Question:

At a recent Council meeting, a Councillor asked for clarification of Section 23(1) of the 1908 Allotments Act, concerning the duty of a local authority to provide "sufficient allotments where they consider that there is a demand for them in their area". The Council having previously been advised that in 1998 the House of Commons - Environment, Transport and Regional Affairs Committee Report, entitled "The Future of Allotments" that it was considered appropriate that each local authority should decide for itself what proportion of its resources to devote to their purposes. The Report apparently also advised that "allotment authorities have room to exercise discretion about the level of provision of allotment gardens and facilities on site". Could you please advise on these apparently conflicting pieces of advice to local authorities?

Do the views apparently expressed in the Future of Allotments report also not conflict with the Section 23(2) of the 1908 Act whereby "Where representations have been received by any six registered electors or persons liable to pay council tax, it is the duty of local authorities to take those representations into consideration when assessing demand".

Response:

The views expressed in the Document of 1998, and in the PPG 17, have the nature of guidelines **at best**. It has always been the prerogative of a municipal authority to determine the level of **resources** it will devote to allotments.

Indeed, at one time there was a Statutory provision (s. **16 Allotments Act** 1922 and **section 4 Allotments Act** 1925, both repealed) whereby a LA might make a precept of not more than 0.8 pence, towards provision of allotments. It is my opinion that the said repeals have led Las to assume, erroneously, that there is now no obligation of provision and letting.

However : the obligation of provision and letting (**section 23 subsection (1) Small Holdings and Allotments Act 1908**) are **absolute : they admit of no defence, challenge or argument.**

Should a LA decide that any provision it might make does not fulfil the Statutory (and hence mandatory) obligations of provision and letting of allotments (**section 23 subsection (1) Small Holdings and Allotments Act 1908**) then the LA is in Breech of Statutory Duty. This is *prima facie* actionable before the County Court by any and every person allegedly aggrieved by the alleged Breach.

It follows that any LA which purports to find, or to have found a *soi-disant* "get out clause" in PPG 17, or in **Cm 4052** has either misled itself or is deluding itself, unwittingly (unlikely) or otherwise. Any reference to a LA being able to decide for itself the level of resources has, in my opinion, been deliberately misconstrued so as to provide a LA with an excuse not to provide.

Any such misconstruction might engage the *Wednesbury Doctrine of Reasonableness* - a decision so unreasonable that no reasonable person or body, properly advised, could conceivably have arrived at.

(**Associated Provincial Picture Houses - v - Wednesbury Corporation**, reported at page 223 of the first volume of the King's Bench Reports for 1948, Court of Appeal (England.)).

Once a UK Statute has been lawfully enacted by the UK Parliament - that is, the House of Commons and the House of Lords - and received the gracious Royal Assent to the enactment, graciously granted by Our Sovereign Lady Elizabeth by the grace of God Queen, Defender of the Faith - then no power on Earth has any authority to challenge the provisions of the Act, or ignore, or subvert, its provisions. These are absolutely and unconditionally binding on any and every subject of our Sovereign Lady, unless and until expressly repealed by the High Court of Parliament (the Westminster shower).

It follows from this that there is no conflict between the provisions of the Allotment Acts 1908 - 1950, and the Documents referred to in your E-Mail. Where there is a **perceived conflict**, the Acts can and must take precedence.

LAs were obliged to have undertaken, and publish results of, the provision of allotments in the Planning for Open Space, Sport and Recreation required for the year 2002 by PPG 17. With reference to the provisions of **s. 23 (1)** (*supra*), it should be possible to determine the basis of provision and letting of allotments which the LA under consideration proposes to make.

I hope this information will be of some help to you.

Yours sincerely

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