

Allotments—The Basics

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National Society of Allotment and Leisure Gardeners

PROTECT PROMOTE PRESERVE

Provided that land intended for allotments was previously agricultural land, planning permission is not required for allotments. The authority for this statement derives from **Section 55 subsection (2) paragraph (e)** and **section 336 Town and Country Planning Act 1990**.

s. 55 (2) (e) :

The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land . . . the use of any land for the purposes of agriculture . . . and the use . . . of any building occupied together with land so used.

s. 336 :

‘agriculture’ includes horticulture, fruit growing, seed growing . . . the . . . keeping of live stock . . .

Pursuant to the provisions of **section 23 subsection (1) Small Holdings and Allotments Act 1908**, municipal authority is under two Statutory and hence mandatory obligations as regards allotments :

to provide a sufficient number of allotments ; and

to let these to folk who wish to take them.

“Sufficient”, in this context, has yet to be defined by a Court of Competent Jurisdiction. In strict Legal theory it is at least arguable that if there be one person on a waiting list for an allotment, the municipal authority is in breach of the Statutory duty imposed by **s. 23 (1)**.

The provisions of **s. 23 (1)** become engaged where, pursuant to the provisions of **section 23 subsection (2) Small Holdings and Allotments Act 1908**, six Parliamentary electors make written representations to the municipal authority, expressing a demand for allotments. The authority must then make shift to provide a sufficient number, and let these in accordance with **s. 23 (1)**.

The obligations in **s. 23 (1)** are **absolute** ; they admit of no defence, argument or challenge. **Section 25 Small Holdings and Allotments Act 1908** confers powers of compulsory acquisition of land for allotments on municipal authorities, and land so acquired can be within or without (say) the parish boundaries. Compulsory purchase is, of course, an option, but not one favoured by NSALG, which prefers that the compulsory hiring, provided for by **section 39 subsection (2) Small Holdings and Allotments Act 1908** be resorted to.

The municipal authority will make application to the appropriate Government Department for consent to make the compulsory hiring.

Currently, this is the Department of Communities and Local Government (DCLG) , and application is made to the Secretary of State

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Land acquired by a municipal authority for allotments, or specifically appropriated to allotments user by the authority, accedes to the status of Statutory allotments land. Where it is proposed to dispose of Statutory allotments land to a purpose other than allotment user, the consent of the Secretary of State, DCLG, is required, pursuant to the provisions of **section 8 Allotments Act 1925**. In considering whether to grant or to withhold consent to disposal, the Secretary of State is required to take into account at least five rigorous criteria :

- the allotment(s) in question is/are not necessary and is/are surplus to requirement ; - adequate provision will be made for plot holders displaced by any such disposal, unless any such provision is not necessary or is not reasonably practicable ;
- the number of people on the waiting list has been effectively taken into account ; - the municipal authority has actively promoted and actively advertised the availability of allotment sites ; and the municipal authority has consulted NSALG.

It is suggested that should the first criterion fall the rest become otiose.

Once a municipal authority has 'earmarked' land for allotments, the site should be marked out. The standard allotment plot in England and Wales is the '**10 pole plot**', which measure equates to 300 square yards, or 250 square metres, or one sixteenth of an acre. The plot is usually, but need not invariably be, rectilinear in shape. The only mention of area is to be found in **section 22 subsection (1) Allotments Act 1922**, and refers to

" . . . an allotment not exceeding forty poles in extent . . . ".

This might be construed as entitling any plot holder to four standard (10 pole) plots. However, the 10 pole plot, properly husbanded, should feed a family of four for a twelvemonth. It is thought that the optimum provision should be fifteen 10 pole plots to the acre, which should allow for haulways.

To return to the provisions of **section 23 subsection (1) Small Holdings and Allotments Act 1908** : this provides that a municipal authority shall provide earth, for cultivation. (In the opinion and experience of NSALG, many authorities, having provided this, consider that they have done all that is required of them.)

The average rent for the 10 pole plot in England & Wales is **£25 per year**, which is thought to be a derisory amount, in the 21st century. Allotment rents are governed by the provisions of **section 10 Allotments Act 1950**, which speaks of allotment rents being that which

" . . . a tenant may reasonably expect to pay . . . ".

This is invariably objective to the allotment site rather than subjective to the tenant, and there is provision in **s. 10** for a lesser rent to be charged where circumstances might warrant this. However, the charging of any such lesser rent is in the discretion of the municipal authority.

The point here, arrived at by a long-winded route, is that a municipal authority is under no mandatory obligation to provide water, or fencing, or pathways, or anything over and above the bare earth for cultivation. Where water, etc., is provided, a tenant may expect to pay a realistic rent.

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Quite frequently NSALG is asked about bees being kept on an allotment site. **Section 61 Small Holdings and Allotments Act 1908** can be construed as saying that it is *prima facie* lawful for bees to be kept. However, a local authority can make rules governing the conditions on which plots will be let – **section 28 Small Holdings and Allotments Act 1908** - , and this might include a prohibition on bees.

Please see our leaflet : “Bees on an Allotment Site” - under ‘Useful Information’ on the website.

Sometimes confusion arises about the keeping of live stock on an allotment plot. Generally speaking, any creature can be kept with the express permission of the Landlord Paramount (the municipal authority). Pursuant to the provisions of **section 12 Allotments Act 1950**, domestic chickens (but not cockerels), and/or rabbits, can be kept and housed on an allotment plot **as of right**. This means that the consent of the Landlord Paramount is not required and need not be sought. Any attempt to impose conditions or a prohibition on the keeping of hens and/or rabbits is ineffective.

That said : NSALG thinks that it is only courteous for a plot holder

- to inform the municipal authority of an intention to keep and house domestic chickens and/or rabbits
- to inform the authority of the number of creatures it is intended to keep ; and
- to supply a contact telephone number in case of any problem with creatures.

Domestic chickens and/or rabbits cannot be kept so as to cause nuisance, or threat to health. Most allotmentiers who keep chickens keep them primarily as pets, any eggs being a welcome bonus. Please see our leaflet ‘Hens and Rabbits on Allotment Plots’ under ‘Useful Information’ on the website.

Any allotments tenancy is terminable in one of two ways. The most common method is by reference to the tenancy agreement document. Where a plot holder is alleged to be in breach of a clause, or of clauses, in the agreement then provisions of **section 146 Law of Property Act 1925** are engaged. This provides that where it is proposed to terminate a tenancy by reference to the agreement, the tenant allegedly in breach must be given reasonable opportunity to rectify the alleged breach or breaches. What is reasonable is a question of fact in every case.

The second method is the Statutory termination, **section 1 subsection (1) paragraph (a) Allotments Act 1922** as amended **section 1 Allotments Act 1950**. This gives the plot holder 12 months notice of termination. It follows that the maximum security any allotment gardener can enjoy is 12 months. However, this Statutory notice cannot be served so as to terminate later than 6th April in any given year ; nor earlier than 29th September in any given year. NSALG uses the rough guide ‘Lady Day to Michaelmas’.