

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL
24/01/2013

B e f o r e :

VIVIEN ROSE
(sitting as a Deputy Judge of the Chancery Division)

Between:

(1) SUSAN SNELLING	
(2) ROY MERISON	Claimants
- and -	
BURSTOW PARISH COUNCIL	Defendant

Emma Dring (instructed by Messrs Edward Harris) for the Claimants
Estelle Dehon (instructed by Hedleys Solicitors) for the Defendant

Hearing date: 11 December 2012

Ms Vivien Rose :

1. This claim raises a difficult point of construction relating to statutes governing the acquisition and disposal of garden allotments. The Claimants are both allotment holders at a site called Hunter's Moon in Burstow, Surrey. The Defendant parish council ('the Council') is the freehold owner of the site. The Council wishes to sell part of the site in order to build housing there. The sale would result in about ten allotment holders being displaced but they can, the Council says, all be accommodated on other land within the same Hunter's Moon site or on a new site about 1.2 kilometres away.

The legislation

2. The issue raised by the Claimants is as to what power the Council can use to sell part of the Hunter's Moon site. Because I need to refer to so many different pieces of legislation in this judgement, it may help to set out at the start a table showing the relevant legislation in chronological order, indicating how I will refer to the Act in this judgement and highlighting the key provisions.

Act of Parliament	Reference in this Judgement	Relevant sections	
Inclosure and Improvement of Commons Act 1845	Inclosure Act 1845	31	Power to appropriate allotments to the labouring poor
Commons Act 1876	Commons Act 1876	27	Power of sale that the Claimants contend applies to Hunter's Moon
Local Government Act 1894	LGA 1894	5(2) 6(1)(c)(iii) & 6(4)	Vesting of field gardens in parish councils Transfer of management of field gardens to parish council
Small Holdings and Allotments Act 1908	SH&A Act 1908	25 32 33	Power to purchase or lease land for the purpose of providing allotments Power of sale that the Council contends applies to Hunter's Moon Transfer of management of field gardens to parish council and deeming of acquisition under SH&A Act 1908
Allotments Act 1925	Allotments Act 1925	8	Requirement of consent of Secretary of State to sale of certain allotments
Local Government Act 1972	LGA 1972	126	Power of councils to appropriate land for use as allotments

3. Section 31 of the Inclosure Act 1845 (since repealed) provided that where the Inclosure Commissioners proposed to enclose land by Order under that Act, they could 'require and specify as One of the Terms and Conditions of such Inclosure the Appropriation of such an Allotment for the labouring Poor as the Commissioners shall think necessary, with reference to the Circumstances of each particular Case'. Where such a condition was imposed on the Inclosure, the Valuer of the land was required under section 73 'to set out and allot' that part of the land to the Churchwardens and Overseers of the poor of the parish in which the allotment was situated. Section 73 of the Inclosure Act 1845 further provided that:

'All Allotments which shall be made to the Churchwardens and Overseers under this Act shall be held by the Churchwardens and Overseers of the Poor for the Time being in the same Manner and with the same legal Powers and Incidents as if the same Allotments were Lands belonging to the Parish, but in trust nevertheless for the Purposes for which the same shall be allotted...'
4. Under section 108 of the Inclosure Act 1845, the Churchwarden and others who were put in charge of managing the allotments were styled the 'Allotment Wardens' of the Parish.
5. The Commons Act 1876, in its Preamble, stated that allotments that were created for the labouring poor under the Inclosure Acts 1845 to 1868 were to be referred to in that Act as 'field gardens'. Section 27 of the Commons Act 1876 dealt in its first paragraph with amending the provisions of the Inclosure Act 1845 which stipulated the possible uses to which any surplus

rents generated by recreations grounds and field gardens could be put. However, the second paragraph of section 27 provides that:

‘... the allotment wardens of any field gardens may, with the approval of the Inclosure Commissioners, sell all or any part of the allotment vested in them, and out of the proceeds of such sale purchase any fit and suitable land in the same parish or neighbourhood: Provided, that the land so purchased shall be held in trust for the purposes for which the allotment so sold as aforesaid was allotted, and for no others; and provided, that the Inclosure Commissioners shall not sanction any such sale as aforesaid unless and until it shall be proved to their satisfaction that land more suitable for the purposes for which the allotment proposed to be sold was allotted may and will be forthwith purchased; and the proceeds of any such sale shall be paid to the Inclosure Commissioners, and shall remain in their hands until such purchase of other land as aforesaid.’

6. That power of sale under section 27 of the Commons Act 1876 was, therefore, very circumscribed. It required the consent of the Inclosure Commissioners; that consent could only be given if the intention was to buy other more suitable allotment land and the proceeds of any sale were not released to the allotment wardens but kept by the Commissioners until the replacement land was purchased.
7. The LGA 1894 dealt with the transfer of land, powers and duties from churchwardens to the parish councils upon the parish councils coming into office:
 - (i) by section 5(2)(c) all land that was vested in churchwardens and overseers, other than property connected with the affairs of the church, was vested in the parish council, ‘subject to all trusts and liabilities affecting the same’;
 - (ii) by section 6(1)(b) the powers, duties and liabilities of churchwardens, except so far as related to the affairs of the church, were transferred to the parish council;
 - (iii) by section 6(1)(c)(iii) the powers, duties and liabilities of churchwardens and overseers with respect to the holding or management of allotments were transferred to the parish council;
 - (iv) section 6(4) provided that where any Act constitutes any persons wardens for allotments, then the powers and duties of the wardens shall be exercised and performed by the parish council.
8. Further provision about the holding and management of allotments by councils was made by the SH&A Act 1908. Under section 23 of that Act, if a council was of the opinion that there was a demand for allotments, the council was under a duty to provide a sufficient number of allotments and let them to persons resident in the parish. Section 25 conferred a power to purchase or take land on lease for the purpose of providing allotments and to acquire land compulsorily under the compulsory purchase powers conferred elsewhere in the Act.
9. Subsequent sections of the SH&A Act 1908 set out how the allotments were to be run by the councils (including borough, urban district and parish councils). Although most of these provisions have since been repealed, they cast some light on the scheme that Parliament intended to set up under that Act. Thus, section 26 allowed councils to make improvements to land acquired by them for allotments. Section 27 set out various provisions governing the council’s letting of the land and the fixing of the rents, including a provision that no one person could hold allotments exceeding five acres and that allotments should not be sublet. Section 28 empowered the council to make rules governing the letting of allotments in order to prevent ‘any undue preference in the letting thereof’, and generally for carrying the provisions of the Act into effect. The rules could define the people eligible to be tenants of allotments and were

‘binding on all persons whatsoever’. The councils were given power to appoint allotment managers to do anything in relation to the management of allotments that the councils were empowered to do, including to incur expenses. Section 30 provided for what was to happen if an allotment holder fell into arrears with his rent.

10. Section 32 of the SH&A Act 1908 provided a power of sale for superfluous or unsuitable land. The wording of section 32 is as follows:

‘32(1) Where the council of any borough, urban district, or parish are of the opinion that any land acquired by them for allotments or any part thereof is not needed for the purpose of allotments, or that some more suitable land is available they may *{with the sanction of the county council}* sell or let such land otherwise than under the provisions of this Act, or exchange the land for other land more suitable for allotments, and may pay or receive money for equality of exchange.’

11. The provision as originally enacted included the requirement for the consent of the county council to any sale as set out in italics above, but this requirement was repealed by the LGA 1972.

12. Section 33 of the SH&A Act 1908 is an important provision for our purposes. It comes at the end of the part of the Act dealing with allotments and it is worth setting most of it out, as originally enacted, though with some excisions to make it more easily comprehensible.

‘33(1) The allotment wardens under the Inclosure Acts 1845 to 1882, having the management of any ... allotments or field gardens ... may, by agreement, with the council ... transfer the management of that land to the council, upon such terms and conditions as may be agreed upon with the sanction, as regards the allotment wardens of the Board, and thereupon the land shall vest in the council.

(2) *All trustees within the meaning of the Allotments Extension Act 1882, required or authorised by that or any other Act to let lands in allotments to cottagers, labourers, journey men or others in any place, may if they think fit, ... sell or let the land to the council...upon such terms as may be agreed...*

(3) Where, as respects any rural parish, any Act constitutes any persons wardens of allotments ... the powers and duties of the wardens... shall, subject to the provisions of this Act, be exercised and performed by the parish council ...

(4) The provisions of this Act relating to allotments shall apply to land vested in, or the management whereof has been transferred to, a council under this section or the corresponding provision of any enactment repealed by this Act in like manner as if the land has been acquired by the council under the general powers of this Part of this Act’

(Provisions in italics repealed)

13. The third Schedule to the SH&A Act 1908 set out the enactments repealed by that Act. These included subsections (3) and (4) of section 6 of the LGA 1894.

14. The final piece in the jigsaw is section 8 of the Allotments Act 1925. As originally enacted this provided as follows:

‘8. Where a local authority has purchased land for use as allotments the local authority shall not sell, appropriate, use, or dispose of the land for any purpose other than use for allotments without the consent of the Minister of Agriculture and Fisheries after consultation with the Minister of Health, and such consent shall not be given unless the

Minister is satisfied that adequate provision will be made for allotment holders displaced by the action of the local authority or that such provision is unnecessary or not reasonably practicable, and where such consent is obtained the sanction of the county council under section thirty-two of the Small Holdings and Allotments Act 1908, shall not be required.’

15. After amendments over the years, the current text of section 8 reads as follows:

‘8. Where a local authority has purchased [or appropriated] land for use as allotments the local authority shall not sell, appropriate, use, or dispose of the land for any purpose other than use for allotments without the consent of the Minister of Agriculture and Fisheries and such consent [may be given unconditionally or subject to such conditions as the Minister thinks fit, but] shall not be given unless the Minister is satisfied that adequate provision will be made for allotment holders displaced by the action of the local authority or that such provision is unnecessary or not reasonably practicable.’

16. The words in square brackets were inserted by the Agricultural Land (Utilisation) Act 1931. The reference at the end of the section to the consent of the county council under section 32 of the SH&A Act 1908 was repealed by the Statute Law (Repeals) Act 1993 Schedule 1, Part III, that is sometime after the requirement of consent in section 32 of the SH&A Act 1908 had in fact been repealed. It is agreed between the parties that the reference there to the Minister of Agriculture and Fisheries should now be read as referring to the Secretary of State for Communities and Local Government.

The Hunter’s Moon allotments

17. The land comprising the Hunter’s Moon allotments (‘the Allotments’) was appropriated for allotments under an award made in 1855 under section 31 of the Inclosure Act 1845. The land was awarded to the Churchwardens and Overseers of the Poor of Burstow and the award provided that it was ‘to be held by them and their successors in trust as an allotment for the Labouring Poor of the Parish of Burstow’. This is a rural parish for the purposes of section 33(3) of the SH&A Act 1908.
18. The Council’s contention is that its power to sell the Allotments is conferred by section 32 of the SH&A Act 1908, subject to obtaining the consent of the Secretary of State pursuant to section 8 of the Allotments Act 1925. The Council carried out an extensive consultation on the sale of the Allotments, I am told, over a period of four years. They have applied to the Secretary of State and he gave his consent by letter dated 6 October 2011. That consent was subject to a number of conditions about making alternative sites available for cultivation and giving publicity to the availability of any vacant plots. The letter stated that the Secretary of State noted that objectors considered that the application made under section 8 of the Allotments Act 1925 ‘was not the appropriate vehicle to gain consent’ and expressly declined to comment on the status or nature of the land in question. The letter was expressed to be limited to granting consent only under section 8 and not under any other enactment or provision.

The parties’ submissions

19. Ms Dehon on behalf of the Council submitted that the proper construction of the legislation is relatively straightforward. Pursuant to section 33(4) of the SH&A Act 1908, the Allotments should be treated as land that has been acquired by the Council under the power in section 25 of the SH&A Act 1908. One arrives at that conclusion by two routes. The first route is that the management of the Allotments was transferred to the Council under section 33(3) (which provides as respects any rural parish that the powers and duties of any persons constituted wardens of allotments shall be exercised and performed by the parish council). The Allotments

are therefore allotments ‘the management whereof has been transferred to the council under [section 33]’ for the purposes of section 33(4). The second route is that the management of the Allotments had in fact already been transferred to the Council by the operation of section 6(4) of the LGA 1894 which, in terms very similar to those in section 33(3) of the SH&A Act 1908, provided that the powers and duties of wardens of allotments shall be exercised and performed by the parish council. Given that section 6(4) of the LGA 1894 was repealed by the SH&A Act 1908, the Allotments are land the management whereof has been transferred to the Council under ‘the corresponding provision of any enactment repealed by this Act’ for the purposes of section 33(4) of the SH&A Act 1908.

20. Either way, the purpose of section 33(4) is clear, according to the Council, in that allotments covered by that section are intended to be subject to the same regime in sections 26 to 32 of the SH&A Act 1908 as applied by that Act to land in fact acquired by the council under its other powers.
21. The Council further submits that section 8 of the Allotments Act 1925 applies to the sale of the Allotments. Given that the Allotments must be treated as though the Council acquired the land under the SH&A Act 1908, they fulfil the criterion in section 8 of being ‘purchased or appropriated for use as allotments’. If the Allotments also appear to fall within the power conferred by section 27 of the Commons Act 1876, then either the power in section 32 of the SH&A Act 1908 takes precedence over the earlier power or the Council is entitled to choose which of the two powers to exercise and it has chosen section 32.
22. The Claimants say that the matter is not so simple. They agree with the Council that the management of the Allotments was transferred to the Council either under section 33(3) of the SH&A Act 1908 or by section 6(4) of the LGA 1894. They also therefore agree that the Allotments fall within 33(4) of the SH&A Act 1908 by one or other of the routes set out above. They agree that this appears to mean that the power of sale in section 32, along with the other powers and duties in sections 25 onwards of the SH&A Act 1908 applied to the Allotments. However, they say that this creates a conundrum because there are now two inconsistent powers of sale for the Allotments, that contained in section 27 of the Commons Act 1876 (which has never been repealed) and that contained in section 32 of the SH&A Act 1908.
23. The Claimants submit that according to well-established principles of statutory construction, a court should be slow to conclude that the later statute impliedly repealed the provisions of the earlier statute. If it is possible to find a way to construe the powers consistently then the court should strive to do so. The Claimants referred me to *O’Byrne v Secretary of State for Environment, Transport and the Regions* [2001] EWCA Civ 499 where the Court of Appeal stressed that ‘The court will not lightly find a case of implied repeal, and the test for it is a high one’ (per Buxton LJ who delivered a dissenting judgement). Laws LJ with whom Thorpe LJ agreed said that the contradiction between the two pieces of legislation must be ‘inescapable’ and that the construction of the later statute must be shown to be the only rational interpretation that is available. In that case, having examined in detail the operation of the two inconsistent statutes the majority of the Court of Appeal held that there had been an implied repeal.
24. The Claimants say that the two apparently extant powers of sale can be rendered consistent by application of the principle *generalia specialibus non derogant* (a general provision does not derogate from a special one). The power in section 27 of the Commons Act 1876 should be construed, the Claimants submit, as limited to allotments that were created under the Inclosure Act 1845 (referred to in section 27 as ‘field gardens’). Those should retain the special protection of the circumscribed power of sale in section 27 of the Commons Act 1876 whereas the general power of sale in section 32 of the SH&A Act 1908 (with the added protection of section 8 of the Allotments Act 1925) can apply to all other kinds of allotments.

Discussion

25. The drafting of section 33 of the SH&A Act 1908 contains a number of puzzles. The relationship between the power in subsection (1) for allotment wardens under the Inclosure Acts 1845 to 1882 voluntarily to transfer the management of the land to a council and the provision in subsection (3) whereby the powers and duties of persons constituted wardens of allotments are transferred by the operation of statute to the council is unclear. Subsection (3) is limited to rural parishes, whereas subsection (1) applies to all borough, urban district or parish councils. This would appear to leave outwith section 33(4) a class of allotments in urban parishes where the wardens do not choose to transfer the management to the council. This casts doubt on the Council's assertion that section 33 was intended to sweep up into the new 1908 regime *all* land at that time held by councils for the purposes of allotments. However, of course, this lacuna did not in fact exist because all the powers of management of allotment wardens had already been transferred to parish council by section 6(1)(c)(iii) and/or section 6(4) of the LGA 1894. It appears that the powers, the transfer of which section 33(1) and (3) purported to deal with, no longer existed at the time section 33 was enacted. Why subsections (1) and (3) were thought necessary is not at all clear – the draftsmen of the legislation were clearly aware of the existence of section 6 of the LGA 1894 since subsections (3) and (4) (but not subsection (1)(c)(iii)) were repealed by the Schedule to the SH&A Act 1908.
26. Despite the difficulty of construing these provisions, I accept the Council's submission that, as regards allotments which came under the management of the parish council by virtue of section 33(4) of the SH&A Act 1908, they were intended to be governed, and governed exclusively, by the powers set out in sections 26 onwards of that Act. The enactment of the power of sale in section 32 of the SH&A Act 1908 was intended to apply to all allotments acquired under that Act or treated as acquired by it pursuant to section 33(4) of the SH&A Act 1908. That power did to that extent repeal the power set out in section 27 of the Commons Act 1876. There is nothing in the legislation to support the contrary contention that Parliament intended that section 27 of the Commons Act 1876 should continue to apply to field gardens enclosed under the Inclosure Act 1845 and that the power in section 32 of the SH&A Act 1908 should apply only to other kinds of allotments operated by the Council.
27. The Claimants point to the fact that section 27 of the Commons Act 1876 has been preserved in force whereas many other provisions of that Act have been repealed over the years. However, it is difficult in the circumstances of this case to infer from the survival of section 27 that Parliament must have concluded that the power still applied to field gardens in derogation from the general power in section 32 of the SH&A Act 1908. On the contrary, it is clear that the drafters of section 33 had Inclosure Act field gardens well in mind, by enacting section 33(1) which refers expressly to them but did not carve them out from section 33(4). As I have said, the patchwork of legislation here is defective in a number of respects, and the failure expressly to repeal section 27 may simply be one more of these. The Claimants concede that there is nothing in section 33 of the SH&A Act 1908 to show that the drafters were aware of the extant power of sale in section 27 of the Commons Act 1876.
28. The provisions of section 27 of the Commons Act 1876 are themselves problematic. They require not only that the Inclosure Commissioners approve the sale of the land only if other replacement land is to be bought but also that 'the proceeds of any such sale shall be paid to the Inclosure Commissioners, and shall remain in their hands until such purchase of other land'. Although the role of the Inclosure Commissioners generally has been transferred over the ensuing 140 or so years to various Ministers and Secretaries of State, it is unlikely that the current position is that the proceeds of sale of any allotments have to be paid to the current relevant Secretary of State and retained by him or her until a purchase of suitable replacement land is transacted by the Council.

29. Ms Dring on behalf of the Claimants put forward various arguments in support of the contention that the power in section 32 of the SH&A Act 1908 was not intended to repeal section 27 of the Commons Act 1876. The principal argument was that the limitation on the Council's power of sale of allotments imposed by section 8 of the Allotments Act 1925 does not, on its proper construction, apply to land transferred to the Council by operation of law. Section 8 (as amended) applies only to land which the local authority 'has purchased or appropriated for use as allotments'. That wording refers to two specific means by which land comes to be used as allotments (rather than, for example, referring more broadly to land 'acquired' by the Council or to land currently being used for allotments). Those two specific means do not include the vesting of land in the parish council by operation of statute. The Claimants say that the Allotments clearly were not purchased by the Council and they were not appropriated for that use by the Council because they were already being used as allotments at the time they came into the Council's possession, pursuant to section 6 of the LGA 1894 or section 33(3) of the SH&A Act 1908.
30. If section 8 of the Allotments Act 1925 does *not* apply here, then there is no requirement for the consent to the sale of the Allotments by any outside body with oversight of the Council for this purpose (the requirement for county council consent originally included in section 32 of the SH&A Act 1908 having been repealed by the LGA 1972). It would be odd and unsatisfactory, the Claimants contend, that field gardens which were initially granted such extensive protection by section 27 of the Commons Act 1876 should now have less protection than any other allotments.
31. I do not accept this reading of section 8 of the Allotments Act 1925. Section 8 does not itself confer a power to purchase or appropriate land. The power to purchase land must come from another source. In this case the power to purchase land comes from section 25 of the SH&A Act 1908. That section conferred a power on the Council, by agreement, to purchase (or lease) land for the purpose of providing allotments. The power to appropriate land for that use comes from section 126 of the LGA 1972. That provides that any land belonging to a parish council 'which is not required for the purposes for which it was acquired or has since been appropriated may be appropriated by the council for any other purpose for which the council are authorities to acquire land by agreement'.
32. If section 8 of the Allotments Act 1925 had referred to land 'acquired' for use as allotments instead of 'purchased', then it would have been clear that Parliament intended that allotments which came into the control of the parish council by virtue of section 33(4) of the SH&A Act 1908 were now to be subject to the requirement for the consent of the Minister. The fact that section 8, as originally enacted, expressly referred to Ministerial consent replacing the county council's consent under section 32 of the SH&A Act 1908 shows that section 8 was intended to apply to the exercise of the power of sale under section 32 of the SH&A Act 1908. As it is, section 8 of the Allotments Act 1925 referred to only one of the methods available to the parish council for acquiring land under powers in the SH&A Act 1908 – purchasing but not taking on lease or, for example acquiring compulsorily. Should this be taken to indicate that section 8 was intended to apply only to land which was *actually* purchased under section 25 of the SH&A Act 1908 and not to land acquired by the exercise of any other power under that Act or by the operation of section 33(4) of that Act? I do not consider that the wording has that effect because that would largely defeat the purpose of section 33(4). The purpose of that section was, as stated, to ensure that allotments that came under the control of the council by operation of the preceding section 33(1), (2) and (3) or by operation of a repealed provision should be treated in the same way as land 'acquired' by the council under its general powers for the purposes of the provisions of that Act, including the power of sale under section 32.
33. The fact the wording of section 33(4) of the SH&A Act 1908 provides that land is to be treated as acquired by the Council under its general powers only for the purpose of applying 'the provisions of this Act' rather than for all purposes does not assist the Claimant. As I have said,

the relevant power of sale is the power under section 32 *of that Act* and section 8 of the Allotments Act 1925 is an ancillary provision supplementing that earlier power of sale.

34. I recognise that this does raise the question, however, not only why section 8 refers to land ‘purchased’ rather than ‘acquired’, but also why the SH&A Act 1908 did not simply repeal the requirement for consent of the county council in section 32 rather than merely disapplying it when the consent of the Minister has been obtained under section 8. It may be that in relation to land that had been leased rather than either bought under section 25 or ‘acquired’ pursuant to section 33(4) the requirement for council consent rather than Ministerial consent still stood. Be that as it may, I find that the intention of Parliament must have been that the requirement of consent under section 8 of the Allotments Act 1925 applied where the parish council wished to exercise the powers under section 32 of the SH&A Act 1908 in relation to land that had either been bought by them under section 25 of that Act or which was treated as having been acquired by them under the SH&A Act 1908 because of the operation of section 33(4) of that Act.
35. There was no anomaly, therefore, created by the repeal in 1972 of the requirement for county council consent in section 32 of the SH&A Act 1908 because it did not create a gap in protection for field gardens. I do not agree that such a gap exists and therefore I do not consider that Parliament must have intended that the gap be filled by the continued application of section 27 of the Commons Act 1876. The requirement of consent (now) by the Secretary of State applies to the sale of allotments which came to the parish council by operation of section 33(4) of the SH&A Act 1908 as it does to allotments which were bought by the parish council under its powers in section 25 of that Act.
36. The Claimants’ second argument is that the application of section 27 of the Commons Act 1876 would have the effect of preserving the charitable trust which has not otherwise been brought to an end. Section 27 of the Commons Act 1876 requires that the proceeds of sale of field garden allotments must be used to buy land which is held on trust for the same purpose, namely for the labouring poor.
37. In my judgement, the reason why the trust under the Inclosure Act 1845 may have been treated as a charitable trust was because it was for the benefit of the labouring poor – the relief of poverty being a well-established charitable purpose. That charitable purpose was diluted by section 26 of the Commons Act 1876 which provided (as originally enacted) that if there was insufficient demand from the ‘poor inhabitants of the parish’, the allotments could be let by the council to other people. Section 23 of the SH&A Act 1908 referred to the obligation on the council to provide allotments ‘for the labouring population’ in the parish and the power to purchase or lease land in section 25 was to ensure that the council could fulfil this duty. The reference to the ‘labouring population’ was repealed by the Land Settlement (Facilities) Act 1919 so that allotments must be provided by the council where there is demand, without reference to the poverty or affluence of the would-be allotment holders. The Claimants do not contend that the Allotments are still subject to any requirement that they are restricted to poor allotment holders or that poor inhabitants of Burstow should have priority access to the Allotments. They accept, rather, that the regime in the SH&A Act 1908 applies to the Allotments (because they accept that the Allotments fall within section 33(4) of the SH&A Act 1908) in all respects other than being subject to the power of sale in section 32.
38. In my judgement, therefore, the Council was correct in seeking the consent of the Secretary of State under section 8 of the Allotments Act 1925 because the power of sale that it wishes to exercise to dispose of the Allotments is the power conferred by section 32 of the SH&A Act 1908 and not the power under section 27 of the Commons Act 1876. I do not have to find that section 27 is now entirely redundant – the Council did not rule out that there may be other kinds of allotments which were not, for whatever reason, swept up by section 33(4) of the SH&A Act 1908 and where section 27 still has some residual effect. But as regards the Hunter’s Moon Allotments, those did fall within section 33(4) of the SH&A Act 1908 and so are covered

exclusively by the power of sale under section 32 of that Act, subject to the obtaining of the consent of the Secretary of State under section 8 of the Allotments Act 1925.

39. Finally, I would like to thank both counsel for their very clear and helpful submissions which guided me through these rather tangled statutory provisions.
40. The Claimants' claim for a declaration is therefore dismissed.