

## **EXECUTIVE BOARD – 20 NOVEMBER 2018**

<b>Subject:</b>	<b>Allotment Rent Rates and Charges</b>
<b>Corporate Director(s)/Director(s):</b>	Dave Halstead, Director, Neighbourhood Services Andy Vaughan, Corporate Director, Commercial & Operations
<b>Portfolio Holder(s):</b>	Dave Trimble, Portfolio Holder for Leisure and Localities
<b>Report author and contact details:</b>	Eddie Curry, Head of Parks, Open Spaces & Investment Funding James Dymond, Parks & Open Spaces Development Manager
<b>Subject to call-in:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Key Decision:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Criteria for Key Decision:</b>	
(a) <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision	
and/or	
(b) Significant impact on communities living or working in two or more wards in the City <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Type of expenditure:</b> <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital	
<b>Total value of the decision:</b> Additional income of approximately £33,000 per annum if direct-let rent increased to 46p/m <sup>2</sup> per annum.	
<b>Wards affected:</b> All	
<b>Date of consultation with Portfolio Holder(s):</b> 17 October 2018	
<b>Relevant Council Plan Key Theme:</b>	
Strategic Regeneration and Development	<input type="checkbox"/>
Schools	<input type="checkbox"/>
Planning and Housing	<input type="checkbox"/>
Community Services	<input type="checkbox"/>
Energy, Sustainability and Customer	<input type="checkbox"/>
Jobs, Growth and Transport	<input type="checkbox"/>
Adults, Health and Community Sector	<input type="checkbox"/>
Children, Early Intervention and Early Years	<input type="checkbox"/>
Leisure and Culture	<input checked="" type="checkbox"/>
Resources and Neighbourhood Regeneration	<input type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>	
<p>Proposals are being made to</p> <ul style="list-style-type: none"> <li>Increase allotment rents over a 3-year period.</li> <li>Set fees and charges for tenancy administration to encourage good management of allotment plots by tenants.</li> <li>Set up new allotment association leases on an individual site by site basis.</li> </ul> <p>The additional income generated from these changes will be reinvested into the City's allotments to improve quality and bring derelict plots back into use to the benefit of the current waiting list containing over 800 applications.</p>	
<b>Exempt information:</b> None.	
<b>Recommendations:</b>	
1. To approve the increase of allotment rents to direct-let tenants to 46p per square metre over a 3-year period from 2019/20 to 2021/22.	
2. To delegate authority to the Director of Neighbourhood Services to sign new allotment association leases that include a new rent rate mechanism on a site by site basis.	
3. To approve the proposed fees and charges to direct-let allotment tenants as set out in	

section 2.6 of the report below.

**4. To approve establishing an earmarked reserve to hold additional income generated which will be re-invested for site improvements.**

## **1 REASONS FOR RECOMMENDATIONS**

- 1.1 Allotment rents in Nottingham have historically been very low and comparison with other Core Cities shows that Nottingham is currently 2<sup>nd</sup> cheapest out of 7 cities:

City	Full annual price for a 250m <sup>2</sup> plot (2018)	Price per m <sup>2</sup>	Discounted Prices	
			Over 60/65	Low Income / Disability Benefit
Glasgow	£34.50	13.8p	£25.00	-
<b>Nottingham</b>	<b>£55.00</b>	<b>22p</b>	<b>£41.25</b>	<b>£27.50</b>
Manchester	£68.00*	27.2p	£34.00	£34.00
Leeds	£72.00	28.8p	£36.00	£36.00
Sheffield	£72.00	28.8p	£54.00	-
Birmingham	£92.00	36.8p	£47.00	-
Cardiff	£120.80*	48.32p	£60.40	-

(\* including water; all other prices exclude water costs)

- 1.2 At present, Nottingham offers the following concessions:
- 25% discount for those over 65;
  - 50% discount for those eligible for low-income benefits or disability benefits.
- 1.3 The extra income generated from the increase in rents will be reinvested into the City's allotments in order to improve quality, access and security.
- 1.4 Funding will also be used to bring derelict plots / sites back into use as the current waiting list contains over 800 applications.
- 1.5 Consultation with direct-let tenants, allotment associations and the general public has shown that there are mixed views on raising rents in order to invest into site improvements. As a result, the proposed rent increase has been set at 46p/m<sup>2</sup> rather than the 56p/m<sup>2</sup> originally proposed.

## **2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

### **2.1 Allotments Act 1908 to 1931**

As outlined in the Legal advice in Section 5, below, any decision on the level of rent to be charged pursuant to the relevant Allotment Acts must be based on the statutory test contained within Section 10 of the Allotments Act 1950, and should be based on a proper and comparable valuation exercise with the understanding that the rents to be charged are those which a tenant may reasonably be expected to pay for the land let.

Information on allotment rents from other local authorities varies significantly due to the different ways in which sites are managed across the country. However, price comparisons have been made with allotment rents in other

Core Cities, as shown in Appendix D. This demonstrates that the rent proposed by the end of the 3-year period would still be broadly within the range of current allotment rents in other Core Cities where the average price for a 250m<sup>2</sup> plot in 2018/19 is £69.54 (without any discounts):

Furthermore, the rents for other cities shown in Section 1.1 above do not take into account any future increases that may be planned.

## 2.2 Nottingham City Council Allotments

2,800 allotment plots are owned by Nottingham City Council.

Of these, approximately 800 plots are managed directly by the Allotment Service with tenancies to “direct-let tenants”.

The other 2,000 are leased to 18 allotment associations or companies under business leases. These are the majority of the large sites ranging from 600 plots down to 30 plots. These lease-holding associations are required to manage and maintain their allotment sites independently from the Council.

As of 8<sup>th</sup> October 2018, the current waiting list for a City allotment contains 836 names.

## 2.2 Current Rent Levels

The 2018 allotment rent is 22p/m<sup>2</sup> excluding water charges; this equates to:

- £33/year for a 150m<sup>2</sup> plot (small);
- £55/year for a 250m<sup>2</sup> plot (average);
- £88/year for a 400m<sup>2</sup> plot (large).

This was increased from a rate of 14p/m<sup>2</sup> in 2017.

The following concessions are offered as discounts on the prices above:

- 25% discount for those over 65;
- 50% discount for those eligible for low-income benefits or disability benefits.

Prior to this:

- Rents were not raised between 1996 and 2002;
- Rents were not raised between 2003 and 2011;

For direct-let sites water is charged separately and added to the rent based on the amount of water used on site. Water charges vary between nil and 6p/m<sup>2</sup>. A £5.96 standing charge for water is also charged to every plot supplied with water.

## 2.3 Leasehold Sites

Leasehold rents are set at a rent review every five years. At review they are set to match the direct-let rent rate applicable at the time.

On an annual basis, if a site has been ‘well managed’ in the previous 12 months, 75% of the site’s rental income will be returned contractually to the leaseholder association to allow them to manage their site.

In addition to this rebate, individual allotment rent concessions (set by the lease at 25% of rent for qualifying tenants) are allowed from the remaining lease rent. 6.9% of potential leasehold revenue is allowed concessions.

2017's income from leasehold sites (i.e. 2,000 plots) was on average 17% of the total lease rent - £7,400.

If direct-let rent rates increase in the future, it would be expected that the tenants of the larger direct-let allotment sites may wish to become leasehold and set their own rent levels.

Part of the allotment rent consultation proposals is that we will offer a rent rate (and review mechanism) that can be agreed with the Council on a site-by-site basis for leasehold sites. The rate would be determined by existing site quality, allotment provision and the site's need for investment.

## 2.4 Allotment Service

The allotment Service includes 1.4 FTE Allotment Officers and an annual maintenance budget of £28,000 to carry out site repairs and improvements.

2017's income was:

- £20,500 from direct-let site rents from approximately 800 plots (as invoiced); and
- £7,400 from approximately 2,000 plots on leasehold sites.

## 2.5 Rent Increase Proposals

Quality audits of the City's allotments (last updated in 2017) show that significant investment is needed in many areas in order to provide the high quality service that we aspire to.

Improvements required include:

- Improved or new water supplies to sites with none at present;
- External security fencing and/or gates;
- Internal plot boundaries, e.g. new fencing;
- Path and avenue surfacing;
- Community facilities such as huts, shops or toilets.
- Renovating derelict plots and sites to bring them back into use.

As an example, each future annual increases of 8p/m<sup>2</sup> would generate an increase in revenue of around £11,000 per annum – this could be reinvested into site improvements.

The last round of leasehold site rent reviews have taken place over the last two years. Therefore increases to the direct-let rent rate will not have any great effect to leasehold rents until 2021-22.

## 2.6 Proposed Fees and Charges

Allotment plots across City sites range from very small sites of 50m<sup>2</sup> or less up to very large plots of c.400m<sup>2</sup>. The administration of these plots, including site visits, preparing tenancy agreements, inspections, surrenders and breach notices, is not affected by their size and can be onerous, even for the smallest plots.

We therefore propose to introduce a minimum plot charge to cover our tenancy administration costs, i.e. all tenants are charged for at least a 125m<sup>2</sup> plot, even if they rent a smaller plot.

It is also proposed to introduce a charge of £50 for tenants who don't surrender their plots properly and necessitate forced entry, a change of locks and/or new site keys being ordered.

Finally, the issue of notices to tenants who breach their tenancy regulations for a second time will be increased £10 to £20.

## 2.7 Consultation on Proposed Changes

### 2.7.1 Direct-let tenants

Consultation with direct-let tenants (i.e. those on allotment plots managed directly by the Allotment Service) started in November 2017 with a direct mail-out to all 800 tenants and ran until the end of January 2108. The direct-let consultation paper is attached at Appendix A.

In this consultation, we asked about:

- Increasing rent rates up to 56p/m<sup>2</sup> to improve allotment site quality.
- Implementing a new structure for association sites with rent rates set on a site-by-site basis between the Council and the leaseholder.
- Introducing a minimum plot charge to cover our tenancy administration costs, i.e. all tenants are charged for at least a 125m<sup>2</sup> plot, even if they rent a smaller plot.
- Introducing new fees and charges such as £50 for tenants who don't surrender their plots properly and increasing notices for a second breach of tenancy regulations from £10 to £20.
- Transferring the responsibility for hedge-cutting on the outside of allotment plots to plot-holders

**The survey was sent to 800 tenants and 68 responses (8.5% response rate) were received and are summarised below:**

- 42.7% of respondents had no objection to or did not comment on the rent rate increase proposals; 57.4% objected to them.
- 94% of direct-let tenants had no view on leasehold rent rates.
- 80.6% of respondents had no objection to or did not comment on the introduction of a minimum plot rent; 19.4% objected.
- 98.5% respondents had no objection to or did not comment on the proposed new fees and charges; 1.5% objected.

### 2.7.2 Leasehold Allotment Associations

Consultation with allotment associations started in April 2018 with a direct mail-out to all associations who lease sites from Nottingham City Council. The leasehold association consultation paper is attached at Appendix B.

We explained that under the conditions of the current leases, any changes to direct-let rent rates would affect leasehold allotment site rents at each site's next rent review, which would be between two and four years away.

We explained that the Council has been investigating a new lease and management agreement template for all leasehold sites and that to encourage Allotment Associations to enter into a new model lease, the Allotments Service proposes that the rent rate for these leasehold allotment sites is agreed between the Council and allotment site leaseholders on a site-by-site basis; this would take into account the quality of the site management and allotment provision.

We also asked Associations about the topics in the direct-let consultation:

- Increases to direct-let rents;
- Introducing minimum plot charges;
- New and increased fees and charges;
- Hedge-cutting.

**The results of this survey are summarised below:**

- The Allotment Federation made a response on behalf of its 13 leasehold associations and STAA, as follows:
  - Rejection of the proposed rent increase as considered unreasonable and damaging to allotment gardening within the city.
  - Rejection of the proposed new lease as it is considered to be unworkable, over cumbersome, and places a significant risk on allotment societies.
  - Recommend that the allotment societies meet with the city council officers to agree alterations to the existing lease, these to include:-
    - a) Agreeing a rent and rebate level which reflects the cost of the service supplied by the city council to the allotment associations, and the service supplied by the associations to the city of Nottingham and its residents.
    - b) Add a clause to protect association trustees from claims by the city council.
  - The federation would like it noted that it feels that the council is trying to coerce associations to adopt the new lease. That the new lease if adopted by associations could enable the council to outsource the management of the allotment service to the private sector. Carillion is an example of what can then happen.
- In addition, 6 leasehold sites produced individual responses:
  - All leasehold responses rejected the proposal to increase the direct-let rent rate to 56p/m<sup>2</sup>, if it were to be applied to their site.
  - Several leasehold sites have pointed out that they are ready to enter into leases.
  - There is a desire to keep lease arrangements as simple as possible and keep associations from being over-burdened if possible.

### 2.7.3 General Public

The final consultation phase was with the general public via an online SnapSurvey, also available in paper form, in October 2018. The public consultation paper is attached at Appendix C.

The online survey was promoted via email, social media, on the City council's website and also sent to all allotment associations and other relevant bodies.

The consultation included different information for different types of allotment user, or non-user.

### The results of this survey are summarised below:

#### Survey participation by site type of respondent

	<b>No. of Responses</b>
Direct Let Tenants	14
Leasehold	64
St Anns	84
Non-NCC Allotment	23
Non-Allotment	18
Organisation	4
Other	4
<b>Total</b>	<b>211</b>
<b>Other responses – textual</b>	<b>121</b>

If you are an allotment tenant on an allotment owned by Nottingham City Council, can you tell us what rate (after an increase) would cause you to surrender your tenancy?

<b>Rate at which a tenant may Surrender</b>	<b>Number of Responses</b>	<b>Stated % of Tenants Surrendering</b>
25p/m2	46	34%
30p/m2	28	55%
35p/m2	27	75%
40p/m2	15	87%
45p/m2	5	90%
50p/m2	2	92%
56p/m2	11	n/a
	Total: 134	

If further investment becomes possible on your site, how strongly do you agree or disagree with the following improvements we could make?

I prefer a lower-quality site with lower rent:

	<b>No. of Responses</b>
Strongly agree	51
Agree	37
Neither agree or disagree	47
Disagree	28
Strongly disagree	15

## 3 **OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

- 3.1 The principal alternative option is not to raise allotment rents; this will mean that most sites remain in their current condition or potentially decline if future budgets

are unable to meet the demand for maintenance and repairs. Funding will also be very limited or not available for bringing derelict plots back into use.

#### **4 FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)**

- 4.1 As a result of the proposals in this report, the expected additional income to be generated from directly let allotments from the Council is approximately £11,000 per annum, thereby giving a total increase of £33,000 by financial year 2021/22. However, this increase is subject to the consultation process, concessions applied to allotment holders and occupancy levels, so the actual increase achieved could be different to the expectation. The additional income to be generated from leasehold sites will be subject to a number of factors including management of the sites, site quality and date of the next review of the lease.
- 4.2 As outlined in the reasons for recommendations, the additional income generated from the increase in rents will be reinvested to make improvements to City's allotments. To facilitate this, an earmarked reserve will be established and maintained to cover improvement costs in future years.

Maria Balchin,  
Senior Commercial Business Partner,  
25 October 2018.

#### **5 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)**

- 5.1 There is a statutory test, which is contained in the relevant Allotments Acts of 1922 and 1950, which is of particular importance to this proposal. One of the key provisions from a legal perspective is that the statutory test set out in Section 10 of the Allotments Act 1950 must be taken into consideration in any decision on amount of Allotment rents.

There is also recent case law and guidance relating to Allotment rents, including discussion on the above test, which can be found in a decision involving Leeds City Council.

In summary, the key points Nottingham City Council must consider are that any decision on the level of rent to be charged pursuant to the relevant Allotment Acts must be based on the statutory test contained within Section 10 of the Allotments Act 1950, and should be based on a proper and comparable valuation exercise with the understanding that the rents to be charged are those which a tenant may reasonably be expected to pay for the land let. The Act specifically states that:

*“Land let by a council under the Allotments Act 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...”*

It is understood that a proposal to reinvest money received from increased rental amounts could be a relevant consideration in the valuation exercise but it should not be the only factor and that notwithstanding those considerations

and any intention, the statutory test under Section 10 will be the determining factor.

Therefore, in summary, if (a) a proper and comparable valuation exercise is undertaken and (b) the rents determined pursuant to that valuation exercise are considered those that a tenant may reasonably be expected to pay for that land i.e. there is a two stage test undertaken and satisfied as suggested by recent case law and guidance, then the course of action should be considered acceptable. Recent case law and guidance suggests that to assist in supporting any valuation exercise it would be prudent to use comparables from other local authorities as to the Allotment rents those other authorities have charged.

As a final point to note, it is important to be aware that rental valuations should not be the remit of a legal officer but should be dealt with by an appropriately qualified person with experience in rents for tenancies of this nature (such as a surveyor).

Mick Suggett, Conveyancing Team Leader  
Gavin Carr, Senior Solicitor  
22<sup>nd</sup> October 2018

## **6 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)**

- 6.1 The allotments Service have considered the comparable allotment rents from the Core Cities group in order to establish a market rent. It is understood that previous NCC rent reviews have not been based on market evidence as a comparison and rents have therefore out of step with the market.

The recommended figure of £0.46 per square metre is not the highest rate being attained in the Core Cities, but does appear to be more in line with a comparable market rate.

- Rod Martin, Development and Disposals Manager, 25/10/18

## **7 SOCIAL VALUE CONSIDERATIONS**

- 7.1 Social value will be taken into consideration when Procurement exercises take place for improvement works on allotments.

## **8 REGARD TO THE NHS CONSTITUTION**

- 8.1 The Council is committed to providing food growing opportunities in the City on both allotments and community gardens as outlined in the Food Growing Framework strategy.

## **9 EQUALITY IMPACT ASSESSMENT (EIA)**

- 9.1 Has the equality impact of the proposals in this report been assessed?

Yes



Attached as Appendix E, and due regard will be given to any implications identified in it.

**10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT  
(NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT  
INFORMATION)**

10.1 None.

**11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT**

11.1 None.

**Appendix A: Consultation Paper for Direct-Let Tenants**

**Appendix B: Consultation Paper for Leasehold Associations**

**Appendix C: Consultation Paper for General Public**

**Appendix D: Allotment Price Comparisons**

**Appendix E: Equality Impact Assessment**