

Allotment Disposal

What is in this for local councils?

Local councils will be aware that they cannot dispose of statutory allotment land without the Secretary of State's permission. New Government non-statutory guidance provides information regarding how such disposal decisions will be handled. Councils will wish to make careful note of the guidance when considering disposing of land given the controversy that disposal of allotments can create. The heated disputes that have arisen where residents have requested additional provision of allotments in some areas of the country are indicative of the value that is placed on allotments by certain people and Government is keen to emphasise the importance of protecting land allocated to allotments within this guidance.

Unusually, this guidance takes particular account of the relatively low level of resources available within local councils, compared to other local authorities, and makes special supportive provision for the application process.

References to local councils: Throughout

Pages: 16

Deadline: n/a

Detail

The *Allotment disposal guidance: Safeguards and alternatives* provides additional detail on the statutory and policy criteria that councils need to be aware of in respect of disposal of allotments. The guidance relates to statutory allotment land i.e. all land a council has purchased or appropriated for use as allotments and where the land has not been designated for another purpose prior to its use as allotments.

Statutory Criteria

The three statutory criteria are contained in s.8 of the Allotments Act 1925. These are that the Secretary of State may permit, with or without conditions, disposal of land purchased or appropriated for allotments but shall not permit disposal of land unless satisfied that:

1. Adequate provision will be made for allotment holders displaced; or
2. Such provision is unnecessary; or
3. Such provision is not reasonably practicable.

1. Adequate Provision will be made for allotment holders displaced

Councils seeking to prove they have met this criterion should:

- Provide a map showing the old and new provision;
- Be able to demonstrate that the new site has been secured for use as allotments;
- Be able to show that the new site is easily accessible; and
- Ideally, be able to show that the site is located within three-quarters of a mile of the old site.

The Secretary of State will take into account various factors such as any evidence and explanations provided by the council, the relative size of the sites, the number of plot holders affected and accessibility for different groups of people. This latter issue is interesting for councils aware of the increasing expectation of delivery of services to

the whole community which can increase costs of providing those services through the need to make reasonable adaptations.

2. Such provision is not necessary

Ostensibly, this is relatively straightforward where it can be shown that there are no existing plottolders and no demand. However, further on within the policy criteria in the guidance, it is clear that Government would expect councils to have explored whether they have sufficiently explored demand and made the provisions suitably accessible.

3. Such provision is not reasonably practicable

This would have to be proved through explanations from the council as to its local circumstances. Section 32 of the Small Holdings and Allotments Act 1908 applies and requires that money from the sale or exchange of superfluous or unsuitable statutory allotment land must be spent on new land for allotments or improving existing allotments, although debts and liabilities in respect of land acquired by the council for allotments may first be discharged. However, the guidance is clear that councils will not be granted disposal where their excuse for not finding alternative land is that it is too expensive to provide. The guidance suggests that one way finance might be obtained is through the Community Infrastructure Levy paid by developers. Where developers seek to acquire land for development which includes allotment land and state that new provision will be funded through the Levy, councils will want to closely examine whether there is a guarantee that the money will reach them and what the timing will be for that money being paid over. The accessibility of the alternative land to different groups will be a consideration and councils would not be expected to displace existing plottolders where no alternative land is available, although a disposal of part of a plot might be an option.

Policy Criteria

The policy criteria cover the ground of the interpretation of the statutory criteria and introduce specific criteria which councils might not have thought about previously. Although statutory criteria must be met, it is possible that, in exceptional circumstances for which evidence must be submitted, disposal will be granted even though all of the policy criteria have not been met. The policy criteria are:

1. The allotment is not necessary and is surplus to requirement;
2. The number of people on the waiting list has been effectively taken into account;
3. The council has actively promoted and publicised the availability of sites and has consulted the National Allotment Society; and
4. The implications of disposal for other relevant policies, in particular local plan policies, have been taken into account.

1. The allotment is not necessary and is surplus to requirement

Even where the site is bigger than needed, existing plottolders need to be provided with an alternative unless this is unnecessary or not reasonable practicable. Waiting lists and the number of plottolders and plots are among the considerations for this criterion. Even where the land appears surplus to requirement and not being demanded, the guidance suggests that there might be a better way of managing the allotments to stimulate demand e.g. through an allotment association and, of course, the principal local authorities allotment service management might be subject to the new community right to challenge to take over the service. The guidance

also mentions the community right to try to bid for valued and listed community assets which could be used by allotment associations etc., to try to take ownership of allotment land should it come up for disposal. Additionally community gardens, community orchards and other food growing projects are seen as ways of reinvigorating interest but councils will need to take account of a need to apply for disposal if use of the land is changed even if the use remains linked to food and growing.

2. The number of people on the waiting list has been effectively taken into account

The number of people on waiting lists across the whole of the council's area are taken into account as will be whether steps have been taken to respond to demand and whether waiting lists have been closed. The guidance suggests that councils should assess and take account of whether lack of demand in one area could be down to lack of awareness of availability, to improvements being needed e.g. to improve access or to the allotments being in the wrong location.

3. The council has actively promoted and publicised the availability of sites and has consulted the National Allotment Society

This takes into account latent as well as active demand. The National Allotment Society is likely to have a particular perspective. However, the Secretary of State will consider their views but not treat them as conclusive. Councils should keep and be prepared to provide evidence of their contacts and communications with the Society. Prior to the council deciding to seek approval for disposal, early consultation with the Society is encouraged so that alternatives to disposal can be considered. Evidence of website information, leaflets and other means of promoting the availability of sites will be taken into account.

4. The implications of disposal for other relevant policies, in particular local plan policies, have been taken into account

Councils should evidence and highlight sections of the local and neighbourhood plans and any local and national policies affected by or likely to influence whether disposal is granted.

It is also considered good practice to consult with the allotment holders about the potential disposal. Meaningful dialogue with the community is also encouraged and Government takes the opportunity to promote neighbourhood plans as a way of helping communities to shape their parish or town.

Applying for Consent

The application process is as follows:

1. Carry out the preparatory work needed to establish whether there is a case for disposal and no alternative, including through consultation with the National Allotment Society;
2. Email npcu@communities.gsi.gov.uk or visit the DCLG website to obtain an application form;
3. Make the application with relevant evidence;
4. Await any response and requests for further information which should arrive within one month.
5. Provide any further information requested within one month. Special steps will be taken with parish councils in recognition of their relatively low resources. Where further information is requested by the Secretary of State, the council will be contacted within a few days to clarify any queries and advise on deadlines to supply additional information and they will be contacted a week ahead of the intended deadline to check progress;
6. Await a decision within 13 weeks;

7. Request an extension to deadlines, if needed, but requests may be refused;
8. Reapply if your application fails on a basis which can be addressed.

References

Allotment disposal guidance: Safeguards and alternatives January 2014 DCLG ISBN 978-1-4098-4132-6 can be found at <https://www.gov.uk/government/publications/allotment-disposal-guidance-safeguards-and-alternatives>

The Allotments Act 1925 can be found at <http://www.legislation.gov.uk/ukpga/Geo5/15-16/61>

The Small Holdings and Allotments Act 1908 can be found at <http://www.legislation.gov.uk/ukpga/Edw7/8/36/contents>