Neutral Citation Number: [2014] EWHC 2598 (Admin)

Case No: CO/17267/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

The Court House
Oxford Row
Leeds LS1 3BG

Date: 5 August 2014

Before:

His Honour Judge Behrens sitting as a Judge of the High Court in Leeds

---

Between:

The Queen on the Application of
(1) IAN WOOD
(2)JUDY TURLEY
(on their own behalf and on behalf of the
LEEDS AND DISTRICT ALLOTMENT
GARDENERS FEDERATION — **Claimants**
- and -
LEEDS CITY COUNCIL — **Defendant**

Richard Clayton QC (instructed by **Irwin Mitchell LLP**) for the **Claimants**
Christopher Baker (instructed by **Karen Blackmore, Leeds City Council**) for the **Defendant**

Hearing dates: 16, 17 July 2014

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.

.....

Judge Behrens:

1 Introduction

1. This application for judicial review is made on behalf of Leeds and District Allotment Gardeners Federation ("LDAGF"). It arises out of a decision made by the Executive Board of Leeds City Council ("the Council") on 4th September 2013. The effect of the decision was substantially to increase the rent payable by allotment holders over a three year period commencing in October 2014. This, together with other cost cutting measures, would have the effect of reducing the loss to the Council of administering the allotment facilities from £133,000 per annum to nil.

2. The decision made on 4th September 2013 was subject to the "Call In Procedure" and was duly called in. At a meeting of the Scrutiny Board on 25th September 2013 it was resolved that the decision be released for implementation.

3. It will, of course, be necessary to consider the law in more detail later in this judgment. However as s 10 of the Allotments 1950 Act is central to the issues between the parties it is convenient to set it out here. S 10(1) provides:

> **10 Rents to be charged for allotments let by local authorities.**
>
> (1) Land let by a council under the Allotments Acts, 1908 to 1931, for use as an allotment shall be let at such rent as a tenant may reasonably be expected to pay for the land if let for such use on the terms (other than terms as to rent) on which it is in fact let:
>
> Provided that land may be let by a council as aforesaid to a person at a less rent if the council are satisfied that there exist special circumstances affecting that person which render it proper for them to let the land to him at a less rent.

4. LDAGF contends that the Council has acted unlawfully on the following grounds:

1. the Council misconstrued or misapplied s 10 of the Allotment Act 1950 ("the 1950 Act");
2. the Council failed to take account of relevant consideration, namely evidence indicating the rent a tenant may reasonably be expected to pay for the land if let for use as an allotment on the terms (other than terms as to rent) on which it is in fact let, as s 10 requires it to do;
3. the Council took account of an irrelevant consideration, namely the Council's own financial position and its wish to eliminate the subsidy, which s 10 precludes it from doing; and
4. in any event, the Council's conclusion on the rent level to be set was irrational.

5. The claim is disputed by the Council in its entirety. It contends that the fixing of the rent was a valid exercise of its powers under s 10 of the 1950 Act. It contends that the application for judicial review was not made promptly and/or was unduly delayed with the result that relief should be refused. Furthermore, and as a separate ground, it contends LDAGF had the alternative remedy of referring the matter to the Ombudsman.

6. These proceedings were issued on 3rd December 2013. On 28th March 2014 I granted permission on the papers. In so doing I expressly left open the question whether the proceedings were brought promptly or whether there was an alternative remedy. The matter was argued on 16th and 17th July 2014 when judgment was reserved.

7. Before dealing with the case in detail it is right that that I should acknowledge with thanks the very detailed skeleton arguments and the full clear oral submissions that I have

received. I am also extremely grateful for the research carried out by Counsel and particularly Mr Baker after the oral argument on the convoluted legislative history relating to the repeal of section 11 of the Allotments Act 1950 and on the power of the Scrutiny Board.

2 The facts

Allotments in Leeds

8. The Council's Parks and Countryside service is responsible for 97 allotment sites. There are nearly 4,000 plots, a full-size plot measuring 250 sq. metres. There is a waiting list of about 1,500. As at September 2013, the annual rent for an allotment plot was as follows:

	Non-concessionary rent	Concessionary rent
Full plot (250 sq m)	£37-00pa	£18-50pa
Half plot (125 sq m)	£18-50pa	£9-25pa

9. Concessions were granted to those in receipt of state pension, eligible disabled people, the unemployed and full-time students.

10. The Parks and Countryside service directly manages 37 of the 97 allotment sites. The other 60 sites are managed by (unincorporated) allotment associations composed of allotment-holders. Each of the latter sites is the subject of a lease granted to the trustees of the respective association.

11. The leases were for just under 7 years, but were terminable on 12 months notice. They provided for each association to collect the rents due from allotment-holders and permitted the association to retain two-thirds of that amount for its own purposes; the remaining one-third was payable by the association to the Authority by way of rent under the lease. Through their respective associations, allotment-holders could accordingly themselves spend two-thirds of the rents charged, on such matters as they might decide.

12. Under clause 2.8 the allotment rent was defined as the rent for individual plots as set by the Council from time to time and notified to the trustees. The leases contained a number of covenants by the association including covenants to collect the rents from individual plot holders, to pay one third of the gross rental income to the Council, to manage the lettings, to manage the land, and to keep accounts. In addition to the break clauses they contain provisos for re-entry for non payment of rent and other breaches of covenant.

The meeting of 12th November 2012.

13. The provision of allotments was considered by Safer and Stronger Communities Board on 12th November 2012. The report by the officer to the Board makes a number of points:

1. Demand for allotments has increased over the years with the waiting list as at October 2011 of 1,858
2. Allotment charges are agreed via the Allotment Working Group and a full year's notice is given to plot holders of any planned increase. Any increases in allotment rent have been kept in line with inflation.

3. The projected income received by the Council for the year amounted to £44,995 and projected cost amounted to £177,850. There was accordingly a loss to and/or a subsidy by the Council of £132,855.

4. There was a need to increase the number of allotments to meet the demand from 0.19 hectare per 1,000 of population to 0.24 per 1,000 of population.

14. The Board resolved to note the report and raised a number of issues not relevant to this dispute.

The meeting of the Allotments Working Group ("AWG") on 13th April 2013

15. In 2012/13, the Council's budget for the Parks and Countryside service was reduced by £2 million with a further reduction of £0.6 million in 2013/2014. One of the matters it sought to address was the subsidy in relation to the provision of allotments.

16. At a meeting of the AWG on 13th April 2013 attended by a number of allotment associations including Mr Wood, the Chair (Joanna Clough) informed the group of the net deficit and that a consultation document would be sent to all allotment holders including the wider public to seek people's views on a number of options that would help address the £132k deficit. She summarised in general terms the three options that were being considered.

The Consultation Document

17. In May 2013, the Council distributed a consultation document to 3,400 allotment-holders, 51 allotment associations, LDAGF and 99 Ward Members. The Consultation Document is 4 pages long and includes:

> **This consultation** concerns allotment facilities that are managed by the Council's Parks and Countryside service. The provision of allotments is heavily subsidised by the Council by around £130k each year, and furthermore the Council is under acute financial pressure and needs to economise where possible.
>
> **Savings** are needed and a recent report to the Council's Executive Board identified the need to remove the subsidy from allotment provision. The Council is therefore considering how it might review the way allotments are managed and the pricing structure to deliver these savings ...

18. It went on to propose 3 options:

1. To cover the deficit by increasing the rents for all allotment-holders, in proportion to what they currently paid;

   The effect of this would be to increase the full plot price to non-concession holders to £103.07 and to concession holders to £51.53. Half plot prices would be half of this. The increase was to be phased. The level of income to be retained by the association was to be the same with the result that the percentage retained would decrease from two thirds to around 24%.

2. To cover the deficit by increasing the non-concessionary rents only;

   The effect of this would be to increase the full plot price to non-concession holders to £123.43 whilst concession holder's rent would not increase. The increase was to be phased. The level of income to be retained by the association was to be the same with the result that the percentage retained would decrease from two thirds to around 24%.

3. Reviewing the management arrangements to seek a not-for-profit third party allotment operator, who would then determine the pricing arrangements and meet all the costs of provision.

   This option could be considered if all allotments managed by the Council were managed by a voluntary organisation. In that event some of the costs associated with administering and maintaining allotments could be saved which in turn would mean a reduction in price increases.

19. The Consultation Document invited the views of consultees on the options. It also invited consultees to suggest other options to deliver the savings required.

20. It is to be noted that the Consultation Document made no reference to s 10 of the 1950 Act. Nor does it make any reference to the question of whether the proposed increases represent a "rent as a tenant may reasonably be expected to pay for the land". The expressed purpose of the increases is to address the £132k deficit.

Equality and Impact Assessment ("EIA")

21. On 1st August 2013 Joanna Clough prepared an EIA in relation to the proposed increases. In it she analysed the responses to the Consultation Document. There were 578 replies of which 304 were in favour of option 1, 34 in favour of option 2, 128 in favour of option 3 and 112 who did not identify any option. She concluded that nearly 60% were in favour of a price rise with a majority in favour of option 1.

She noted that:

> This does not recognise the importance of concessions for those who would not be able to afford the proposed price increase. It is important to ensure those who genuinely can not afford to pay are not excluded … Therefore it is proposed to retain concessions for those who are registered disabled, unemployed full time students or in receipt of pension credit and introduce a new 20% concession for those who are in receipt of a state pension,

22. She produced a table showing the effect of the proposals

	2014/2015			2015/2016			2016/2017		
Rental	**Concession**	**Concession Pensioner**	**Full**	**Concession**	**Concession Pensioner**	**Full**	**Concession**	**Concession Pensioner**	**Full**
Full	£27.00	£46.40	£58.00	£32.50	£52.00	£65.00	£36.00	£57.60	£72.00
Half	£13.50	£23.20	£27.00	£16.25	£26.00	£32.50	£18.00	£28.80	£36.00
Quarter	£6.75	£11.60	£13.50	£8.00	£13.00	£16.25	£9.00	£14.40	£18.00

23. She described the positive impact of the proposals as:

> The introduction of a phased price increase over the next 3 years for the provision of allotments across the city will secure the future provision being managed by the Council.

24. As against that she noted:

> The proposed increase in charges is over 100% and may have a negative impact on those on limited incomes or in receipt of benefits and concessions are available.

The Report to the Executive Board of 4th September 2013

25. On 4th September 2013 Mike Kinnaird prepared the report which went before the Executive Board. The report is 9 pages long and is divided into 12 sections.

26. The report starts with a summary of the main issues. Mr Kinnaird draws attention to the budgetary constraint facing the Council, the subsidy of £132k currently made to the allotments, the consultation process, and the proposals. Some of the deficit would be reduced by reducing the level of cost. He identified a possible £53k of savings leaving a deficit of £80k. The proposed increases in Ms Clough's table would have the effect of projecting a full subsidy recovery of £80k in 2016/2017.

27. The remainder of the report deals with these matters in detail. Thus in section 2 Mr Kinnaird deals in detail with the current position setting out the current rents paid, the expenditure, and identifies possible savings. In section 3 he deals in detail with the consultation mentioning in particular an allegation by LDAGF that the cost of allotment provision is too high. In section 4 he set out the proposals in detail showing how the net subsidy would reduce to nil by 2016/2017.

28. It is to be noted:

1. that the report makes no reference to s 10 of the 1950 Act. Equally there is nothing in the report that draws to the Board's attention the requirement that the proposed rents were "rents that a tenant may reasonably be expected to pay for the land".
2. there is nothing in the report to suggest that Mr Kinnaird has considered whether there are any comparable rents for example in respect of allotments for neighbouring authorities.
3. there is nothing in the report to suggest that the Council had taken any valuation or other professional advice as to the appropriate level of rents for allotments.
4. the increases proposed are justified solely on the basis that they are needed in order to remove the subsidy after 3 years after making allowance for costs savings of £53k.

The Decision of the Executive Board on 4th September 2013

29. The Minutes of the Executive Board are commendably brief. Mr Kinnaird's report was presented. Members discussed the nature of the consultation exercise and considered the proportion of the allotments that were self managed. It was noted that further work needed to be done to encourage more sites to be self managed in the future.

30. The Board passed two resolutions:

(a) That a phased price increase commencing in autumn 2014 to recover £50,000 subsidy with a £15,000 above inflation rise in 2015 and 2016 projecting a full subsidy recovery of £80,000 in 2016/17 be approved.

(b) That approval be given to Allotment Associations being given notice to terminate the existing lease on 29th September 2013 to allow a renegotiation based upon the Allotment Association keeping 32% of the allotment rental by 2016/2017 (which with the proposed price increase is equivalent in monetary terms to the value currently retained).

31. The Minute was published on 6th September 2013 and noted that the last day for call in was 13th September 2013.

32. It is to be noted that the resolution does not expressly approve the increases referred to in the table. However by inference the first resolution appears to approve them. It is a curious feature that the increases are referred to as "price increases" rather than "rent increases"

The Call In

33. On 13th September 2013 two Members submitted the relevant form for a call-in and the decision was duly called in.

34. On 25th September 2013 Angela Brogden prepared a report on the Call In procedure. In summary the Scrutiny Board has 3 options. It can release the decision for implementation. If so the decision is released for implementation and cannot be called in again.

35. It can recommend that the decision be reconsidered. If it does this it is reconsidered by the Executive Board which has power to vary or confirm its original decision. This forms the basis of the final decision which cannot be called in again.

36. It can recommend the decision be reconsidered and refer the matter to full Council if decision not accepted.

37. The Scrutiny Board met on 25th September 2013. Mr Wood attended the meeting on behalf of LDAGF. The minutes of the meeting are 3 pages long. At an early stage legal advice relating to the Executive Board was sought and the public were excluded from the meeting. The Minutes do not contain details of the legal advice that was sought or given. There is no contemporaneous note or other documentary evidence relating to the advice given to the Scrutiny Board.

38. There is, however, a witness statement from Mr Flesher dated 9th May 2014. In paragraph 63 of his witness statement he states that Leonie Wallace from legal services provided oral advice to the Scrutiny Board including detailing provisions of s 10 of the 1950 Act and referring to case law as follows. There then follows paragraphs 64 to 68 which appears to be what Mr Flesher says was her oral advice. In summary:

1. Allotment gardening is a recreational activity. There will still be a subsidy because the listed expenditure does not include expenditure such costs as legal costs and staffing support by officers outside the allotment service.
2. The determination of allotment rents is not based on rents charged by local authorities or private landlords. Research by Parks and Countryside revealed wide ranging differences in the way allotment services are provided which could not be reconciled to make an informed judgment as to the rent to be charged in Leeds.
3. Parks and Countryside attempted to compare allotment gardening with other recreational activities to find out whether it was reasonable to use a percentage increase in line with these activities. This was difficult as the management activities were very different compared with other activities.
4. Parks and Countryside's recommendations were made following an open public consultation where the opinions of plot holders were listened to and acted upon. Changes were made following the consultation. There was also a demand from Leeds residents to cut recreational services.
5. The weekly rate of £1.36 in 2016 is a reasonable rate particularly when compared with the cost of swimming.

39. A number of comments can be made about these paragraphs:

1. It is not entirely clear that they are all meant to represent Leonie Wallace's legal advice. However both Counsel treated them as such.
2. There is no detailed reference to s 10 of the 1950 Act. The test in s 10 is not mentioned. There is no mention of a single case.

3. Many of the opinions are not legal advice at all. It is not clear why Leonie Wallace should be giving advice about the research carried out by Parks and Countryside or its attempts to compare allotment services with other recreational activities. This was surely a matter for Parks and Countryside to deal with (and for that matter to be included in the report to the Executive Board). It is not clear what qualifications Leonie Wallace had to express the opinion that the weekly rate of £1.38 was reasonable. Her opinion on reasonableness was certainly not an expression of legal advice.

4. As Mr Clayton pointed out the allegations in these paragraphs and indeed in the rest of Mr Flesher's witness statement are vague in the extreme. There is, for example, an assertion that it is impossible to reconcile rents charged by other landlords or local authorities but no real particulars are given of the research or of any charges made by any other authority or private landlord. Furthermore no mention was made of this research in the report to the Executive Board.

40. The Scrutiny Board went back into open session. It was addressed by Councillor Downes, Mr Wood, Councillor Dobson and Mr Flesher. There is no reference to s 10 of the 1950 Act in the Minutes of the discussion. Furthermore Mr Golton, one of the persons present states that it was not referred to in the open part of the meeting.

41. The minutes contain one possibly relevant reference. Either Councillor Dobson or Mr Flesher submitted (amongst other things) that the "agreed price increases are proportionate and not unreasonable". However neither of these concepts are the same as the concept in s 10 of the 1950 Act – whether the rent is such as a tenant may reasonably be expected to pay for the land.

42. The Scrutiny Board resolved to release the decision for implementation.

Subsequent Events

43. On 4th October 2013 Mr Wood consulted Irwin Mitchell LLP. The matter was referred to Mr Peebles who advised Mr Wood that he would need LDAGF to commit £1,500 to consider the papers and perhaps take Counsel's advice.

44. On 11th October 2013 Leonie Wallace wrote to LDAGF informing it of the decision of the Scrutiny Board. The letter enclosed the Notice of Termination of the existing lease and enclosed a draft new lease. The new lease was similar to the old lease but created a 25 year term from 12th October 2014 subject to a break clause. It also provided for the Council to receive a higher proportion of the rental income – 60% in 2014/2015, 64% in 2015/2016 and 68% in 2016 to the end of the term.

45. Mr Wood needed the authority of LDAGF to proceed. On 24th October 2014 he informed Mr Peebles that he was authorised to proceed. Mr Peebles formed the view that case was complex and unusual. By 14th November 2013 he instructed Mr Clayton QC. Mr Clayton QC provided positive advice the following week. A conditional fee agreement was negotiated between Irwin Mitchell, Mr Clayton QC and LDAGF.

46. The letter before action was sent on 25th November 2013. In the light of the impending 3 month limit only a short time was given for the Council to respond.

47. Meanwhile in November 2013 Mr Wood sent a formal complaint to the Council raising a large number of issues. The letter made it clear that the breach of s 10 of the 1950 Act was a separate issue. On 6th December 2013 Joanne Clough responded in detail to the complaints. The letter concluded by stating that if Mr Wood was not satisfied with the response it was open to him to complain to the local Government Ombudsman.

48. As already noted these proceedings were commenced on 3rd December 2013 just under 3 months after the decision of 4th September 2013 and just over 2 months after the decision of the Scrutiny Board of 25th September 2011.

49. In paragraph 71 of his witness statement Mr Flesher states (inaccurately) that notices to terminate the leases with allotment associations was served on 15th (rather than 11th) October. He goes on to state that 6 signed leases have been received since then. He does not state whether the Council has executed the leases or state when they were received. Thus they could have been received after these proceedings were commenced. Mr Baker pointed out that in paragraph 3 Mr Flesher adopted the detailed grounds of defence. In paragraph 17 of the detailed grounds the position is as set out in paragraph 71 of Mr Flesher's witness statement. However paragraph 36 goes slightly further in that it is asserted that the 6 new leases "have taken effect". Mr Baker asked me to infer from those words that the 6 new leases must have been executed on behalf of the Council. There is, however, no express statement that they have been so executed and none of the 6 executed leases have been exhibited.

50. If the decision as to the 2014 rents is quashed it is suggested there will be uncertainty and disruption in respect of the rents payable from October 2014.

3 Harwood v Borough of Reigate (1982) 43 P & C R 336 ("Harwood")

51. *Harwood* is the only occasion where s 10 of the 1950 Act has been considered judicially in the High Court. As both counsel sought to rely on parts of the decision and distinguish other parts it is necessary to consider it in a little detail.

52. The decision was made by Mr Vivian Price QC sitting as a deputy High Court Judge in the Chancery Division in November 1981.

53. The Claimant was the tenant of two allotments in Reigate, Surrey. The rent in 1976 and 1977 was £3 p.a in respect of each allotment. In March 1977 the Council served a notice increasing the rent for each allotment to £10 p.a. The Claimant objected to the increase and instigated private law proceedings in the Chancery Division for a declaration that

> upon the true construction of section 10(1) of the Allotments Act 1950 the rent charged or proposed to be charged by the defendants in respect of [the] plots ...is in excess of such rent as a tenant might reasonably be expected to pay for the said land if let for such use on the terms (other than terms as to rent) on which it is in fact let.

54. After setting out the provisions of section 10 the judge referred to a number of authorities under other statutes where the word "reasonable" has been judicially considered. There included the judgment of Megarry J. in *English Exporters (London) Ltd. v. Eldonwall Ltd.*[2] where the judge had to consider the provision in the Landlord and Tenant Act 1954, section 24A, for the payment of an interim rent where the words in question were "apply to the court to determine a rent which it would be reasonable for the tenant to pay while the tenancy continues"

55. He concluded that the only relevant teaching of them all is that the word "reasonable" is to be construed in the context in which it is used, whether statutory or contractual or otherwise. He thought that the most helpful general instruction is to be found in the judgment of Lord Evershed M.R. in *John Kay Ltd. v. Kay* where he cited the language of Lord Greene MR in a case where the issue was whether it was reasonable to make a possession order:

> The duty of the judge," he said, "is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, commonsense way as a man of the world, and come to his conclusion, giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive."

56. He pointed out that Lord Evershed went on to say:

> I have referred to the conception of "reasonableness," and he would indeed be a bold judge who tried to formulate with precision the significance that the word implies. One is inevitably, sooner or later, thrown back upon generalities of the kind I have already quoted from Lord Greene M.R. This much must be clear: the standard is that which is regarded as reasonable by the judge who tries the case, and which is or may be something distinct from standards which may be found to be appropriate by applying other tests... The phrase "economic rent" has been used during the argument, but I prefer to avoid it, since the phrase has, in some contexts, and to some economists, as I believe, a particular and technical significance. The market value of certain premises is one thing, and as I read this Act it seems to me that the "reasonable" rent may be something different. The reasonable rent is arrived at by applying the subjective test of what the judge thinks is right and fair, as distinct, for example, from the objective test of what the evidence shows is the market value.

57. The judge then went on to consider, in general terms, how s 10 was intended to work. He said:

> It seems to me to be very clear when the proviso is read that the whole subsection requires that it shall be the council that is required to determine the rent, not the court, not the tenant. Nor is the rent to be determined by agreement between the council and a particular tenant, although, of course, the council should listen to representations made from interested parties such as associations of allotment holders or individual allotment holders or, indeed, ratepayers. The council, so it seems to me, are required to determine the rent that a notional tenant rather than a particular tenant might reasonably be expected to pay. In arriving at this determination—and this is really the test that I attempt to propound in manner following Megarry J. in *English Exporters (London) Ltd. v. Eldonwall Ltd.*[12]—the council must take into account all relevant circumstances in a broad, commonsense way, giving such weight as it thinks right to the various factors in the situation so that it may come to a conclusion that it thinks right and fair.

58. After setting out the rival arguments the judge turned to section 11 of the 1950 Act which he summarised:

> it provides that the local authority are to have the power to spend moneys in carrying out their duties and obligations under the provisions of the Allotments Acts to make an expenditure over and above their receipts of no greater amount than would be produced by a rate of two pence in the pound, which has later been changed to, I think, 8p in the pound.

59. He concluded that the Claimant had made out his case that allotment gardening is a recreational facility that should be subsidised in the same way as other recreational facilities. He went to say:

> It does show that the defendants, when they were considering what rent should reasonably be charged (that is, when they arrived at the new figure for the rent that a tenant might reasonably be expected to pay), failed to take into account one of the relevant circumstances, namely, the purpose for which they were providing allotment gardens. They should have regarded it as a recreational facility which did not have to be self-supportive because of this fundamental difference in principle.

60. He went on to discuss the use of comparables:

> The first of these is what sort of comparables should the defendants look at? Should it be agricultural rents; should it be allotment rents in other parts of the country or, as Mr. Harman said, should it be allotment rents in neighbouring areas? The difficulty about relying upon such a test, as the defendants will know very well, is that in order to place any reliance upon comparable one has to know how those comparables were arrived at, how the figures were arrived at and what the reasoning was behind them in order to know what relevance they have and how they are to be relied upon. In this case I do not have any such material. Although, again, I am not criticising either party, it does seem to me that if the council is going to rely upon such matters then it would require more information and should get more information as to how other people arrive at their allotment rents than the information that has been provided in the present instance.

61. He concluded that the Claimant succeeded. His ultimate reasoning was expressed thus:

> it does seem to me that if the defendants, first of all, should regard the provision of allotment gardening as a recreational facility, and second can, under the statute, instead of regarding allotment gardening as being self-supporting incur a charge to the ratepayers of Reigate and Banstead of the order of £156,000, then the consideration of the defendants of the question of an increase for the charges for the use of recreational facilities has resulted, in this particular case, in an unfair and excessive charge being imposed upon the allotment holders.

62. As I have said both Counsel seek to rely on parts of the decision and to distinguish other parts:

1. Both Counsel agree that it is for the Council to fix the rent. There is no provision (as in the Landlord & Tenant Act 1954) for determination by the Court or determination by an independent third party.
2. Both Counsel accept that the Council must determine the rent a notional tenant might reasonably be expected to pay. They also accept that the Council must take into account all relevant circumstances in a broad commonsense way in coming to its conclusion as to the rent the tenant might reasonably be expected to pay.
3. Mr Baker points out that section 11 of the 1950 Act has now been repealed. The complex legislative history is set out in the Appendix to this judgment. Thus, in so far as the judge's reasoning depended on section 11 it cannot now be supported. Mr Baker also submits that the decision was wrongly decided in that section 16(1) of the 1922 Act did not require a subsidy and there was no requirement to treat allotment provision in the same way as other recreational facilities.
4. Mr Baker relies on the judge's observations on the question of comparables and the difficulties faced the Council if they had attempted to rely on comparables. Mr Clayton QC on the other hand points out that it is clear that the judge was provided with some comparables. The fact that the judge did not gain much assistance from the comparables with which he was provided does not mean that none should be provided. Whilst acknowledging the difficulty in finding the perfect comparable he submitted that comparable evidence was one of the matters that ought to have been taken into account by the Council in making its decision.

4 Submissions on the merits

4.1 Mr Clayton QC's submissions

63. Mr Clayton QC drew my attention to the wording of section 10. He submitted that the focus of the section was on rent. He pointed that the formula used by the section referred to

> such rent as a tenant may reasonably be expected to pay for the land if let for such use on the terms (other than terms as to rent) on which it is in fact let:

64. He submitted that there had to be a two stage process. First, there had to be some form of valuation exercise to determine the appropriate rent. Second the Council had to determine whether the proposed rent was such as a tenant may reasonably be expected to pay for the land. He sought to compare the position with s 34 of the Landlord and Tenant Act 1954 which requires the Court to determine the new rent of a business tenancy as: "that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor …".

65. He drew my attention to a passage in Woodfall Landlord & Tenant where the authors point out that the rent at which the premises might reasonably be expected to be let on the open market by a willing lessor depends on evidence and preferably on expert evidence by a surveyor experienced in the values current for comparable properties in the neighbourhood. The use of comparables is the most usual method for proving rental values but it is not the only method.

66. He pointed out that (as set out above) the report to the Executive Board on 4th September 2013 did not refer to section 10 of the 1950 Act, did not mention the question of comparable rents or other valuation evidence. Thus the Executive Board's decision was made without reference to any of these matters. He submitted that these matters were material considerations and that the decision of the Executive Board was accordingly unlawful. He drew my attention to the speeches of Lord Keith (at 764 G-H) and Lord Hoffman (at 780F-G) in Tesco Stores v Secretary of State [1995] 1 WLR 759 and submitted that whether or not a consideration was material was a matter of law.

67. He recognised that in paragraph 24 of his witness statement Mr Flesher stated:

> We then looked at other cities to see if we could compare charges. However there were no true comparisons which could really be made as they all do things differently and budget situations are also different. Some have managed sites, some are entirely city controlled. There are different management activities required and the costs of maintenance is different. They have different size of allotment plots. … Without examining the detail behind the figures it was impossible to reach a true cost comparison.

68. Mr Clayton QC described this approach as extremely broad-brush. It gives no details at all. It is by no means clear why it is not possible to examine the detail behind the figures. It does not make clear who carried out the research. The word "We" is ambiguous. In any event the fruits of the research were not brought to the attention of the Executive Board.

69. Furthermore the task for the Council is to determine the rent for the allotments in accordance with the statutory formula. This is not the same as determining the cost of providing the service. It is by no means clear why it is not possible to determine the rents charged by neighbouring authorities. It may be that the terms of neighbouring tenancies are different are different but those are factors that can be taken into account when assessing whether the proposed rent is reasonable.

70. Mr Clayton QC submitted that the decision of the Scrutiny Board on 25th September 2013 did not validate the unlawful decision of the Executive Board. First he pointed to the unsatisfactory nature of the evidence relating to the legal advice given in private to the Scrutiny Board by Ms Wallace. Second he pointed to the scope of the decision of the Scrutiny Board which was to release the decision of the Executive Board for implementation. He submitted that such a decision could not validate an otherwise unlawful decision.

4.2 Mr Baker's submissions

71. Mr Baker made a number of submissions. First, he drew to my attention to the fiduciary duty to safeguard public resources. In his skeleton argument he relied on a number of quotations from authority including:

> "...where a local authority has a statutory duty to provide services and to fund them in part or in whole out of monies provided by its taxpayers it must balance two duties one against the other. On the one hand it must provide the statutory services required of it; on the other, it has a fiduciary duty to those paying for them not to waste their money. It must fairly balance those duties one against the other." (*R (Birmingham Care Consortium) v Birmingham City Council* [2002] EWHC 2118 (Admin); [2003] BLGR 119 at [32], citing from *R v Newcastle-upon-Tyne City Council ex p Dixon* (unrep), per Auld J.).

72. He submitted that the decision by the Council to terminate the existing leases was a decision which it was entitled - if not *obliged* - to take in discharge of its fiduciary duty, because under the former arrangements the tax-payer was in fact subsidising about three-quarters of the Council's expenditure on allotments, at a time when national and local government were under significant financial pressure and the Council's statutory services (such as provision for elderly and vulnerable people) were under enormous strain

73. He drew my attention to some observations of Lord Dyson MR in Baker v Secretary of State [2008] EWCA Civ 141. The case concerned a challenge to the decision of a planning inspector under s 288 Town and Country Planning Act 1990. The issue was whether the inspector had failed to have due regard to the equality of opportunity duty under section 71(1)(b) of the Race Relations Act 1976. In the course of his judgment Lord Dyson said:

> 36. I do not accept that the failure of an inspector to make explicit reference to section 71(1) is determinative of the question whether he has performed his duty under the statute. So to hold would be to sacrifice substance to form. I agree with what Ouseley J said in *The Queen (on the application of Lisa Smith) v South Norfolk Council* [2006] EWHC 2772 (Admin), para 87:
>
> > "I do not accept the submission made by Mr Bird that s71 was concerned with outcomes; ultimately of course it is aimed at affecting the way in which bodies act. But it does so through the requirement that a process of consideration, a thought process, be undertaken at the time when decisions which could have an impact on racial grounds or on race relations, to put it broadly, are being taken. That process should cover the three aspects identified in the section. However, that process can be carried out without the section being referred to provided that the aspects to which it is addressed are considered, and due regard is paid to them..."
>
> 37. The question in every case is whether the decision-maker has *in substance* had due regard to the relevant statutory need. Just as the use of a mantra referring to the statutory provision does not of itself show that the duty has been performed, so too a failure to refer expressly to the statute does not of itself show that the duty has *not* been performed. The form of words suggested by Mr Drabble to which I have referred above may not of itself be sufficient to show that the duty has been performed. To see whether the duty has been performed, it is necessary to turn to the substance of the decision and its reasoning.

74. He accordingly submitted that the failure to refer explicitly to s 10 of the 1950 Act in the report to the Executive Board was not fatal to the Council's claim.

75. He made a number of submissions in relation to s 10 of the 1950 Act. First he submitted that there was an analogy with s 123(2) of the Local Government Act 1972 which relates to the disposal of land by local authorities. In general (and subject to the consent of the Secretary of State) the consideration must be the best that can be reasonably be obtained. He

referred me to some observations of Kennedy J in *R v Darlington BC ex p Indescon Ltd* [1990] 1 EGLR 278, QBD, at p282:

> "...certain principles can be distilled from the authorities to which I have referred ... Those principles can be expressed in this way, that a court is only likely to find a breach or an intended breach of s123(2) of the Local Government Act 1972 if the council has (a) failed to take proper advice or (b) failed to follow proper advice for reasons which cannot be justified or (c), although following proper advice, followed advice which was so plainly erroneous that in accepting it the council must have known, or at least ought to have known, that it was acting unreasonably."

76. Mr Baker submitted that there are important differences between s 10 of the 1950 Act and s 34 of the Landlord & Tenant Act 1954. These include the fact that s 10 is part of a statutory framework governing many aspects of the grant of allotments. He drew to my attention s 23 of the 1908 Act under which there is a duty on the Council to provide sufficient allotments if they are of opinion that there is a demand for them. He pointed out that the responsibility for fixing the rent is given to the Council and not to the Court. In contrast Pt II of the 1954 Act contain a detailed statutory code whereby the court determines (if the parties cannot agree) whether to make an order for the grant of a new business tenancy (under s29), with power (among other matters) to determine (a) the amount of an interim rent (under s24A) and rent during the new tenancy (under s34), (b) the extent of the land to be included in the tenancy (under s32), (c) the duration of the new tenancy (under s33), and (d) other terms of the new tenancy (under s35). The court is accordingly adjudicating on private law rights between the parties. Furthermore under s 34 the Court is determining an open market rent for the premises rather than, as here such a rent as a tenant may reasonably be expected to pay for the land.

77. Mr Baker submitted that there is nothing in s 10(1) of the 1950 Act which prescribes *how* an authority is to determine the amount which a notional tenant may "reasonably be expected to pay". Inherently, the inclusion in the statutory wording of elements of expectation and reasonableness involve imprecision and a range of possible outcomes; furthermore, the exercise might legitimately be conducted in a number of different ways and is an example of many other types of decision calling for the exercise of experience and judgment.

78. Mr Baker submitted that an analogy could be drawn with authorities recently approved in the Court of Appeal in relation to the determination by an authority of the amount which they would "usually expect to pay" to place a person in residential care accommodation. He referred me to a passage from the judgment of Singh J in *R (South West Care Homes Ltd) v Devon County Council* [2012] EWHC 1867 (Admin) where he said:

> "24 ...it is also important to bear in mind, as the defendant has submitted before me, that, first, provided that which it is legally relevant for the decision maker to know is brought to its attention, it is generally for the decision maker to decide upon the manner and intensity of the inquiry to be undertaken into any relevant factor (see *R (on the application of Bevan & Clarke LLP and Ors) v Neath Port Talbot Borough Council* [2012] EWHC 236 (Admin), at paragraph 56 (Beatson J)).
>
> "25 Secondly, the weight to be given to a relevant factor is for the decision maker and not for the court in the absence of irrationality (see the same case at paragraph 57). I would add this observation, again accepting the defendant's submission on this point. It will frequently be the case and is undoubtedly the case in the present context, that the relevant factors to which the decision maker must have regard do not all point in the same direction. They may well pull in different directions and a balance will have to be struck. This is quintessentially a function of

the public authority concerned, subject always to judicial review on the ground of irrationality. ..."

79. He pointed out that the passage had been expressly approved by the Court of Appeal in *R (Care North East Northumberland) v Northumberland CC* [2013] EWCA Civ 1740 (Admin).

80. Mr Baker submitted that the process adopted by the Council was in substance clearly an exercise in determining how much a notional tenant would reasonably be expected to pay. He sets this out in detail in paragraphs 45 – 52 of his skeleton argument. In summary in paragraph 45 he points to the waiting list for allotment holders, the consultation process, the fact that the proposed increases are less than those in the consultation process, the new concessionary provisions including the new concession for pensioners and the opportunity to rent quarter sized allotments. In paragraphs 46 – 48 he relies on the investigation of the officers, the lack of any profit made by the Council and the willingness of 6 associations to sign the new leases.

4.3 Discussion and Conclusion

81. I agree with Mr Vivian Price QC that very limited assistance in the construction of s 10 of the 1950 Act can be gained from supposed analogies with other Acts. I also agree with Mr Baker that there are material differences between s 34 of the Landlord & Tenant Act 1954 and s 10 of the 1950 Act. The most important differences are that under the 1954 Act the Court is fixing a market rent in the absence of agreement between the parties in a commercial situation whereas under the 1950 Act the Council is setting a rent which it is reasonable for the tenant to pay in a non commercial recreational situation.

82. Whilst the observations of Kennedy J in Indescon seem relatively uncontroversial I do not myself find the analogy with s 123(2) of the Local Government Act 1972 of great assistance. In any event this is a case where the officers do not appear to have taken any advice at all.

83. I also agree with Mr Vivian Price QC with the general approach he advocated as to how s 10 was intended to work (see paragraph 57 above).

84. I agree with Mr Baker that the repeal of s 11 of the 1950 Act materially affects the reasoning of Mr Vivian Price QC's ultimate conclusion. There is, as it seems to me, no obligation on the Council to subsidise the allotment holders. However any rent that is determined by the Council must be in accordance with the statutory formula.

85. I agree with Mr Clayton QC that Mr Vivian Price QC's observations on the use of comparables have to be read in the light of the fact that he was provided with comparable evidence. I do not read his judgment as suggesting that comparable evidence can never be of value.

86. I agree with Mr Baker that s 10 of the 1950 Act does not prescribe any method for the determination of a rent that a tenant may reasonably be expected to pay for the land. For my part, however, I find it difficult to see how that task can be approached without some sort of valuation exercise. The most usual way of doing this would be to look at the rents charged by other Councils which had also been fixed under the same statutory formula. If for some reason that was of no assistance it might be possible to get assistance from agricultural rents. Whilst the cost of providing the service may be a relevant factor it cannot in my view be the only factor in determining the rent.

87. I agree with Mr Clayton QC that the Council's reliance on the large waiting list for allotments has to be viewed with a degree of caution. As he pointed out the waiting list was made up for the most part prior to the rent increases with which this case is concerned.

88. I agree with Mr Clayton QC that the decision of the Executive Board on 4th September 2013 was flawed. To my mind s 10 of the 1950 Act was plainly a material consideration which was not drawn to the attention of the Executive Board in form or in substance. There is nothing in the report which mentions or summarises the statutory formula. Accordingly there is no reason to think that it was considered by the Executive Board.

89. I cannot accept the submission of Mr Baker that the process was in substance an exercise in determining how much a notional tenant may reasonably be expected to pay. First, Mr Baker's formulation of the test is not the same as Lord Dyson's formulation in paragraph 37 of Baker. As Lord Dyson pointed out the question is whether the decision-maker has *in substance* had due regard to the relevant statutory [test]. In this case the decision maker was the Executive Board. For reasons I have given they did not have regard to s 10 of the 1950 Act. Second, s 10 of the 1950 Act was not mentioned in any of the process leading to the decision. It was not mentioned in the report to the meeting of 12th November 2012, in the Consultation Document or in the EIA. In paragraphs 25 and 26 of Mr Flesher's statement he says (in vague terms) that advice was taken from Legal Service in relation to the setting of a rent. He does not set out that advice or whether he had in mind the provisions of s 10. There is no contemporaneous documentary evidence of that advice. In any event Mr Flesher was not the decision maker.

90. I accept that some of the matters set out in paragraphs 45 to 48 of Mr Baker's skeleton argument are circumstances which might be relevant to the question of whether the proposed rents are rents that a tenant may reasonably be expected to pay for the land. However as the Executive Board did not consider that question it is not possible to say that they would inevitably have approved the proposed rents.

91. In my judgment the decision of the Scrutiny Board on 25th September 2013 did not validate the unlawful decision of the Executive Board made on 4th September 2013. There are two reasons for this. First, as is clear from the report to the Scrutiny Board and s 9F(5) of the Local Government Act 2000, the Scrutiny Board itself had no power to make an original decision on the question of the allotment rents. That power was vested in the Executive Board. The only power available to it was to release the decision of the Executive Board for implementation or to refer it back for reconsideration. The decision made was to release the Executive Board's decision for implementation. Thus the decision released is still the flawed decision of the Executive Board. Thus even if the Scrutiny Board had had detailed and accurate legal advice on the effect of s 10 of the 1950 Act it could not itself have decided that the formula had been complied with. Second for the reasons set out above I am far from satisfied that the Scrutiny Board had full and proper legal advice on the effect of s10 of the 1950 Act.

92. I therefore conclude that the decision of 4th September 2013 was unlawful. For completeness it is unlawful on ground 2 (and possibly ground 1) of LDAGF's grounds. In the course of his submissions Mr Clayton QC did not pursue ground 3. In so far as ground 4 adds anything to grounds 1 and 2 it does not in my view succeed. I am not in a position to decide whether the proposed rent increase does or does not satisfy the statutory formula. Thus I cannot decide that the proposed rent increase was so large that no reasonable authority could have resolved to approve it.

93. Mr Clayton QC however suggested that the test for irrationality was wider. He submitted if a decision failed to take into account a material factor it was necessarily irrational. In so far as that submission is correct (and I do not need to decide whether it is) it does not take the matter further than ground 2.

5 Delay/Lack of promptness

94. In paragraph 55 of his skeleton argument Mr Baker put the position in this way:

> The Claimants waited until 3 December 2013, the penultimate day before the end of 3 months after the date of the Authority's decision on 4 September 2013, before issuing the challenge. The Claimants' pre-action protocol letter was sent only on 25 November 2013. Well before then, on 11 October 2013, the Authority had already given notice to all the associations to terminate the leases and sent out proposed new leases for signature with the new terms as to rent ; as above, six of those leases have already been signed and returned and have taken effect. Furthermore, the increases in the rents due from allotment-holders are due to take effect in the autumn of 2014; the Authority's financial year started on 1 April 2014 and its budget and council tax have been set on the basis of the changes taking effect. It is therefore too late to quash the decision of 4 September 2013, which would cause uncertainty and disruption, and present differences in the arrangements as between those associations holding new leases and other associations holding no lease.

95. In paragraph 56 Mr Baker has referred me to the provisions of CPR 54.5(1) and to the provisions of s 31(6) of the Senior Courts Act 1981. Both Counsel referred me to a number of authorities on the effect of lack of promptness and/or undue delay.

96. In my view I can deal with this aspect of the case quite shortly. I am not satisfied that there has been any lack of promptness or undue delay on the part of LDAGF.

97. I will assume without deciding that in accordance with the submission of Mr Baker that the relevant decision was the decision of the Executive Board of 4th September 2013. Thus these proceedings were issued only 1 day within the 3 month time limit set out in CPR 54.5(1)(b). I also accept that the claim must be made promptly as set out in CPR 54.5(1)(a).

98. In my view there was no lack of promptness in taking no action before 25th September 2013. The decision was subject to a Call In. Mr Wood attended the meeting of 25th September 2013. It was in my view perfectly reasonable to await the decision of the Call In before taking any decision as to further action.

99. The period between the decision of the Scrutiny Board and the issue of proceedings was 2 months and 1 week. It is, to my mind of considerable importance to have well in mind that LDAGF is an unincorporated association with limited means managing a recreational activity. It is likely that the members of LDAGF will not be versed in the intricacies of the law relating to judicial review.

100. In those circumstances the chronology set out in Mr Peeble's witness statement is both understandable and in my view not unreasonable. Mr Wood had consulted solicitors by 4th October 2013; Mr Peebles did not see the papers until 11th October 2013; there was an inevitable short delay in arranging the commitment of £1,500 until 24th October 2013. Mr Peebles took the view the matter was complex and consulted Mr Clayton QC in mid November and received advice by 14th November 2013. A letter before action was sent on 25th November 2013. It was necessary to arrange finalisation of the conditional fee agreements before issue.

101. In paragraph 63 of his skeleton argument Mr Baker criticises the period up to 25th November 2013. To my mind those criticisms do not reflect the difficulties faced by an

association such as LDAGF in getting the necessary authority, raising finance and arranging a conditional fee agreement in a case as complex as this. This was not a straightforward case. It was an unusual area of law and it does not surprise me in the least that Mr Peebles needed to carry out research and take Counsel's opinion.

102. Different considerations might well apply if the Claimants had been a well funded commercial organisation in respect of a commercial activity. However in all the circumstances of this case I am not satisfied that any lack of promptness has been shown.

103. I should add that the Council has not identified the date by which it contends that these proceedings should have been commenced. That failure makes it difficult to say that any lack of promptness has caused the matters complained of in Mr Baker's skeleton argument.

104. The evidence does not make clear when the Council's budget was set. If it was set after 3rd December 2013 it was set with knowledge of these judicial review proceedings. The notices terminating the leases were sent out on 11th October 2013. It is to my mind wholly unrealistic to have expected proceedings to have been issued by that date. For reasons I have given it is by no means clear that the 6 leases that have been returned have been executed by the Council. Even if they have I am not told when they were executed. If they were executed after 3rd December 2013 they were executed with knowledge of these proceedings.

6 Alternative Remedy

105. The only alternative remedy suggested by the Council is a reference to the Local Government Ombudsman.

106. The law relating to alternative remedy is summarised in paragraphs 84 – 88 of Mr Clayton QC's skeleton argument where he submits that the relevant question is whether the alternative remedy is convenient expeditious and effective. He points out that a complaint to the Local Ombudsman is not effective as a non binding recommendation by ombudsman is not effective to prevent the Council from setting an unlawful rent.

107. This view is supported in paragraph 26.110 of Auburn, Moffatt and Sharland on Judicial Review:

> It has been suggested that, where a claimant can complain to a local government ombudsman, that will afford an adequate alternative remedy. However the role of the ombudsmen is generally to supplement the jurisdiction and not to act as a substitute for the courts and the better view is that a complaint to an ombudsman does not afford an adequate alternative remedy. This is particularly likely to be the case where the claim raises issues of law.

108. Mr Baker referred me to some observations in *R (Cowl) v Plymouth City Council* [2001] EWCA Civ 1935:

> "15... The courts should not permit, except for good reason, proceedings for judicial review to proceed if a significant part of the issues between the parties could be resolved outside the litigation process."

109. As a result he submitted that the modern approach is to look at the position more broadly than simply to consider the availability of legal remedies.

110. I agree with Mr Clayton QC's submissions. I am wholly unpersuaded that in this case, which involved issues of law on the construction of s 10 of the 1950 Act, an application to the Local Government Ombudsman provided a suitable alternative remedy for LDAGF.

7 Relief

111. As Mr Baker points out even if the Court finds a decision is unlawful it does not follow that it will grant relief. Relief is discretionary. He submits, largely for the reasons set out in paragraph 55 of his skeleton argument which I have set out above that no relief should be granted.

112. I do not accept that submission; the Executive Board has made a decision on raising the rent without taking into account s 10 of the 1950 Act. The decision should be quashed at least for any period after October 2015. In so far as the 6 new leases relate to that period the Council can of course terminate the leases by exercising the break clauses.

113. Mr Clayton QC did not press for an order quashing the resolution to terminate the old leases. I agree it would be inappropriate to make such an order.

114. The more difficult question relates to the rent for the year commencing October 2014. If that rent is quashed there is uncertainty as to the rent payable for that period especially in the light of the rule that 6 month notice must be given for any rent increase. On the other hand the Council have known of these proceedings since December 2013 and have not chosen to take any contingency measures to cater for the possibility that the application might succeed. Furthermore there would appear to be nothing to prevent the Executive Board meeting in the near future and take a lawful decision of the rent which would be binding in 6 months. Thus the time for which there would be uncertainty would be relatively short. My provisional view is thus that the resolution should be quashed for this period as well. However in the course of his submissions Mr Clayton QC submitted that I should leave any detailed question of relief to the hearing when judgment is handed down. I am content to adopt that course and to deal with the position of the October 2014 rents then. That will enable the parties to bring any further points to my attention.

Appendix

115. For completeness I am including a summary of the legislative history of section 11 of the Allotment Act 1950 and so far as relevant s 16(1) Allotment Act 1922. As noted above it is taken largely from the two notes provided (in the main) by Mr Baker after the conclusion of the oral argument.

116. Section 16(1) Allotments Act 1922 originally provided :

> "A council shall not take any proceedings under the provisions of the Allotments Acts relating to allotments, unless in the opinion of the council the expenses of the council incurred under those provisions (other than such expenses as are hereinafter specified) may reasonably be expected, after the proceedings are taken, to be defrayed out of the receipts of the council under those provisions."

117. Section 11(1) Allotments Act 1950 amended s16(1) Allotments Act 1922 as follows :

> (1) In subsection (1) of section sixteen of the Allotments Act, 1922 (which prohibits a council from taking proceedings under the provisions of the Allotments Acts unless in the opinion of the council their expenses under those provisions may reasonably be expected to be defrayed out of their receipts under those provisions) for the words " to be defrayed out of the receipts of the council under those provisions ", there shall be substituted the words "to exceed the receipts of the council under those provisions by no greater amount than would be produced by a rate of two pence in the pound"; and section seventy-five of the Local Government Act, 1929 (which increases such statutory limits upon local authorities' expenditure as are imposed by reference to specified rate poundages) shall not apply to the said section sixteen as amended by this subsection."

118. Section 11(1) Allotments Act 1950 was repealed by s17(2) of, and Schedule 4 to, the Decimal Currency Act 1969, with effect from the appointed day, *i.e.* (by s16(1) of the latter Act) 15 February 1971. However s16(1) Allotments Act 1922 remained in force; but from the same date the latter was further amended by s10(3) to, and Sched 2 of, the Decimal Currency Act 1969 so that the permitted amount was not to exceed that which would be produced by a rate of 0.8p in the pound.

119. Section 16(1) Allotments Act 1922 was itself later repealed by the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990 (SI 1990/776), art 3(1) and Schedule 1, with effect (by art 1(1) thereof) from 1 April 1990.