



Allotments management toolkit: How to complete your lease requirements template

Introduction

Social Farms & Gardens have worked with the Welsh Government to produce a range of resources to help ensure local authorities and others involved in the management of allotment sites in Wales to maximise the potential of those sites for the local population.

With support from the Welsh Government, SF&G Wales have written a guidance document for local authorities, growers and growing groups in Wales which provides an overview of allotment site management.

The toolkit includes a series of factsheets which expand on various topics covered in the Guidance.

The toolkit also includes a selection of sample tenancy and other legal document templates to assist in site management.

All these resources are available to download from:

www.farmgarden.org.uk/allotment-site-management-toolkit

About this factsheet

This factsheet should be used to help you complete your lease requirements template, which is part of the Allotments Management Toolkit.

Lease requirements (also known as 'Heads of Terms') are the foundations of any property contract.



How to complete your 'Lease Requirements Template'

Introduction

Lease requirements (also known as 'Heads of Terms') are the foundations of any property contract. It is a record of decisions that have been agreed between the parties (landlord and community group) and can be used to draw up a lease or other such document that reflects the decisions made. It is also a useful tool to focus your ideas on how the project will function.

Download your copy of the Lease Requirements Template from the address on the front page of this factsheet and refer to the advice here as you proceed to complete the template for your organisation.

When to use

Once a site has been identified and an initial meeting held on site with both parties and all are keen for the project to go ahead, your lease requirements/Heads of Terms can start to be created. Basic information/ non contentious issues should be completed - address of site, names and any other points you have agreed so far. Go back and fore with the other party to come up with a final heads of terms document that can then go to solicitors for converting into a draft lease.

The list of other suggestions in the template is not exhaustive and if other matters are of importance between the parties, then they should be included.

Warning

It is important to mark your lease requirements template 'Subject to contract and without prejudice' which means that you'll be turning it into a formal agreement at a later date. This prevents the Heads of Terms being mistaken for the final contract.

Preparing the key information for your lease/licence

Landowner

This should be the name of the person who owns the land. This could be an individual, several individuals or a company. Check who owns the land online by viewing the ownership title with the Land Registry (www.landregistry.gov.uk). There is a charge of around £4 for a copy of the title and an additional charge for a plan.

The person granting the lease may not be the owner. They may be the tenant. Ideally, if renting from a tenant, confirmation in writing from their landlord should be obtained, confirming that a community group's occupation is permitted. If this is not permitted the group may have to leave before they are able to harvest the crop.

It is important that the landlord's address is correct, as this is where the rent and any formal notices will be sent.

Tenant/Occupier

The tenant needs to have a 'legal identity', meaning an individual, several individuals or a company. For example, an unincorporated body would need to have a named individual, such as the group's secretary listed as the Tenant on the tenancy agreement. Further information about choosing the right legal structure for your group can be obtained from Social Farms and Gardens.

The tenant's address should be somewhere post can be delivered as it will be used to send formal notices, therefore the site address may not be appropriate.

Site

The address of the site should be included here and also its size, e.g. "1.2 acres at land behind 10 Allotment Avenue, Farmbury, Bangor".

There are many websites where a map can be downloaded and printed out and the boundary of the site marked with a red pen to produce a plan of the site. The line should be on the inside of the boundary and be of a width appropriate to the scale of the plan. A more formal plan may be needed for the final version of the lease.

You should check that the owner owns all the land that is going to be subject to the agreement by cross referencing this against the land registry plan.

Rent

Will the rent be paid annually, half yearly, monthly? Will it be paid in advance or afterwards (in arrears)?

The details of any other arrangement reached for paying rent, for example by giving produce/ labour should be recorded here. It might be that no rent is to be paid and this can be recorded as a 'pepper-corn rent'. It's just a legal term.

If rent is not going to be paid initially, for example where the land needs a lot of work before it will start being productive, this is known as a 'rent free period' and the timescale should be recorded here.

Rent days

These are the dates to pay the rent on.

Rent Review

Will the rent remain the same for the length of the lease or will you change it during this time? If it will stay the same, record this here.

If it is going to change, consider what mechanism you can use; for example, it could be linked it to the Retail Price Index or the price of potatoes in the local shop last month. Depending on the type of legal agreement you enter into, you need to make sure that any formula will allow for the rent to decrease as well as increase.

You also need to consider the frequency of being able to change

the rent. Too frequent and the effort involved in changing the rent may not be efficient use of your time, too infrequent and you may have large increases to deal with when they happen. Every 3 years is a traditional frequency.

Term

How long will this agreement last? The guaranteed period is the term length as written here. It may be that the community group or enterprise continues on the site after this time on a replacement tenancy. If the community group wishes to leave before the tenancy term is over, legally they will still be liable to pay the rent for the whole length of the term. A 'break clause' can be used to manage this (see Break clause section below).

When deciding on the length of term, you need to consider the minimum time which will make your efforts worthwhile as well as the requirements of any grants you may have regarding a minimum length of agreement.

An agreement over seven years will need to be registered at the Land Registry and added to the title, which will mean additional cost employing a solicitor to submit a return.

It may be that a trial period is offered, with the intention of a longer letting after this is over. Alternatively, a 'break clause' can also be used to manage situations where certain criteria have not been met. The community group may need to consider what would happen in the worse-case scenario of having to leave the site after the trial period is over.

Access and parking

Does the site have road frontage, or will access over other land be required to reach it? Can this be by car or will it be necessary to park a little bit away and walk? Will there be a designated parking area and how many cars can be there? What about deliveries? Record these

decisions and mark the parking area on the plan and also the access routes.

Permitted Uses

What is going to be happening on the land? It's really important to consider if there will be a trade or business operating as this will dictate the type of lease you will need.

It is best not to be too specific as plans may change over time and a general clause will allow for flexibility. For example, initially crops are grown for food, but then crops are planted for energy production. A user clause of "growing crops for food" would be breached by growing the crop for energy. The most flexible wording would be "growing crops".

Who is allowed on the site? Will the public be allowed on site and if so, is this limited to weekends or a certain number of times a year? What if school visits are anticipated but the Women's Institute want to look round? Again, a more general clause would deliver flexibility.

Can chickens or sheep be kept? Should there be a limit on the number kept? Is there to be a box scheme or farm shop going to be operating on the site?

Insurance

What different types of cover will you need? Does there need to be a minimum level of cover, such as £5 million public liability insurance? This might be a requirement from funders or for organised visits. Will the landowner or the community group pay for these insurances and make sure that they are renewed?

Maintenance

The community group or enterprise should make good any damage they cause and likewise so should the landowner, but regular maintenance will be required, such as hedge cutting, clearing ditches, renewing fences, scrub clearing etc. and you will need to decide who undertakes this.

There needs to be a process for notifying whoever is responsible that maintenance is required. It is also good practice to consider what actions the other party can take if the maintenance isn't done, such as doing it themselves if it isn't done within a certain time and how the costs incurred can be recovered.

In an emergency, such as a burst water pipe, quicker action will need to be taken, so a shorter period of notification will be required for this.

Erection of hard-standing/ buildings

Always check if planning permission is required before carrying out any development. It's best to get advice on the likelihood of obtaining planning permission before acquiring land or entering into a lease if these developments are critical to the success of the project or enterprise. If planning consent is required, who will obtain it? Should the landowner be asked before the community group puts up anything? You could agree an initial programme of works after which anything else needs separate permission.

Compensation for improvements

At the end of the agreement can the Community group or enterprise leave the site as it is? Or do they need to take down any structures/ buildings? If they are to be left, how much will the landowner pay (compensate) the Community group for leaving the structures/ buildings? Compensation for each structure/ building should be discussed between the parties before it is built.

Responsibility for legal costs in finalising the agreement

This can include the solicitors' fees for drawing up the lease, cost of maps, viewing the land registry title, making a return to the Land Registry and the payment of stamp duty land tax (which may be unlikely as can be a high threshold).

Assignment and subletting

If things don't work out, can the community group/ enterprise transfer or sublet the lease to someone else? Normally this isn't allowed. Be aware that landlords may look to impose clauses regarding alienation or subletting.

Break Clause

This gives the opportunity to end the tenancy before the end of the term, although it can also cause uncertainty as to the future of the project, so should be used sparingly.

This type of clause can be used by the tenant only, the landowner only, or applicable to both. They can be triggered following a specific event, such as planning permission being granted or on pre-agreed dates.

Water

Is there water? Will it be included in the rent, or charged separately? How will usage be measured - with a sub-meter or as a percentage of the total bill? What happens if there is a leak and extra charges? Will extra equipment need to be installed to make it suitable and who will pay for this?



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