the Rating and Evaluation Act 1925 and the Overseers Order 1927 the office of overseers was abolished and whose trustees functions were to be replaced by trustees to be appointed by the Parish Council

1949 First record of HPC corresponding with the Charity Commission (“CC”)

1966 Application made to formally register the AfLP as a Charity

1971 HPC sells the Brimmers Hill Allotment site to Buckinghamshire County Council for £53000 as the site of the Widmer End Combined School. The proceeds of sale were used by HPC to purchase other land in the Parish for the community.

1995-1997 HPC writes to the Charity Commission being the start of a long series of letters with CC. CC contends that HPC owns the land concerned as Custodial Trustee on behalf of the AFIP

2004 CC undertakes an investigation as to whether the AfLP Charity still exists

2005 CC meets with HPC. CC concludes the AfLP Charity exists and requires HPC to undertake certain steps including the appointment of four individuals to act as managing trustees of the AfLP and for those Trustees to ascertain the extent of land that may be owned by the Trust and to consider applying to CC for a Scheme to be made.

2006 HPC appoints three Councillors and the Clerk to act as the managing trustees of the AfLP

2007 Mr Trevor Dean resigns as a Councillor but continues as an AfLP Trustee.

2010 The then Clerk registers HPC as the registered proprietor of "AfLP" land at HM Land Register as part of a programme by the HM Land Registry to mop up unregistered land across the Country.

2011 One of the Councillors and the Clerk resign as AfLP Trustees.

2012 A further Councillor resigns leaving Mr Dean as the sole AfLP Trustee.

2013 (July) HPC appoints three further Trustees so that all of the trustees are independent from HPC. Discussions and negotiations start to take place between HPC and the AfLP including addressing the issue of the Brimmers Hill site to BCC in 1971.

2014 (January) AfLP presents HPC with certain Heads of Agreement.

2014 (April) The Clerk to HPC instructs a barrister specialising in Trust and Charity Law to advise HPC. Counsel advises that HPC that as Custodial Trustee it is obliged to transfer the legal estate vested in HPC to the beneficiary of the Trust (namely the AfLP) if called upon to do so. Counsel also advises HPC that it was entitled to retain to retain the proceeds of the sale of the Brimmers Hill site and that it was not obliged to account to the AfLP with those proceeds.

2014 (June) HPC resolves (among other things) that following the legal advice received to transfer the legal title of the lands concerned to the AfLP and that the Council's Working Group (AWG) be authorised to enter into discussions with the AfLP with a view to leasing back that land and to conduct further negotiations with the AfLP.

2014 (July) HPC resolves to cease to keep confidential any further discussions with the AfLP and not to exclude the public or press from any meeting where this might be discussed. HPC also resolved to declare that there was no breach of trust following the sale of the Brimmers Hill Site nor any liability to compensate AfLP with any loss of income in respect of the whole or any part of the lands held on behalf of the AfLP.

2014 (September) HPC resolved to execute a transfer of the land concerned to the AfLP and to resign as custodial trustee if asked to do so.

2014 (October) CC publish draft Scheme.

2014 (November) HPC resolves to accept the recommendations of the AWG as to the terms of a settlement reach with the AfLP whereby the four allotments sites concerned would be leased back. HPC also resolved for the Clerk to seek further advice from Counsel as to the matter of terms of the draft Scheme which had been prepared by the CC.

2014 (December) HPC resolves to accept further recommendations from the AWG so as to reach a final terms of a settlement with the AfLP. HPC were asked to ensure that it had considered all relevant matters in coming to a decision and were satisfied that it had obtained sufficient independent legal advice and had acted in accordance with the Nolan Principles. To action this the Council resolved to reverse certain resolutions following a special motion pursuant to its standing orders and which included the resolution to seek further advice with regard to the terms of the CC Scheme leaving the way open for that Scheme to be made. HPC resolved to instruct its solicitors to carry out the necessary conveyancing transactions.

2015 (January) The CC Scheme is brought back for an internal review decision following a number of representations made objection to the Scheme.

2015 (April) CC internal review concludes and a Decision Notice issued.

2015 (May) The Clerk briefs new Councillors. New draft Scheme to be made under the provisions of the Commons Act 1899 issued.

2015 (June) CC send an email to both HPC and the AfLP asking for concurrence with the legal views as expressed by the CC required in connection with the issue of a new CC Scheme.

2015 (July) HPC resolves to confirm concurrence of the views as expressed by the CC and for an application to be made by HPC to the CC for a Scheme to be made under the provisions of the Commons Act 1899. HPC Clerk makes an application to the CC for the Scheme to be made.

2015 (August) Draft new Scheme published by the CC.

2015 (September) HPC resolves to authorise AWG to endeavour to re-negotiate the length of the lease back to HPC in respect of the Common Road Old Allotment site and to make a representation that the reference to the Parish of Hughenden in the new draft Scheme should be defined by reference to the current boundaries of the Parish.

2015 (October) The CC confirm the new Scheme as an Authorised Scheme. HPC resolves for a briefing paper to be prepared.

2015 (October) Appeals made by a resident against the CC's decision to make a scheme enabling HCST to take responsibility for land in Hughenden Parish and against its decision to keep the charity on the register of charities.

2016 (January) Joint meeting between HPC AWG and HCST updating on progress of the appeal by a resident to the First Tier Tribunal against the CC Scheme. Both Trustees and HPC are in agreement that a sensible strategy is to await the outcome of the appeal before proceeding to complete the land transfers. However, it was agreed that each party should look to work together as if the entire agreement had been concluded. Regarding Common Road Old Allotment site, it is view of the current Trustees that they would be reluctant to extend the lease beyond a term of 25 years if it was to remain in its current state of open/unused community space. A consultation of GK residents/parish wide residents should be undertaken to establish a preferred use for the space. If acceptable to the Trustees, the Trustees may be willing to extend the lease to a term of 99 years with appropriate rent reviews.

2016 (January) Joint Press Release issued by HPC and HCST (Trust) about the future of allotments in the parish. The parcels of land had been held by the Council as custodian trustee for the Trust. As a result of the Scheme being made, the Trust are now confirmed as the absolute owner of the freehold. In turn under the terms agreed, the four allotment sites and the recreation land will be leased back by the Trust to the Council for a term of 99 years.

2017 (August) The First-tier Tribunal dismisses both appeals made by resident in October 2015. The Tribunal stated that the Commission made the scheme in 2015 because "at some point in the past, using the land in question to provide allotment gardens had ceased to be a suitable and effective means of relieving poverty in Hughenden and that there was justification for making a scheme to change the objects of the charity by reasons of a cy-pres occasion, and to update the trustees' powers of management". The Tribunal concluded that charitable trusts had been established and that it is "satisfied that the Commission has the power to make the scheme". It also backed the Commission's refusal to remove the charity from the register and said, "we conclude that the Commission was right to refuse to remove the charity from the register".

2017 (December) Permission to appeal the decision by the First-tier Tribunal (FTT) which was initially refused by the FTT, was granted by the Upper Tribunal on 22nd December 2017.

2018 (May) Appeal submitted to Upper Tribunal by resident against decisions made by FTT in August 2017.

2018 (October) Decision released on 3rd December 2018 upholding the decision of the FTT stating that “there was no material error of law in the FTT’s conclusion that the land allotted by the inclosure awards in this case is held subject to valid charitable trusts. It follows that, in our view, the Charity Commission was correct to maintain the charity on the register of charities and was entitled to exercise its scheme-making powers in relation to it.” In light of its conclusions, the appeal was “dismissed”.