



**Community Land**  
Advisory Service



# Guide for Landowners

A guide for public and private  
landowners considering use of their  
land for community growing



**The Scottish  
Government**



**Scottish  
Land & Estates**  
Landowners Working for the Countryside

**Social Farms  
& Gardens**







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Central Scotland Green Network Trust

East Dunbartonshire Council

Edinburgh and Lothians Greenspace Trust

Federation of City Farms and Community Gardens

Fife Council

Forestry Commission

greenspace scotland

Keep Scotland Beautiful

NHS Health Scotland

Nourish Scotland

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Scottish Government (Observer)

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Trellis Scotland.

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<sup>1</sup> [www.scotland.gov.uk/Topics/Business-Industry/Food-Industry/own/gyorr](http://www.scotland.gov.uk/Topics/Business-Industry/Food-Industry/own/gyorr)

# Executive Summary

The aim of this publication is simple – to give both public and private landowners in Scotland the key information they need to make an informed decision about making land available for community growing use.

Many landowners would be willing to support such initiatives, but perhaps lack knowledge of how to go about it or have concerns about complying with planning or other statutory obligations. In addition, landowners and community groups can sometimes find it difficult to communicate with each other about access to land for community growing.

This Guide has been written in response to these challenges. It begins by discussing the background to the recent surge in community growing, reviewing the policy context, and looking at some of the benefits of dedicating land to community growing use. It then sets out a number of the things which landowners might want to think about when considering whether their land is suitable for community growing use and, where it is, what the best way to go about making this land available to the community might be. This includes a summary of the legislative/regulatory context, some discussion of practical land management issues, and information about different forms of land access arrangements. Finally, for landowners looking to let land out for community growing rather than sell it outright, further guidance is provided on the drafting of suitable legal agreements, and key terms to be included.

Case studies, showcasing examples of different approaches to community land use, are given throughout.

The first edition of this guide was published in 2013, and proved to be a popular and well-used resource. Against this background, this edition retains the same format as the initial edition, but has been updated to reflect recent legislative changes with regards to community empowerment and land reform, which are covered in chapter 5. Other elements have also been updated where appropriate. In particular, whereas the previous edition primarily focused on making land available for community growing under a lease (this being the most common route for communities and landowners to go down at that time), this edition also looks to cover potential alternatives to leasing in a little more detail.

## Getting Started: Key Elements

There are three key elements that both a landowner and community group need for a successful outcome:

**The right site** – ensuring that the site is suitable for community growing use and the needs of the users.

- **Good communications** – particularly over land access arrangements and any on-site issues.
- **A properly structured agreement** – making sure that both parties' rights and responsibilities are clearly set out, as is the length of the agreement, the permitted uses, etc. An agreement that works well for both landowner and the community will usually produce fewest ongoing problems.

Below are 'six of the best' steps landowners should consider in order to achieve these key elements:

1	<b>Create a strategy.</b> Consider how community growing fits with your current and future estate plans. These things will help you to identify a potential site (or decide whether one suggested to you is acceptable), a timescale, and will inform the terms on which the land is made available for community growing use. Look at some of the Case Studies and research online to see what others have done that you like or dislike.
2	<b>Think about regulations and neighbours.</b> Consider the proposed site and its use in relation to the regulatory framework, the proposed user and any neighbours. Establish communications early with any relevant regulatory bodies (such as the local planning officer, SEPA or SNH), neighbours and with the proposed users to make sure all parties agree what is acceptable, and what may need to be restricted or managed. See chapters 3, 4 and 5 for specific information.
3	<b>Assess site suitability.</b> In choosing a site, consider carefully its suitability in terms of things such as accessibility and services, including water supply. These things are key to the success of a project and, whilst not the only things to establish, can be tricky and expensive to resolve if they go wrong. Consider chapter 3 especially.
4	<b>Negotiate With Care.</b> In negotiating land access arrangements – both at the outset, and during the life of any agreement – seek to establish a win-win situation, which works well for both parties. Where both parties feel they gain from an arrangement, this gives the best chance of a good working relationship and a successful community growing project. See chapters 2, 3 and 6 in particular.
5	<b>Establish a good, practical framework for the use and management of any site.</b> Do this through discussion with all the relevant parties and taking appropriate advice. This will ensure that it's clear what both you and the community expect from the arrangement, and that this is reflected in the terms of any agreement reached between you. Use the suggested Heads of Terms as a starting point, feeding into the key elements above, and consider chapters 3 and 6 especially.
6	<b>Take your time.</b> It is better to get things right from the start, so set out clearly what you want to achieve and how best to do it. Read the detail of this Guide, not just this summary, and take all the appropriate advice you may need. Though there can be much work involved, many benefits can arise from making land available for community growing and doing so can be very rewarding for all involved.

# Contents

<b>Executive Summary</b> .....	iii
<b>Contents</b> .....	1
<b>1. Introduction &amp; Context</b> .....	3
<b>1.1. General Context: Why is use of land for community growing a good idea?</b> ....	3
<b>1.2. Policy Context (for public landowners)</b> .....	4
Case Study: Drylaw & Telford Community Gardens Project, Edinburgh .....	5
<b>2. Benefits of Community Land Use</b> .....	6
<b>2.1. Income Generation</b> .....	6
2.1.1. Further income generation considerations for public landowners .....	7
<b>2.2. Reduced Maintenance</b> .....	7
<b>2.3. Site Improvements</b> .....	7
<b>2.4. Better Communities</b> .....	7
<b>2.5. Better Relationships with Community</b> .....	8
<b>2.6. Productive Use of Land</b> .....	8
Case Study: Bantaskin Primary School, Falkirk .....	9
<b>3. What to think about when thinking about community growing</b> .....	11
<b>3.1. Site Practicalities</b> .....	11
3.1.1. Boundaries .....	11
3.1.2. Access .....	12
3.1.3. Water and Other Services .....	13
3.1.4. Buildings and Other Structures .....	14
3.1.5. Livestock .....	14
Case Study: Shettleston Community Growing Project .....	15
<b>3.2. Costs and Financial Implications</b> .....	17
3.2.1. Initial Costs .....	17
3.2.2. Other Financial Implications .....	17
<b>3.3. Legislative and Regulatory Framework</b> .....	19
3.3.1. Key Principles .....	19
3.3.2. Contaminated Land .....	20
3.3.3. Potential Concerns .....	22
3.3.4. Establishing Confidence in a Community Group .....	23
3.3.5. Neighbours .....	23
3.3.6. Return of the Land .....	23
3.3.7. Identifying Suitable Sites (Traffic Lights System) .....	23
Case Study: Blane Valley Allotments Association, Strathblane .....	25
<b>4. Planning Guidance</b> .....	26
<b>4.1. Permitted Development Rights</b> .....	26
Case Study: Incredible Edible Balfron, Stirlingshire .....	28
<b>4.2. Planning Permission Issues</b> .....	29
<b>4.3. Applying for and obtaining planning permission</b> .....	30
4.3.1. Impact on nearby residents' amenity .....	30
4.3.2. Car parking and access .....	30
4.3.3. Protection of species .....	31
4.3.4. Flooding .....	32
<b>4.4. Other Material Considerations</b> .....	32
<b>4.5. Illustrative Examples</b> .....	32



<b>5. Land Reform and Community Empowerment</b>	34
<b>5.1. Introduction</b>	34
<b>5.2. Community Right to buy</b>	34
5.2.1. Background	34
5.2.2. Agricultural	36
5.2.3. Crofting	36
5.2.4. Rural and Urban Rights to Buy	36
5.2.5. Abandoned and Neglected Land	37
Case Study: Muiravonside Community Growing Area, Falkirk	38
5.2.6. Interests of Sustainable Development	39
<b>5.3. Asset Transfer Requests – Public landowners only.</b>	40
5.3.1. Participation Requests – Public landowners only	41
<b>5.4. Food Growing Strategies and obligation to provide allotments</b>	41
<b>5.5. Further changes on the horizon</b>	42
Case Study: Falkirk Council Food Growing Strategy site identification	42
<b>6. To sell or to let, and on what terms?</b>	44
<b>6.1. Negotiations</b>	44
<b>6.2. What's being negotiated for?</b>	45
6.2.1. General Overview: For sale or to let?	46
<b>6.3. Specific types of lets – leases of agricultural land and allotment sites</b>	47
6.3.1. Agricultural Leases	47
6.3.2. Statutory allotments (public landowners)	49
6.3.3. Private allotment sites (Private Landowners)	50
6.3.4. Templates	50
6.3.5. Common Law lets	51
Case Study: Kirknewton Allotments	51
<b>6.4. Leases</b>	52
<b>6.5. Licences</b>	53
<b>6.6. Landshare agreements</b>	54
<b>6.7. Lease Terms</b>	57
6.7.1. Heads of Terms	57
6.7.2. Access	59
6.7.3. Rent Options	59
6.7.4. Rental Rates	60
6.7.5. Length of Agreement	60
Case Study: Braehead Community Garden, Stirling	61
6.7.6. End of the Agreement	62
<b>6.8. Other Key Points</b>	63
6.8.1. Buildings and Other Structures	63
6.8.2. Nuisances	64
6.8.3. Registration	64
6.8.4. Land and Buildings Transaction Tax (LBTT)	64
6.8.5. Lease Templates	64
<b>7. Further Information</b>	65
<b>Appendix 1</b>	66

# 1. Introduction & Context

## 1.1. General Context: Why is use of land for community growing a good idea?

Local community groups are increasingly interested in using land for a range of community growing purposes including community allotments, gardens, woodlands and orchards. For definitions of different types of community growing projects, please see Appendix 1.

The recent interest in community gardening and 'growing your own' partly stems from the economic downturn and people looking for affordable ways to source locally grown food, but there is also increasing recognition of wider benefits including education, regeneration, health and well-being, and community cohesion. Meanwhile, the potential for community growing projects to contribute to the protection and promotion of biodiversity, and/or to further sustainable development, means that these are of increasing interest to landowners looking to make improvements in these areas, or who have land that is currently underutilised. However, demand for land greatly exceeds supply, (waiting list figures alone indicate that a doubling of land for allotments and community gardens is needed to meet current demand), and land availability has been identified as a major constraint limiting community growing opportunities.

Against this background, a number of specific obligations have been imposed on public landowners, requiring them to take certain steps to support community growing on their land as looked at in the section on policy context (for public landowners) below. Private landowners on the other hand are not subject to any comparable duty to support community growing, but may consider any legal use for their land. It is hoped that this guide may be helpful to private landowners considering community growing as one such use, as well as to public landowners looking to support community growing as part of their statutory functions.

Importantly, the wide range of motivations for community growing means that there is no 'one size fits all model' for this, and there is an equally wide range of forms this can take. While examples of some of the most common types of community growing projects are set out in Appendix 1, this list should by no means be considered exhaustive, and any community growing project should always be tailored to meet the particular circumstances and aspirations of those involved, both on the part of the community and the landowner.





For further guidance of different types of community growing, and what might work well in different places, a good starting point is greenspace scotland's 'Our Growing Community' pack, available [here](#).

## 1.2. Policy Context (for public landowners)

Scottish Planning Policy expects local development plans to be informed by up-to-date audits, strategies and action plans covering green infrastructure's multiple functions, including community growing. To this end, local development plans should safeguard existing and potential allotment sites, and should also encourage opportunities for a range of community growing spaces.

In addition, local authorities have a statutory duty to provide allotments where there is a demonstrable demand for them to do so, and have powers to acquire land for this purpose whether by agreement, adaption or compulsory purchase. Under part 9 of the Community Empowerment (Scotland) Act 2015 (CEA), which came into force in April 2018, local authorities are required to take reasonable steps to provide allotments if waiting lists exceed certain trigger points, and protections for allotments are strengthened. At the same time, CEA part 9 also requires local authorities to prepare food growing strategies which identify land that may be used for allotments or other community growing projects and describe how, where there is an identified need to do so, the authority intends to increase the provision of allotments and/or other community growing spaces in its area.





Further details about local authorities' obligations in terms of providing allotments, preparing food growing strategies and increasing provision of both allotments and other areas of community growing land are set out in section 5.4.

## Case Study:

# Drylaw & Telford Community Gardens Project, Edinburgh

## Location

The garden is at the rear of the Drylaw Neighbourhood Centre in Groathill Road North, Edinburgh. There are also two orchards and another small garden at separate locations in the neighbourhood. The site is only open when the Neighbourhood Centre is open and is only really used by members and volunteers.

## Background

Edinburgh Council leases the site to the Community Garden Project, which has around 30 regular members with an additional ebb and flow of others. Members are drawn from the surrounding community and work is publicised through the Neighbourhood Centre and local press. The groups aims are embodied in their activities which include learning from others by site visits (using Climate Challenge funding), encouraging and educating others by working with groups at the local schools and church (work experience candidates) and community-building (through the social aspects of a community garden as opposed to individual plots).

## Why Did The Group Start?

The garden ground at the Neighbourhood Centre was not in use, and as the council is supportive of community groups which promote the growing of fruit and vegetables, harness local effort and purpose and make beneficial use of vacant land, an arrangement was made for the ground to be converted into a community garden. The orchard sites previously experienced large amounts of fly-tipping and unauthorised burning of rubbish, so the orchards were established to discourage this activity. This has been successful with only minimal tipping and burning taking place now.

## Site Development & Activities

Tools are provided, potentially dangerous equipment is kept separately and the site is managed by the project team to minimise potential for trouble. There had been a garden worker employed, whose job was to identify possible additional community garden areas, develop them and encourage the public to look after them. Again, these sites were situated on Council property, but unfortunately, the post ceased when funding ran out.

## Management and Lease Terms

The lease is a 25 year lease, which will be reviewed in 2019. The long term plans for the ground, along with the successes to date will be looked at as part of the review. The Council also supports the project by carrying out some maintenance (grass cutting), providing insurance and allowing use of the building and water.

## 2. Benefits of Community Land Use

There are genuine benefits for landowners associated with community growing use of land, ranging from income generation through to wider community regeneration, and it can contribute to the outcomes of local and national policies on food, health, community empowerment, the environment, biodiversity and social inclusion. Together this can build community resilience and capacity and acts as a 'nursery' enabling talent and enthusiasm to grow.

Some of the key benefits are set out below, and further details on the value of community growing, health outcomes and social returns on investment are available [here](#) and [here](#).

### 2.1. Income Generation

Financial income is perhaps the most tangible benefit a landowner can gain from community growing use of their land, although the amount of this depends on a number of variables such as size of the site, its location, whether it benefits from planning consent, access arrangements, demand, and the terms on which community growing use is permitted (i.e. whether this is for a limited time only, or subject to certain restrictions, etc.).





### 2.1.1. Further income generation considerations for public landowners

For public landowners in particular, potential rental levels will also be affected by policy, accountability and the economy, as well as public landowners' duty to make best use of resources for the good of the public. With this in mind, consideration should be given to adopting community rent policies that reflect the different needs of groups over time, and which may allow for rents to be set at less than market value in certain circumstances. Importantly, the Scottish Public Finance Manual and, for local authorities, the 'Disposal of Land by Local Authorities (Scotland) Regulations 2010' expressly endorse the disposal of assets at less than market value (including granting leases at below market value rents) when doing so will deliver wider public benefits. However, if this approach is to be taken, it needs to be demonstrably consistent with public landowners' duty to make the best possible use of resources for the good of the public in accordance with the principles of best value.

## 2.2. Reduced Maintenance

If you choose to let your land out to a community growing group, it may be prudent to ensure some (or all) necessary maintenance is carried out as part of the agreement. Depending on your needs – and the abilities of the community group – this may range from a general requirement that the land be looked after in accordance with the principles of good husbandry, through to a detailed Schedule of Works to be carried out at specified times.

This can form part of any negotiation with an occupier and may be in lieu of some or all of any rent, or may be in addition to a rental charge. This reduces or removes your own site maintenance costs for the duration of the agreement, without compromising your long-term plans for the site as landowner.

## 2.3. Site Improvements

Improvement can be made to a site through funding available to community groups which may not otherwise be available to the owners, particularly where the owner is a private individual. This isn't to say that no funding is necessarily available to landowners (for example, Central Scotland Green Network provides some funding to local authority landowners), but community groups might have more options in terms of securing money for improvements such as fencing, drainage and access, if the improvements are integral to the project and suitable for the funding criteria.

Bear in mind that, in Scots law, most physical improvements 'run with the land' such that they revert to the landowner rather than the party that actually carried out, instructed, or paid for the works (subject to some limited exceptions for agricultural and allotment tenancies, which are looked at in section 6.3).

## 2.4. Better Communities

Making land available to community growing groups can help improve local communities by creating a broad range of opportunities and benefits, including:

- Social inclusion – participation in community activities for excluded or vulnerable groups such as the elderly or minority ethnic communities.
- Education – learn how to grow, cook, co-operate and problem solve at any age.
- Employment – training opportunities, both casual and structured schemes leading to qualifications or experience for job applications.



- Combating poverty – through access to cheaper food and increased food security.
- Improved health and wellbeing – research shows that community gardening and food-growing can help improve diet and fitness, and also has therapeutic benefits for groups such as people with special needs, the elderly and infirm, and those with mental health problems.

## 2.5. Better Relationships with Community

If a landowner is seen to be 'putting something back' into a local area by opening up land to a community project, this can create better relationships. However, it is important to be clear about your intentions for allowing community access from the outset. Whether your intention is to improve an area through community action, or to help garner support for a large-scale development project, being open and clear about your objectives is the best way forward.

## 2.6. Productive Use of Land

There are multiple benefits created when an unused or otherwise neglected piece of land is put to good use. These include:

- Better general appearance, local regeneration and positive effect on surrounding area, particularly in urban areas.
- Potential reduction in anti-social behaviour, such as vandalism.
- Environmental sustainability – access to growing opportunities helps reduce food miles and lowers the carbon footprint associated with producing food, while improving biodiversity and providing opportunities for efficient use of resources through, for example, rainwater harvesting.
- Combating climate change – the existence of green oases in cities mitigates the effect of urban heat islands.



# Case Study:

## Bantaskin Primary School, Falkirk

### Overview

Bantaskin Primary School is close to the centre of Falkirk. It has a well-developed orchard, home to more than 10 fruiting apple, pear and plum trees, and some raised beds in the playground where the children are responsible for the planting, caring and harvesting of vegetables, herbs and fruit. Each year group have their own plot, including a growing area for the nursery.

### Aims & Objectives

The stimulus for the project was the excitement of the children germinating plants in their classroom as part of a science project. The germinated plants were then transplanted outside. The seed looked nothing like the vegetable as the children knew it. Due to great interest from other children and teaching staff, the next natural step was to start growing more.

Curriculum for Excellence allows teachers to follow and pursue the interest of the children. Growing fruit, vegetables and edible plants is fantastic stimulus to teach senses, healthy eating choices, food miles and seasonality. Through our growing project, the children are now starting to understand what crops can grow in Falkirk and why some crops cannot be grown here.



## Activities & Management

The school has installed raised beds in the playground, dug out grass patches to put in growing beds and the nursery has grown cabbages, strawberries and peas in tractor tyres. The orchard produces pears, apples and plums. The trees are managed by parent volunteers who prune them when required. Over 300 children are involved in a 'hands-on' capacity, including preparing the soil, planting the seeds, planting out the seedlings, watering, labelling, harvesting and cooking with the crops.

The school has a new kitchen classroom and primary 5, 6 + 7 have been using the produce from the school grounds to cook. To date the children have made: Pumpkin and carrot muffins, apple crumbles, apple scones, Italian pasta, vegetable soup, and chocolate potato cake. This year, Primary 6 and 7 have also held a fruit and vegetable sale. Children have enjoyed eating chives and nasturtiums during break-time.

In the future, we would like to install more raised beds and develop 'community growing'. Our vision would include developing family growing spaces to further support our efforts of parental & community engagement and provide access to local food with zero food miles.

## Successes and Challenges

As a school we hope to use our kitchen and our garden to help develop a great understanding of why fruit and vegetables are important nutritionally, as well as to demonstrate why local produce is important to help tackle the environmental impact of food miles.

One of our greatest achievements is the establishment of our 'Good Food Heroes' programme. This is a cooking project to help engage with parents in our school as well as develop their confidence and knowledge of healthy food choices. The course we have developed allows parents to gain their 'Elementary Cooking Skills' certificate which is a REHIS (Royal Environmental Health Institute of Scotland) qualification.

Furthermore, the efforts of our children have been recognised by Royal Horticultural Society which has awarded the school a Level 3 certificate. Our next step is working on achieving the level 4 which will be developed by our 'pop up kitchen' afternoon and selling plants. This will help the children experience opportunities of enterprise and business skills.

## Land Access Arrangement

Permanent fixtures installed in the school need to be approved by the local authority, including anything being installed against or attached to the building. The Head Teacher can provide permission for non-permanent structures.

Green space, such as grassy areas can be changed to suit the needs of the developing curriculum and need for physical play without permission. The local authority was asked about the development of the grass areas so that the maintenance regime could be adapted to make sure they didn't spray the weeds which could impact on the trees in the orchard.

## Advice

Get involved with local groups e.g. Forth Environment Link, Allotment Society. Groups will have previous experience working with schools and can provide great advice. Visit other schools to see what they are doing. Speak to local rangers and Outdoor Education team advisors within the council.



## 3. What to think about when thinking about community growing

When looking at a potential site (or sites) for community growing use, it is essential to think carefully about (i) the land in question, (ii) the community's aspirations for this, and (iii) your own plans for it, to ensure that any arrangement that is entered into works from the perspective of all three. Against this background, things that need to be considered from the outset include: physical aspects of the site(s) (such as soil types and slopes); practical aspects (such as whether there is adequate access and whether water is available); and issues that might affect use (such as the site being close to neighbours or biodiversity issues). In all cases, it is essential to think as far ahead as possible.

For public landowners, one particular challenge is exploiting the potential of landscaped grounds that surround schools, hospitals, municipal buildings, colleges and universities, prisons and many others. Land and buildings tend to be held in 'silos of responsibility' – for example, land around a hospital is likely to be the responsibility of a Health Board, while land around a school is likely to be the responsibility of the local authority. There is however significant scope for growing on some of these areas if land managers can find ways to make it available.

In addition to the information in this section, for landowners looking to develop allotment sites in particular, reference should be made to the Scottish Allotments and Gardens Society's Design Guide [here](#).

### 3.1. Site Practicalities

There are many information resources on community growing available on the internet, and the starting point from a community grower's perspective should always be the site's suitability for growing in general terms (looking at, for example, its orientation, soil type and exposure to the elements). From a landowner's perspective, however, there are some quite specific points that should be considered before making land available for community growing use, and these are looked at below.

#### 3.1.1. Boundaries

##### Boundaries

To define the site to be used for community growing, you will need a plan and some physical marker to delineate the area. A fence or hedge is not required (though can be useful), but there needs to be some way of identifying the boundaries on the ground.

A boundary may be for security – growing areas may need to be protected from damage, unauthorised access and vandalism, while tools may need secure storage. This type of boundary will need to relate to the occupiers' needs and, if the site is to be locked, there should be nominated key-holders who are contactable in emergencies. Boundaries can also be part of the growing landscape, such as hedgerows for wildlife, fruit bushes and trees.

You may wish to regulate the type and location of these boundary types depending on the site and its uses, and you should consult with the local authority as appropriate – for example, fencing adjacent to a road and/or over a certain height may need planning consent (see section 4.2 for further information on this). Think about who will bear any costs involved.



## Hedgerows

In Scotland, there is no specific legislation for the protection of hedgerows themselves, although there is for the protection of hedgerows as a habitat for nesting birds. The legislation prohibits the causing of damage to or the destruction of any wild bird's nest while that nest is in use or being built, which makes the removal of hedgerows an offence in the nesting season. However, hedgerows are not protected at other times of the year. Where landowners manage hedgerows as habitats for birds under good farming practice, they may be eligible to receive grant aid.

Similarly, potential sites may also provide a habitat for other species of flora and fauna that are protected by legislation, and care needs to be taken not to harm these species (or their nesting or hunting areas).

Further information on the effect that the presence of protected species may have, and other consents that may be required by legislation, is set out in section 4.3.3 below.

### 3.1.2. Access

#### Access Route

Providing and defining a safe and clear route onto the site is vital, as is making it clear who is responsible for maintenance of this. If access is difficult, or there are issues with maintenance, this may inhibit users and the site will not prosper.



## Type of Access

Depending on the site and its surroundings, you may wish to provide access for pedestrians only, or for both cars and pedestrians, or perhaps allow vehicles for deliveries and/or special events, but not cars more generally. Many community growing groups promote a reduction in carbon emissions and will prefer cars to be restricted, but it is wise to make arrangements for at least some deliveries.

## Parking

If vehicles can approach the site, then provision for parking will need to be considered (and this may affect whether planning permission is required for the site). If specific parking arrangements are not made, this may lead to casual use of less appropriate parking spots, resulting in nuisance to neighbours or ground damage.

### 3.1.3. Water and Other Services

#### Water

Provision for water on site is essential. If there is a spring or burn on the site this may be used but, if not, then water must come from some external source, or a bore hole may be required. If there is no public or private piped supply to the site, then rainwater harvesting may supply the group's needs.

If water is piped to the site from a private supply, you may choose whether to make a charge. A charge could be in the form of an annual amount, or could be billed as per use on a regular basis. You will need to install a meter if you wish to measure usage.

If water is piped to the site and is not from a private supply, then it will likely be from Business Stream (click [here](#) for more information), which is the primary water and waste water supplier. There is a different charging regime in place for unmetered outside taps, drinking bowls or field troughs, and the reduced charge for crofts and registered smallholdings is inapplicable for community growing. There are however exemptions for registered charities subject to meeting certain criteria, full details of which are available [here](#).

Remember that a growing site with a reliable source of water at a reasonable cost is going to be significantly more attractive to prospective groups than one without this.

#### Drainage and flooding

A waterlogged site is not attractive for growing purposes and, though raised beds and additional compost may improve the position, these will cost either owner or user. Installation of field drains may be helpful.

One example of an innovative approach to water issues is Windmill Farm in Bristol, where solar power was used to pump water out of a bog at the bottom of the site to a well at the top. Further information on Windmill Farm is available [here](#).

#### Sewerage and toilets

If no existing sewerage facility exists at the site, you may opt to do nothing, or you may opt to provide a septic tank, a connection to the mains waste system or a composting toilet. Provision of some services on a site may be integral to a project and may therefore form part of a funding application by a group (subject to the group having sufficient security of tenure to support such an application). In other cases, the provision of any such services may be at either your, or the community growing group's, expense. As landowner, you should consider the most suitable option for your location, the community and the project, plus how this

relates to your longer-term intentions for the land. A flexible approach may be required as a group grows and develops their facilities.

Composting toilets are an environmentally-friendly and lower-cost option, while a mains-connected toilet will be the most expensive option. Somewhere in between the two, septic tanks can still be expensive to install, need to be emptied regularly (for which there will be charges), and must be registered with the Scottish Environment Protection Agency (SEPA). In some instances, in particular where location relative to services proves financially limiting, temporary portable toilet hire when required for events on site might be the most practical option.

In all cases, options should be discussed with the planning department of the local authority, the Building Regulations Officer, the Environmental Health Officer and SEPA at an early stage, as planning permission, building warrant and/or SEPA consent may be required.

## Power, pipes and cables

Providing power to a site is likely to be expensive unless the location is adjacent to an existing supply. Again, it depends on the type of project, and costs will relate to location. If power is to be brought to the site, then consider carefully the route of the supply – the location of all underground pipes, cables and trenches should be left free for maintenance purposes and may therefore sterilise a part of the site. Similarly, any overhead cables or lines should be carefully sited.

### 3.1.4. Buildings and Other Structures

Whether or not there are already any buildings on site, you will need to consider what is required or envisaged by the community growing group for the purposes of their activities, such as sheds or greenhouses. Consider specifications for the size, number, location and condition of these. In some circumstances, a group may wish to build a more substantial building (i.e. for training or education purposes, as a meeting/activities room, or for running workshops).

In all cases, you should ensure that your permission is sought – and granted – before anything is built on the site. Under Scottish law, because buildings are said to ‘run with the land’, they automatically belong to the landowner regardless of who built them, making it important to consider any building proposals carefully. At the same time, where a building is built by a group using your land, they are due no compensation for the building works if/when they vacate the site (subject to some limited exceptions for agricultural and allotment tenancies, which are looked at in section 6.3.1). Depending on what is proposed, planning permission and/or a building warrant may also be required. For further information on planning requirements, see chapter 4 below.

### 3.1.5. Livestock

Some forms of community growing, such as city farms, have traditionally included the keeping of livestock. There are particular rules governing livestock, animals and pets on allotments. Further information on keeping animals and on animal welfare is available [here](#) and [here](#).

Even on sites where no other livestock is proposed, there is often interest in beekeeping, not least because this can aid biodiversity objectives. While there are many positives associated with beekeeping, the location of any hives should take into account proximity to footpaths, housing and operating machinery. In addition, there needs to be a beekeeper who is registered/experienced (for example Basic Beemaster Certificate) and maintains insurance (as a member of the Scottish Beekeepers’ Association they will have public liability insurance cover). The number of hives ought to be considered, as should screening and swarm control, onsite emergency contact details and cover where the beekeeper is absent. See the Scottish Beekeepers Association website [here](#) for further details.



# Case Study:

## Shettleston Community Growing Project

### Overview

Shettleston Community Growing Project (SCGP) sits on what was a derelict piece of ground situated between Shettleston and Tollcross in the East end of Glasgow.

### Aims & Objectives

The project was set up in 2009 by local people who wished to grow food for themselves and their families. With assistance from Shettleston Housing Association and Glasgow City Council, a suitable site was identified, and funding was secured from the Scottish Government's Climate Challenge Fund to turn the derelict and unloved space into an attractive and productive community allotment.

### Activities and Management

In total, there are well over 100 people who regularly use the allotments in one form or another, and SCGP is able to provide free training for plot holders, volunteers and other interested parties that want to learn about all aspects of food growing and cooking the produce they have grown. In addition, funding is sought each year to enable the use of sessional workers for the allotments, and to run the successful Smelly Welly Club on Tuesdays and Thursdays after school and throughout school holidays for young people aged between 8 and 12 years.







Because of contamination on the waste ground all of the produce is grown in raised beds (over 50 in total), which are rented out for a nominal fee to local people, schools and organisations that want to grow and eat produce they have grown themselves. There is also a large soft fruit area, wildlife garden and a massive community garden that is regularly used for events throughout the year and for The Smelly Welly Club to burn off some steam at the end of their sessions.

## Land Access Arrangements

The land is rented from Glasgow City Council and Shettleston Housing Association for a nominal fee. The arrangement with both the landowners that is as long as the project is viable, successful and continues to do the great work that it is intended to do, than SCGP can stay on the site. The project is managed by a Committee who oversee any major decisions that are required whilst the everyday running is managed by the project coordinator.

## Successes and challenges

We are always looking to develop the site and looking for inspiration from other projects and ideas that will benefit everyone in the local community, and the groups and schools that we work with. Our lowest point came in 2015, when our Smelly Welly Club shed, potting shed and poly tunnel were damaged in a fire. But, public support was so great that with kind donations from local people, organisations, and some funding we were able to redevelop the project and it has now become even bigger and better than before. We are delighted to be National winners of Cultivation Street 2017, chosen by David Domoney for the great work we do in the local community and as an example for other community gardens and allotments far and wide.

## Advice

Start small and don't grow anything that you don't like. Why grow it if you're not going to eat it, unless you're going to give it to friends and family or neighbours who might be struggling to buy nutritious home grown fruit and veg, which is always a great thing to do.

Don't be scared to ask for advice and no question is a silly question. We all had to start from somewhere. Sometimes crops will fail and sometimes crops will exceed your expectations. Nature is a wonderful thing, always full of surprises. Give it a go, you have little to lose and lots to gain.



## 3.2. Costs and Financial Implications

### 3.2.1. Initial Costs

There may be several initial financial costs to pay in order to allow a community project to use a site. These could include:

- For some sites, there may be initial costs of discussing a proposed project, setting up formal agreements and any fencing or access arrangements.
- Survey or other related fees.
- Legal fees.
- Transaction costs such as Land and Buildings Transaction Tax (LBTT) (which replaced UK Stamp Duty Land Tax (SDLT) in Scotland from 1 April 2015). More information on this is available from Revenue Scotland [here](#).
- Registration dues if the land is to be sold, or if it is to be leased for a period of 20 years or more.
- Initial insurance.

Some costs may be recoverable from a community group, but not all. It makes sense, therefore, to keep this to a minimum by finding the right group for the site and establishing their needs before spending funds on any works.

You should also consider delaying the conclusion of any deal to establish whether any of these costs could be covered by any funding the group might apply for, in which case it may be appropriate to make them responsible for carrying out any necessary works and meeting the costs of these (possibly in lieu of paying rent for use of the site, or part thereof).

On this point, however, care should be taken to avoid placing a group in the awkward position of being unable to finalise a lease before they get funding, but also being unable to secure funding until a lease is in place, which is an unfortunately common issue for many groups.

### 3.2.2. Other Financial Implications

In addition to the costs identified above, there are some other potential financial implications involved in allowing community use of land. The consequences for private and public landowners have some variations, as outlined below:

#### Private landowners

**Income/Corporation Tax:** Income from the letting of land must be declared as part of the landowner's tax return. As such, letting additional land may result in changes to the taxation of the owner but, as it is also possible to offset certain costs, more tax may not necessarily be due. It may be advisable to seek financial advice.

**VAT:** The lease of land is normally exempt from VAT unless the landowner has opted to waive exemption from VAT, when VAT would then become payable on the rent.

**Inheritance or other taxes:** In most cases, using land for a private activity such as growing will mean that the land is not a business asset and so there will be no business tax reliefs. If the land is being used for business purposes, however, then certain reliefs may be applicable. If in any doubt about this, advice should be sought from a professional.

**Council Tax:** In terms of the Council Tax (Exempt Dwellings) (Scotland) Order 1992 (as amended), woodlands, market gardens, orchards, allotments or allotment gardens are exempt from Council Tax for an unlimited period of time.

Non-domestic rates: Some community growing activities may be subject to non-domestic rates (business rates). It is the nature of the land use that is relevant, not whether this is being done in the course of a business per se. There are, however, exemptions and reliefs available that may be relevant to community growing groups, the key ones of which are:

- **Agricultural Exemption.** Agricultural land and buildings are generally exempt from rates, with agricultural lands being defined as “any lands and heritages used for agricultural or pastoral purposes only or as woodlands, market gardens, orchards, reed beds, allotments or allotment gardens [...] but does not include any buildings thereon other than agricultural buildings [...] or any land kept or preserved mainly or exclusively for sporting purposes”
- **Charities.** Registered charities are entitled to apply for relief of 80%, which may be topped up to 100% under discretionary powers (discussed below).
- **Non-profit Organisations.** For non-profit organisation that are not registered charities (and for registered charities looking to top up their 80% relief) local authorities in Scotland have discretionary powers to grant up to 100% relief. Groups interested in applying for discretionary relief should contact their local authority’s business rates department. Further information on business rates for community growing is available [here](#).
- **Subsidies:** If your land is classed as agricultural and you have entitlements to a Single Farm Payment under the Common Agricultural Policy, the amount you can claim may be reduced if part of this is dedicated to community growing rather than agricultural use, although there is a trading market for unclaimed entitlements which may allow you to offset any reduction in income. If you are involved with any agri-environmental schemes, these too may need to be revised if the land is no longer available. If in any doubt, you should contact your local Rural Payments office.





## Public Landowners

### Public Accounting Rules

Most publicly-funded bodies in Scotland must adhere to the Scottish Public Finance Manual, in terms of which assets may be disposed of for less than market value – whether by sale or by lease – where the public benefit of doing so justifies this. Similar provisions apply to local authorities under the *Disposal of Land by Local Authorities (Scotland) Regulations 2010*. However, as a disposal at less than market value creates a reduction in budget (the difference between the actual price and the market value), disposing authorities may sometimes be reluctant to consider significant discounts. In turn, payment of a full (or near full) market rent or purchase price can present a significant hurdle for community growing groups with limited financial resources.

The challenge is finding ways to ensure that take-up of land for community growing isn't curtailed by this. For example, consideration could be given to grant-funding projects to enable them to get started, and to build up to being able to pay a market rent, with grants tapered over time to encourage projects to become self-financing. As well as helping to overcome initial financial hurdles, this kind of model can help create robust community projects, and a transparent system of opportunities/support for the use of sites. However, this still places an initial burden on projects to justify investment, and some are more able to measure up to this than others.

## 3.3. Legislative and Regulatory Framework

### 3.3.1. Key Principles

Owning land brings with it responsibilities, and certain obligations in terms of what may, may not and must be done with that land. Allowing use of the land by someone else does not prevent or override the operation of the law and each individual or group has a duty to find out what legislation, regulations and guidance they are required to comply with for their particular activities. A landowner also has a general duty to ensure they have taken all reasonable steps to ensure that anyone carrying out such activities on their land does so.

### Planning

This is regulated by the various Town and Country Planning (Scotland) Acts, together with detailed guidance issued by the Scottish Government and local authorities. Matters covered by the planning system include the use to which a site is put and any changes to that use, as well as the erection of any structures on a site, parking, access and signage. There is a discussion of these matters in the specific context of community growing in section 3.1, and in Planning Guidance (chapter 4). For information on listed buildings, scheduled ancient monuments and battlefields, refer to your local authority or the Historic Scotland website [here](#).

### Environmental legislation

This deals with contamination, invasive plant controls, waste management, trees, special habitat designations and protected species. Standards and enforcement of environmental matters are the responsibility of two bodies:

SEPA, which regulates activities that may pollute water and air, waste storage, transport, treatment and disposal, and activities that may contaminate land. Visit the SEPA website [here](#) for more information.

Scottish Natural Heritage (SNH), which looks after Scotland's nature by providing policy and guidance on wildlife and habitats. Visit the SNH website [here](#) for more information.

In particular, consideration should be given to the regulated matters set out below.

### 3.3.2. Contaminated Land

Some sites carry a risk of contamination, especially vacant brownfield sites, and this has to be considered along with land use. Ground contamination deemed acceptable for a factory, for example, may not be acceptable on land for growing food. Where growing of food is to happen, the risk needs to be assessed accordingly.

#### Checking for contamination

All local authorities are required to maintain a register of contaminated land and this should be checked to ensure the site is not listed, and to see what testing may or may not have been undertaken. Caution must be exercised here however, as this information may not be up to date. Where a site does appear on the register, further information should always be sought from the local authority before rejecting this out of hand. Conversely, just because land isn't on the register, doesn't mean that there aren't potential contamination issues, and it's important to also check the history of previous uses on the land and adjacent to it as far as possible. In addition, it may be appropriate to have soil testing carried out.

Importantly, contamination does not necessarily mean a site cannot be used outright and, depending on the nature of the contamination, there may be various low-cost solutions that would still allow growing to take place. For example, the use of raised beds to separate the contaminated soil from any produce and therefore prevent transfer of any contaminating substance. A guide to growing on contaminated land is available at the Grow Your Own Scotland website [here](#).

In addition, further useful information can be found on the SEPA website [here](#) and on the Environment Agency website [here](#).

Also see the Scottish Allotments and Gardens Society Site Design Guide [here](#).

#### Responsibility for contamination

Generally, the law places responsibility for remediation of a contaminated site on the person who caused or permitted the pollution (the polluter) or, failing that, the owner or occupier.

Contamination can also exist on land without causing problems until action is taken that creates a pathway for the contamination to move somewhere where it becomes a problem. In these circumstances, it could be the person who created the pathway who is deemed as the polluter, as well as (or instead of) the person who put the contaminant in the ground in the first place.

Another way that someone can be classed as a polluter along with the person who caused or mainly permitted the pollution is by taking over the site with full knowledge of what is in it, for example a purchaser or tenant with full knowledge. A landowner could do this by writing it into the contract, making all relevant records and surveys available to the incoming purchaser or tenant, and making sure that any discount on the price or rent as a result of declaring contamination is properly documented.

If there is any question about who may be responsible for contamination, or how this may be attributed to different people, professional legal advice should be sought.



## Tree preservation orders

Local planning authorities have powers to place Tree Preservation Orders (TPOs) on any tree (or sometimes groups of trees) to provide protection from deliberate damage and destruction. If a site has one or more trees on it that are subject to a TPO, then the local authority's permission needs to be sought before any work is carried out to any such tree(s). This includes any felling, lopping, topping, uprooting, or otherwise causing wilful damage. If the local planning authority's consent is not sought/granted before any such works are carried out, they have the ability to prosecute. If there is any doubt as to whether a tree (or trees) on a site might be protected by a TPO, confirmation of this should be sought from the local planning authority before any works are carried out.

## Invasive, non-native species

Invasive non-native species are plants (or animals) that have been introduced to an area in which they do not naturally occur, and which have the ability to spread rapidly and become dominant in that area. Some common examples include: Japanese Knotweed, Ragwort, Giant Hogweed or Himalayan Balsam. In terms of the relevant legislation, it is illegal to release, plant or allow non-native species to spread into the wild. This includes releasing, planting or allowing non-native species to spread into woodlands, road verges or river corridors in the countryside, all of which are generally considered to be 'in the wild'.

SNH is the lead co-ordinating agency for invasive non-native species, and has a Code of Practice that provides guidance on this. Alongside SNH, SEPA has a role to play with regards to freshwater habitats, as do the Forestry Commission and Marine Scotland with regards to woodland and marine habitats respectively.

In addition, if non-native species spread onto land that is not 'in the wild', the owner of that land could raise a civil action under the law of nuisance (see more on the law on nuisance in general below).

To avoid the possibility of prosecution or other litigation, care needs to be taken to ensure that no such species can escape from a site. Landowners should ensure sites are free from such species, and that anyone using or managing their land does so responsibly. Treatment and disposal of invasive non-native species – both plant and root – need careful consideration given restrictions on herbicide usage and dumping.

Further information can be obtained from SNH or at the SEPA website [here](#).

## Nuisances

Nuisance can be any action or failure to act that interferes with people's use and enjoyment of land or property, or that could have a negative effect on health, for example as a result of noise, odour or smoke. In Scotland, there are two ways any such nuisance can be dealt with: either through the common law (under which any number of situations may be considered a nuisance); or through statutory provisions (under which only certain matters may constitute a statutory nuisance). Further information on what might constitute a nuisance, and how the statutory nuisance regime works is available at the Scottish Government website [here](#).

Importantly, care should be taken to ensure that no nuisance is caused by a site's use, and this may require consideration to be given to how certain activities are managed, for example the lighting of bonfires or the making of compost.

In addition, there are specific legislative requirements that must be complied with in terms of certain potentially harmful activities, for example the control, use and storage of pesticides, disposal of any contaminants or controlled substances, and waste disposal. Where any of these activities are to be carried out, it's important to make sure that all parties are aware of what the relevant requirements are.

## Access

The Land Reform (Scotland) Act 2003 introduced a general right of responsible access across most land, detailed guidance on which is given in the Scottish Outdoor Access Code (SOAC), which is overseen by SNH. Essentially, with some exceptions such as around a private dwelling or a field sown with crops, the public may take a responsible right of pedestrian access over land, and landowners or managers must allow this.

Some relevant summaries of the law surrounding access, legal responsibilities, and guidance on how to manage access responsibly can be found on the Outdoor Access website, including *A Brief Guide to Laws relevant to Outdoor Access in Scotland* and *A Brief Guide to Occupiers' Legal Liabilities in Scotland in relation to Public Outdoor Access*. These are available at the Scottish Outdoor Access Code website [here](#).

## Equality Act

The Equality Act 2010 legally protects people across society from discrimination in a number of ways. This includes a duty on services providers not to discriminate in the provision of services, and to take reasonable steps to ensure that people with protected characteristics aren't substantially disadvantaged in terms of accessing services – the protected characteristics being: age; disability; gender reassignment; marriage or civil partnership; pregnancy or maternity; race; religion or belief; sex; and sexual orientation. In other words, if a service is offered to the public, then it must be made available to all sections of the public equally.

Where land is let to a group and that group is providing a service to the public, it will be their responsibility to comply with the Equality Act 2010. In some cases however, it may be possible for a service to be provided by the landlord. An example would be where a landlord lets individual plots of allotment ground directly to each user in a way that could be construed as being open to the public.

In addition, public landowners are subject to the public sector equality duty, which requires due regard to be given to a number of equality considerations in decision making, namely the need to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations between different people when carrying out their activities

Finally, public landowners are also set to become subject to the Fairer Scotland Duty. Public authorities must consider how they will tackle the inequalities of outcome caused by socio-economic disadvantage when making strategic decisions.

## Food safety legislation

If community groups or individual plot-holders grow produce on land and sell it (or any other food, for example at an Open Day) they may need to comply with the relevant Food Safety legislation, which covers areas such as hygiene, safety and training, depending on whether food is washed/prepared, etc. Details of this legislation can be found on Food Standards Scotland's website [here](#).

### 3.3.3. Potential Concerns

When considering a new use for a piece of land, it's natural to have some concerns about how this might pan out. Some of the most common of these are set out below, together with ways in which these might be addressed or alleviated.



### 3.3.4. Establishing Confidence in a Community Group

Confidence in a group develops over time and through interaction with the group. Landowners can and should speak to a group directly if they have any concerns over financial stability, longevity, support, abilities, commitment and understanding of responsibilities. For their part, groups should be willing to offer reassurance, references, biographies and business plans in seeking to promote themselves as potential good stewards of the land.

### 3.3.5. Neighbours

The appearance of, and activities at, allotments and community growing sites can generate concern in neighbours. Give consideration to the surroundings of the site and decide whether to incorporate any specific provisions into any agreement reached with any community growing group if necessary. For example, if you have a site adjacent to a quiet residential area, you may wish to limit the hours that any noisy machinery may be used. Good relations with adjoining proprietors are in the interests of both landowner and land user. Potential problems like vandalism or over-hanging bushes may well be shared and common ground found to tackle them. Consultation regarding shared boundaries or proposed planting near boundaries may prevent difficulties at a later stage. Encourage anyone looking to start a community growing project on your land to consult and involve the neighbours from the outset.




### 3.3.6. Return of the Land

One of the concerns expressed by landowners is whether the land will be returned to them at the end of the agreed time, especially where the owner has let a small package of land and does not wish to invest in potentially expensive professional advice for a temporary arrangement.





Landowners should ensure they seek legal advice and be clear with groups from the outset about the length of an agreement to avoid any miscommunication or misunderstanding. See also section 6.7.6 about the termination of leases, in particular.

### 3.3.7. Identifying Suitable Sites (Traffic Lights System)

A simple traffic light scoring system is suggested as an easy way of finding out how suitable a site is for community growing use (see example below). When inspecting a site, each criterion is assessed and ticked on the table according to one of the following assessments:

-  **Red** – the particular criteria is a barrier to community growing use and may be impossible, or take much effort, to change.
-  **Amber** – Indicates a criteria that, while not a complete barrier to community land use, may need managing or may be less desirable.
-  **Green** – The criteria is ideal or workable for community land use.

In the table, the criteria have been grouped into three categories – those that relate to growing and cultivation activities, those that relate to the needs of the people using the site, and those that impact on how the site will be managed. It may not be possible to check all these elements, but gathering as much data as possible will help inform choices between different locations. Some of this data may also help decisions about the type of agreement that should be entered into, and how a site should be operated. It will also provide valuable information that can be used by the groups themselves.

Traffic Light Site Assessment Tool			
Criteria	Traffic Lights		
Growing Information			
Soil type			
Site condition – grassed, planted, cultivated, abandoned...			
Slope			
Aspect			
Size			
Height > sea level			
User Information			
Access – pedestrian and vehicular, regular and occasional			
Public transport			
Location – proximity to users			
Parking – deliveries, users, regular and occasional			
Structural items on site – trees, hard landscaping etc.			
Services – water, power, sewerage, waste			
Storage/shelter – there or potential			
Management Information			
Contamination – previous uses, dumping, on register			
Planning			
Neighbours – type and proximity			
Biodiversity – protected species, SSSI			
Community interaction possibilities – nearby schools, hospitals, prisons, etc.			
Vermin			
Boundaries, definition and maintenance			



# Case Study:

## Blane Valley Allotments Association, Strathblane

### Overview

Accessed via the old railway line path, the site is on the south of the village, comprising 290m<sup>2</sup> of land set out as 33 plots of different sizes and an orchard. Plots are varied in size in response to demand, allowing for people to choose what suits them and their growing abilities. Raised beds were set aside for the local primary school and an after school group now uses these to grow on the site.

Sir Archibald Edmonstone of Duntreath Estate lets the whole site to the Strathblane Development Trust, and the site is managed by the Blane Valley Allotment Association. The group's membership is drawn from the local area and plotholders must live within an agreed set of postcodes to minimise car use. This has resulted in the added benefit of Strathblane being the only village without a huge waiting list.

### Aims & Objectives

A group of interested local people approached the landowner with a proposal to turn an unused field into an allotment site. An original planning application was withdrawn following objections at the consultation stage, though a second application for a different field was eventually successful.

### Activities & Management

The site was chosen by the group as it is not overlooked, has a good aspect and is easily-accessed on foot. Whilst the planning application attracted significant local support, there were also numerous individual planning objections due to concerns over access, the visual impact on the landscape, noise, smell, privacy of local residents and potential contamination of the local water course. These objections were addressed by site rules, including controls over vehicular access and parking, requirements that plots must be maintained in good, tidy condition, and that buildings such as sheds are to a specified standard. Additionally, in order to reduce the potential impact by vehicular access further, it was specified that plotholders must come from within the Community Council boundary, meaning that they can generally walk or cycle to the site.

The allotment site was opened in 2012, and since then, the Association have been working hard to make the site a community hub. Monthly community works days are organised during the growing season with plotholders, associate members and friends of the allotments helping with general site work, supporting new growers, and with the maintenance of empty plots. Work days may also coincide with the Spring meeting, a barbecue and/or a bonfire. In 2017 there was Scarecrow Competition on the annual Open Day which attracted new members.

The renewal of the Old Railway Line Path has helped with access to the site making it easier to pull trolleys along on foot. The allotments themselves have proved a point of interest for walks through the village on a path that it is hoped will develop linkages to the John Muir Way and the West Highland Way.

### Land Access Arrangements

The initial lease is for a period of 10 years with a break option after five years. The 5 year point has been reached, and the Community Development Trust has been asked to pursue a 10 year rolling lease to give the site more long term security.

## 4. Planning Guidance

In a very general sense, the growing of produce – including horticulture, market gardens, nurseries, etc. – is defined as agriculture, for which planning permission is not required (as this does not constitute development). In addition, subject to certain criteria being met (e.g. size, etc.), buildings for use in connection with agriculture do not generally require planning permission (see ‘Permitted Development Rights’ below).

However, where a site is to be used for more than just growing (for example for educational purposes, or as a sensory garden), or where it is proposed to erect buildings that are not directly connected to agricultural use of a site (such as a social space, café, or a toilet), or which otherwise are not covered by permitted development rights, then an application for planning permission is likely to be required.

For definitive advice as to whether an application for planning permission is required for any given project, as well as the likelihood of permission being granted and key issues that any such application might need to address, it is advisable to contact your local authority’s Planning department, sometimes called the local planning authority (LPA) as early as possible in the process. You may also wish to seek advice from an independent third party such as Planning Aid Scotland (PAS) or a planning consultant, who can guide you through the planning process and represent your interests to the LPA.

In parallel with seeking planning permission, you also need to make sure that any physical works comply with building regulations, and check whether a building warrant is required.

### 4.1. Permitted Development Rights

Planning permission is required for all development, the definition of which covers both: (i) physical development (e.g. a new building, including sheds, polytunnels, etc); and (ii) any material change in the use of any buildings or land (e.g. setting up a café in what was originally a shed). Rather than always having to apply for planning permission, however, certain developments may benefit from a deemed grant of planning permission, most notably under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”). The GPDO effectively grants planning permission for a number of classes of relatively minor physical developments and changes of use, these being permitted developments, or developments which benefit from permitted development rights.

It is important to note that permitted development rights do not necessarily apply universally, however, and may be restricted in certain areas, for example in sensitive locations such as within the grounds of a listed building and/or within a conservation area. In addition, permitted development rights may be subject to certain conditions, which must be complied with in the same way as conditions attached to a regular planning permission must. These include, in some instances, a requirement to notify the LPA of any permitted development before this is carried out.

For community growing use, many (but not all) permitted development rights that are likely to be of interest are those relating to agricultural and forestry operations (such that, if a site’s use goes beyond what would be considered pure agriculture or forestry, then these permitted development rights won’t apply). It should also be noted that, amongst other criteria, it is necessary to be part of an agricultural landholding of at least 0.4 ha to qualify for agricultural permitted development rights.



In particular, the following classes of permitted development may be of interest to community growing projects:

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure (subject to a maximum height of 2m, or 1m if within 20m of a road, and not as a means of enclosing a listed building) [Class 7];

The formation, laying out and construction of a means of access to a road which is not a trunk road or a classified road, where that access is required in connection with any other permitted development (other than certain domestic developments, and gates, fences, walls or other means of enclosure covered by Class 7, as set out above) [Class 8];

The erection, construction or alteration of any access ramp outside an external door of a non-domestic building (subject to various conditions about the length and height of any such ramp, as set out in the GPDO) [Class 9G];

The temporary provision of buildings, moveable structures, works, plant or machinery as required in connection with and for the duration of operations on, in, under or over that land or adjoining land (subject to their removal and restoration of the land as soon as possible after those operations have finished) [Class 14];

Works for the erection, extension or alteration of a building on agricultural land (subject to certain conditions about the building's size/use/proximity to neighbouring uses, etc., and to submission of 'prior notification' to the planning authority to determine whether their approval for the siting, design and external appearance of the building is required before development commences) [Class 18];

The carrying out of any works required in connection with the improvement or maintenance of watercourses or land drainage works [Class 20];

Works for the erection, extension or alteration of a building, plus certain other operations, on forestry land (subject to conditions about the building's size/use/proximity to neighbouring uses, etc, and to submission of 'prior notification' to the planning authority to determine whether their approval for the siting, design and external appearance of the building is required before development commences) [Class 22];

The installation, alteration or replacement of solar PV or solar thermal equipment on a non-domestic building [class 6J];

Works on agricultural or forestry land for the erection, extension or alteration of a non-domestic building for the generation of energy from, or storage of, biomass. [Class 6K].

In addition, the GPDO allows the LPA to carry out any development under any enactment, provided that: the cost of this does not exceed £100,000; it does not constitute bad neighbour development; and the development would not constitute a material change of use of any buildings or other land [Class 33].

Further information on the scope of permitted development rights, and corresponding conditions that have to be complied with, is available at the Scottish Government website [here](#).

It should be noted that, at the time of writing, the Scottish Government is considering a number of changes to permitted development rights in Scotland, which could remove the need to apply for planning permission for a number of works commonly carried out on community growing sites. In particular, the Scottish Government is considering extending permitted development rights to cover allotments and community growing sites and, in particular, their perimeter fencing, sheds, greenhouses, portable buildings, containers, communal huts, car parking, and/or accesses. Further information on what is proposed, and up to date information on progress with this, is available from the Scottish Government website [here](#).

# Case Study:

## Incredible Edible Balfron, Stirlingshire

### Overview

Incredible Edible Balfron is based in the village of Balfron, Stirlingshire, and has been running since March 2015. The project initially focused on two plots in the village – one outside the Registrar Office on Buchanan Street, and the other at the corner of Cotton Street and Buchanan Street (locally known as 'Tontine Corner'). It now also includes an additional bed at Tontine Corner, and a growing garden at the local primary school.

The project got up and running so successfully because of the inspiration, shared vision and commitment of the volunteers who started and still run the project; the positive response of the majority of the local residents, and the commitment of the people who are always ready to help.

### Aims & Objectives

The project started after one of the current volunteer leaders was inspired by an article on the "Incredible Edible" movement, which started in the English town of Todmorden. A call for replicating the project was made to the village through the local Facebook page, which resulted in a small community meeting. This was followed by an application for (and allocation of) a small grant from the Council and another community meeting, this time with a large and positive attendance.

### Activities & Management

At the moment the project is mainly run by three volunteers, plus a floating group of around 5 other people who come and help when needed. Despite the low levels of volunteers, the group organises workshops and harvest festivals, has been involved in the planning, construction and establishment of a growing garden at the local primary school, and have been involved as many different parts of the community as possible.

The Tontine corner currently consists of: a long wooden trough donated by a local resident and decorated by the local children's art club, growing strawberries; a herb garden built as a rockery using rocks donated by a local drystone waller and landscaper; beds growing different types of vegetables and flowers; and two 'hugelkultur' raised beds in the shape of crescent moons. These beds surround a central metal frame designed and donated to the project by a local blacksmith artist, where flowers and beans grow.

During the second year of the project, with the intention of engaging more of the community, the bed at the Registrar Office was handed over to the local Cubs group, who still maintain it very successfully.

### Land Access Arrangements

The land is owned by Stirling Council, who have been extremely supportive of the project and have agreed to lease the site to the group for a token amount of rent.

The project does not have a structured management and/or a development plan but, from the beginning, the Community Council were happy to take the project under its umbrella and, as such, it has been able to apply for funding, and receive the support that Community Councils are able to provide to local groups.



## Successes and Challenges

Despite the large community meeting there was, initially, an unintentional clash with the Balfron in Bloom group in the village, which was resolved by clarifying, together with the council, which areas of the village were going to be assigned and looked after by each group.

The struggle to engage more people as volunteers is one that many groups face, and is exacerbated here by the limited time of the existing volunteers to develop a communication and engagement strategy.

The project has been able to achieve a remarkable amount, when considering the number of active people running the project, the limited financial resources, and the time it has been running for. However, probably the biggest achievement is the acceptance and support of a large part of the community, who are using and enjoying the produce and have positive things to say whenever they see volunteers working on the plots.

## 4.2. Planning Permission Issues

The LPA will determine whether any particular project needs to be the subject of a planning application in the first instance. Much will depend upon the specifics of the project. Some general pointers are given below, but as practices vary from LPA to LPA, anyone considering starting a community growing space should check with their own LPA before committing to a site.

Some issues to be considered are:

### Site Use

Will the land be used for more than just growing/agricultural uses? Traditional allotments are used for growing produce only, so their use should generally fall within the definition of agriculture, and no planning permission should be required. In practice however, many new sites have to go through the process of applying for planning permission, in particular where the existing use is not agricultural, and almost certainly where there are any significant elements of non-agricultural use (e.g. social meeting places, teaching places, employment training). A lot of this will depend on the scale and scope of the activities to be carried out on the site, and the question of whether these will constitute a change from a site's existing/agricultural use. The question of whether planning permission is required is often not entirely clear cut. If there is any doubt about this, it is advisable to seek advice from your LPA, PAS and/or a planning consultant as early in the process as possible.

### Whether sheds, paths, car parking areas, bedding planters, seating areas, etc. are required

Sheds can sometimes be erected with the benefit of permitted development rights, subject to certain limitations on height and location, as can some roads/paths. However, it is likely that other forms of development (in particular, parking areas) will not benefit from permitted development rights, so planning permission will be required for them.

If the proposed development is small scale, the LPA may decide that the development is 'de-minimis' and will not require planning permission. The scale of the development will be a determining factor and, the more or larger the structures required, the greater the likelihood that permission is required.

## 4.3. Applying for and obtaining planning permission

Where an application for planning permission is required, the LPA has a statutory obligation to determine this in accordance with the Development Plan, unless material considerations indicate otherwise. Material considerations include national policy such as Scottish Planning Policy 2014 (SPP), which expressly supports community growing as follows:

*“Local development plans should safeguard existing and potential allotment sites to ensure that local authorities meet their statutory duty to provide allotments where there is proven demand. Plans should also encourage opportunities for a range of community growing spaces.”*

The LPA’s Local Development Plan (LDP) should reflect this policy principle of SPP, and will set out a number of specific policies in accordance with which any planning application made to the LPA requires to be determined, including identifying any special designations or protections for particular areas of land.

The fact that land is allocated for a particular use in the LDP, or subject to any special designations or protections (for example being within the green belt, a Conservation Area, or an SSSI) does not automatically mean that community growing use will not be acceptable. However, it is necessary to take any allocations, designations or protections into account, and ensure that any proposals duly respect these.

Specific policies will vary from LPA to LPA, but some of the key issues that should be looked at when considering a planning application for community growing use on any given site are set out below.

### 4.3.1. Impact on nearby residents’ amenity

It is important that the proposed use does not adversely affect the amenity of nearby residents (for example as a result of noise, fumes, dust, over-looking, increase in activity, loss of existing open space, car parking and/or access – on which, see more below). These issues should be borne in mind when preparing the layout and design of any given site, and steps taken to preserve the amenity of nearby residents as much as possible (for example by including screening between the site and neighbours where appropriate). In addition, early discussion with local residents can allay any fears they may have, and garner their support for the proposal.

### 4.3.2. Car parking and access

The amount of car parking spaces to be provided, the location of those spaces, and the means of access to the site all need to be carefully assessed, and can often be issues of concern to local residents. In addition, the LPA may have car parking standards that need to be adhered to, and this should be discussed with the planning officer. If fewer spaces are to be provided than relevant standards require, then good reasons for this should be given – for example, a lower number of spaces may be justified by the availability of other transportation modes (foot and cycle in particular), and the location of nearby bus stops.

The siting of any proposed access and car parking areas also needs careful consideration to ensure the safety of pedestrians and vehicles, both existing and proposed. If possible, it is better to access the site from a minor road as this will generally be the LPA’s preferred option in the first instance and will require less onerous engineering works to create a safe means of access.

Safety concerns do, however, need to be balanced against other potential impacts on nearby residents – for example, issues can arise for a number of reasons, including increases in traffic movements on otherwise quiet streets and general activity (door banging, horns, people





chatting, engines revving). If it is difficult to relocate access and parking areas away from neighbours, consideration should be given to the use of screening – for this, earth mounds and walls are generally the most effective, but fencing, hedging and landscaping can also help.

Residents also can be concerned about cars being parked on the roadside outside their houses causing traffic congestion, and resulting in less room for them to park their own cars. If the fears of residents can be allayed at early stage, fewer objections are likely to be lodged if/when a planning application is submitted, and the chances of planning permission being granted are significantly improved.

#### 4.3.3. Protection of species

Certain species of flora and fauna are protected by legislation, and works that potentially harm these species or their nesting or hunting areas are unlikely to be acceptable, unless appropriate measures can be taken to ensure no harm is caused. To this end, suitable surveys should be carried out at an early stage to identify whether any protected species may be present and, if they are, any mitigation measures that may be required.

#### 4.3.4. Flooding

Certain areas of land are more susceptible to flooding than others, and certain uses of land are more appropriate within such areas than others. Open space, including community growing projects, may be acceptable in areas prone to flooding, although this is by no means definitive. The applicant should discuss this issue with the LPA in the first instance.

### 4.4. Other Material Considerations

When looking at any given planning application, there is a significant body of policy documents, guidance, and advice that may be taken into account as material considerations, depending on the detail of the proposed development in question. These are too numerous to look at in any depth here, but some good starting points for any proposed community growing use may be to look for the following:

- Local authority's Open Space Strategy (OSS) – does this identify a shortfall of community growing areas? Or are there areas specifically identified/protected for certain uses?
- Local authority's Allotment Strategy – what does this say about the availability of allotments and other community growing spaces in the area?
- Local Outcome Improvement Plan (LOIP) – Is there any reference to increasing provision of growing spaces in this? Or are there any outcomes that a community growing project will help achieve?

In all cases, it is advisable to provide the LPA with as much information on the proposed community project as possible, as early as possible. This can help keep the time (and cost) associated with making an application for planning permission down. Statutory timescales notwithstanding (2 months for consideration of applications for local developments such as proposed community growing projects), the time it takes from submission of an application for planning permission to receipt of a decision varies widely, and it is important that you allow enough time for this in organising your project. As a general mantra, it is advisable to speak to the LPA early, and speak to them often.

### Further Resources

A number of organisations have published further information on this topic, which may be quite useful.

Community Ownership Support Service guide to engaging with the planning system is online **here**.

- Woodland Trust note on planning system (with focus on protections for trees and woodlands within this) is available **here**.
- Friends of the Earth's Guide to the planning system (a little out of date, but still largely relevant and useful) can be downloaded **here**.
- The normal plan preparation process is available at the Scottish Government website **here**.

### 4.5. Illustrative Examples

Below are several examples that highlight potential issues which may arise over planning permission in relation to changes to land being used for community growing. These are illustrative only and not conclusive; you should always check with the LPA.

## Table of planning scenarios

Land use scenarios	Planning Requirements
<b>1.</b> Use of field as allotments: Field laid out in traditional plot format exceeding 0.4 ha in area previously used by Farmer X as arable land.	Not development. No planning permission required, whether implemented by landowner or community group.
<b>2.</b> Use of field as allotments: Field laid out in traditional plot format exceeding 0.4 ha in area previously used by Farmer X as arable land, but site has 1.8m height boundary fence surrounding, more than 25m from road.	Only fence falls within definition of development, but is permitted development so no planning permission required, whether implemented by landowner or community group... Unless in sensitive location – check with LPA.
<b>3.</b> Use of field as allotments: Field laid out in traditional plot format exceeding 0.4 ha in area previously used by Farmer X as arable land, but site has 1.8m height boundary fence surrounding, more than 25 m from road, with sheds not exceeding four metres in height and 200 cubic metres in area.	As above, fence falls within definition of development, but is permitted development so no planning permission required... Unless in sensitive location – check with LPA. Only sheds need permission, unless being implemented by local authority and the proposed development costs less than £100,000.
<b>4.</b> Use of field as allotments: Field laid out in traditional plot format exceeding 0.4 ha in area previously used by Farmer X as arable land, but site has 1.8m height boundary fence surrounding, more than 25 m from road, with sheds not exceeding four metres in height and 200 cubic metres in area, with other seating, meeting rooms, portable toilets, etc.	As above, fence falls within definition of development, but is permitted development so no planning permission required... Unless in sensitive location – check with LPA. Only sheds, seating, meeting rooms, portable toilets, etc. need permission, unless being implemented by local authority and the proposed development costs less than £100,000.
<b>5.</b> Use of field for mixture of allotments and community bedding plots, teaching areas, social meeting room, wildlife areas, etc. on field previously used by Farmer X as arable land.	Not agriculture so planning permission required.
<b>6.</b> Use of public park as allotments, laid out in traditional plot format exceeding 0.4 ha in area, but site has 1.8m height boundary fence surrounding, more than 25 m from road.	Only fence falls within definition of development and is permitted development so planning permission not required.
<b>7.</b> Use of public park for mixture of allotments and community bedding plots, teaching areas, social meeting room, wildlife areas.	Only sheds, seating area, etc. needs permission, unless being implemented by local authority and the proposed development costs less than £100,000.
<b>8.</b> Use of private estate land.	Same applies as per scenarios 1 to 5 inclusive.
<b>9.</b> Use of industrial land.	Permission required for all, other than simply growing of produce.



# 5. Land Reform and Community Empowerment

## 5.1. Introduction

Since the creation of the Scottish Parliament, land reform and community empowerment have been important features of its legislative agenda, and have been the focus of a lot of attention. In the face of concerns from some landowners that – in the extreme – this could lead to opportunistic land claims by loosely constituted community bodies, it is important that recent changes are properly understood, in particular in the context of making land available for community growing.

The key elements of the land reform and community empowerment agenda to look at in terms of access to land for community growing are:

- Community Rights to Buy;
- Community Rights to make asset transfer requests in respect of publicly owned land; and
- For local authorities, new obligations with regards to the provision of allotments, and the preparation of food growing strategies to increase the provision of both allotments and other areas of community growing land in the local authority area.
- In addition, in terms of service delivery, communities have the right to make participation requests with a view to improving the outcome of those delivered by local authorities and certain other public sector bodies.

The above rights are all looked at in some detail below, together with a look at what future changes may be on the horizon and, where relevant, a look at how some of these rights have been exercised in practice. Where provisions aren't fully in force at the time of writing, this is highlighted, together with an indication of expected timescales for when these might come into force.

For further information, up to date information on this is available on the Scottish Government's website [here](#).

In addition, there are some changes to the law on leases for both allotment sites and agricultural holdings, which are covered separately in section 6.4: Leases.

## 5.2. Community Right to buy

### 5.2.1. Background

There are now a number of different (and potentially overlapping) community rights to buy with, at the time of writing, others to be brought into force in the near future. Essentially, these can be summarised as follows:

- Firstly, 2003 saw the introduction of rights to buy for agricultural tenants under the Agricultural Holdings (Scotland) Act 2003, as well as for crofting tenants and for rural community bodies (defined as bodies representing rural communities with a population of less than 10,000 people) under the Land Reform (Scotland) Act 2003 (LRA 2003).
- Subsequently, 2015 saw the community right to buy extended to urban community bodies as well as rural ones through the Community Empowerment (Scotland) Act 2015 (CEA),



which also brought in provisions on the acquisition of abandoned land (albeit these are not yet in force at the time of writing).

- At the same time, the CEA also introduced the community rights to make asset transfer requests or participation requests in respect of public land and services respectively, which are looked at separately in Section 5.3.
- Finally, the Land Reform (Scotland) Act 2016 completed the picture with provisions on the acquisition of land in the interest of sustainable development (these are also not yet in force at the time of writing), and reforms to the agricultural right as originally introduced.
- Each of the separate rights to buy highlighted above will be looked at in turn, in addition to which further guidance is available on the Scottish Government's website **here**.

### 5.2.2. Agricultural

Under the Agricultural Holdings (Scotland) Act 2003 farmers with a secure 1991 Act tenancy (see leases section for more information on these) acquired a right to buy the land they rent on this coming up to sale, subject to first having registered their interest in the land in the Land Register. The requirement to register is however removed by the LRA 2016, meaning that all farmers with a secure 1991 Act tenancy will automatically benefit from this right going forwards.

Where this exists, any action the landowner takes with a view to selling the land will trigger the right to buy provisions in the legislation, which set out a timescale for the land to be sold to the tenant, and prescribe how the price is to be determined.

It is, however, important to recognise that these provisions only apply to 1991 Act tenancies and, as set out in more detail in the leases section, new 1991 Act tenancies can only be created by expressly providing for this in the lease documentation. As such, landowners do not have to worry about any new leases inadvertently conferring a right to buy on tenants.

Where older leases are in place though, landowners should take professional advice before taking any action with a view to sell the land to ensure that the right to buy is not triggered inadvertently.

### 5.2.3. Crofting

Under the LRA 2003, bodies representing crofting communities acquired the right to oblige the landowner to sell them croft land associated with that community, subject to an application to do so being approved by the Scottish Ministers. Unlike the agricultural right to buy, this does not require the land to be up for sale first, but allows a purchase irrespective of whether or not the landowner wants to sell.

However, this only applies to land which is registered with the Crofters Commission and “eligible additional land” which borders the registered croft land. As such, this is unlikely to be relevant in the context of making land available for community growing, and is mentioned only for completeness.

### 5.2.4. Rural and Urban Rights to Buy

The LRA 2003, as amended by the CEA, gives both rural and urban communities a right to buy land in their community when it comes up for sale, subject to first registering an interest in that land. There are a number of requirements that must be met before an interest can be registered, the detail of which is beyond the scope of this guidance, but further information on this is available [here](#).

As a pre-emptive right, it is important to note that this does not force a landowner to sell their land, nor to accept less than market value for it – that said, if the land in question were publicly owned, there could still be an argument for a sale at below market value where this would be in accordance with the principles of best value, albeit that properly constituted community bodies looking to acquire publicly owned land would usually be expected to go down the asset transfer route rather than the pre-emptive community right to buy (except perhaps where an asset has already been put on the market, or there are other tactical considerations to take into account).

Whether the purchase price is to be market value or less than this, the hurdle that finding the money for this often presents to community groups may be mitigated by funding from the Scottish Land Fund, which offers grants of up to £1 million to help communities take ownership of land and buildings. More information on this is available at the Big Lottery Fund website [here](#).





Funding issues, long-term planning and the length of the process can mean that Community Right to Buy is not currently the first choice of many community growers. However, there are successful precedents. One example is Comrie Development Trust, which used Community Right to Buy to acquire a disused prisoner of war camp in Comrie, Perthshire from the Secretary of State for Defence, with this now being used to provide allotments, a community orchard, playing fields, data storage and business units. More about Comrie Development Trust's community buy-out and community allotments can be found [here](#).

From the perspective of a landowner who is considering making some of their land available for community growing, leasing the land will neither trigger the right to buy, nor change the rights of a community group with regards to registering an interest in exercising the right to buy. Where an interest in land has been registered, however, professional advice should be sought before taking any action to sell it.

### 5.2.5. Abandoned and Neglected Land

This provision of the CEA came into force in June 2018. Like the crofting right to buy, this doesn't require the land to be put up for sale first, but potentially obliges a landowner to sell irrespective of whether they are looking to do so. For this to apply though, the land in question must be deemed to be "wholly abandoned or neglected or the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of the community", and the community group looking to purchase it must have previously tried to acquire the land by agreement before applying to the Scottish Ministers to exercise the right.

Making land available for community growing is likely to mean it cannot be deemed abandoned or neglected, and so a landowner considering doing this is unlikely to be affected by this right.

# Case Study:

## Muiravonside Community Growing Area, Falkirk

### Overview

Muiravonside Community Growing Area is based within Muiravonside Country Park. There are 34 small in-ground plots and 6 wheelchair accessible raised beds on a hardstanding area. The growing area was set up by Maddiston Community Council but is now run by the Muiravonside Growing Area Committee which is made up of plot holders.

### Aims & Objectives

The project came out of an Action Plan that Maddiston Community Council put together back in 2014. It was shown there was a desire for space to grow and, when no suitable space could be found within the village itself, the Falkirk Community Trust and Park Ranger of Muiravonside were willing to let one be set up within the park.

### Activities & Management

Once agreement to use the park had been made, a border fence and container were bought, then it was a case of marking out plots and starting to grow. After the first 6 months, there was enough people to form a committee and the project was handed to the plot holders to push forward.

The Growing Area Committee has three main positions of Chair, Treasurer and Secretary but other volunteers get involved for individual projects. All the plot holders meet at least twice a year to make plans on how to take the growing area forward and discuss any issues.

The group are always looking for ways to improve the site, and have recently received grants to put in a reed bed filtration system and underground water tanks to provide an onsite, environmentally friendly water source, and will also be looking at ways to store manure from the nearby farm.

### Land Access Arrangements

The land is owned by Falkirk Community Trust who agreed to give us access to the land while there is a desire for local people to grow, and if this should cease, the land is returned to the Trust. There is no formal lease, just an informal agreement strengthened by working with the Trust and park ranger. There is also agreement that there will be no permanent structures on site.

### Successes and Challenges

Main problems to date have been flooding, but there are plans to resolve these by installing a reed bed system which will hold back the run off from the car park and allow it to be pumped for use on the allotments. Despite only having been growing for 2 years, we were delighted to be awarded Outstanding in the It's Your Neighbourhood awards (Maddiston Community Council) and to be nominated for RSPB's Nature of Scotland award for the community initiative in Food and Farming category.

### Advice

If you're starting out, don't get disheartened if it feels like a lot of work with not much return. Our first year had 8 growers and an overgrown field which was partially underwater half the year. We now have a thriving growing area that's starting to become a wonderful community.



### 5.2.6. Interests of Sustainable Development

This is another provision which has yet to be brought into force at the time of writing, this time under LRA 2016. When in force however, it will provide communities with another right to buy land irrespective of whether it is up for sale, in this instance where doing so is:

- likely to further the achievement of sustainable development;
- in the public interest; and
- likely to result in significant benefit to the community (and is the only, or most practicable way of achieving that benefit).

In addition, it will be necessary to show that not allowing the transfer is likely to result in significant harm to the community.

The detail of the way in which this will operate in practice will not be known until secondary legislation to bring these provisions into force is finalised.





## 5.3. Asset Transfer Requests

### – Public landowners only.

Part 5 of the CEA gives a statutory footing to the process of transferring publicly owned assets to qualifying community bodies – something that many local authorities historically did before the Act came into force anyway, but which community bodies now have formal right to request. To this end, part 5 prescribes the process to be followed when an asset transfer request is made under the Act, the timescales for this, the way in which assets to be transferred are to be valued, and the appeal process to be followed if a request is refused.

For public landowners who are subject to these provisions, some key points to note about the statutory process are:

- Asset Transfer Requests may be made for all public land/buildings, irrespective of whether they are deemed to be surplus to the current landowner's requirements (although, where assets are dedicated to an active use that would be jeopardised by a transfer to the community, then this may be a good reason to refuse any such request – on which further information is set out below);
- The request may be for the transfer of ownership of the land/buildings in question, or for a lease of them;
- Once an asset transfer request has been made, the asset to which the request relates cannot be sold or let to anyone else until the request has been dealt with (unless the asset was advertised for sale or lease before the request was made, in which case this does not apply);
- An asset transfer request must be dealt with within a period of 6 months unless agreed otherwise between the parties and must be agreed to unless there are reasonable grounds for refusing. For example, a request for a lease could not reasonably be agreed to if this would put the landowner in breach of the terms of an existing lease, or where doing so might disrupt public services that are currently being provided from the asset in respect of which the request is made.
- Assets may be transferred at less than market value where clear social, economic and environmental benefits can be demonstrated;
- If an asset transfer request is refused, the community body making the request has a right to appeal that decision.
- Importantly, while Part 5 gives community bodies a formal right to apply for the transfer of assets as set out above, this does not prevent public landowners from agreeing to a transfer out-with the provisions of the Act if both parties wish to do so. From a community's perspective, pursuing a sale or lease outwith the Act means not having the benefit of the rights the Act provides and the appeals provisions, in addition to which there is nothing to prevent the landowner deciding not to proceed with negotiations and instead sell or lease the asset in question to a third party. However, where there is a good relationship between landowner and community, and both parties simply wish to put a formal agreement in place as quickly as possible, going outwith the Act may be an attractive option. Some key points to consider when pursuing a negotiated sale or lease arrangement are set out in section 6.2.

Full details of the process and things to think about from a landowner's perspective are set out in the Scottish Government's asset transfer guidance for relevant authorities, available at the Scottish Government's website [here](#).

In addition, DTAS has prepared a detailed road map on the asset transfer request process which, while primarily aimed at community bodies, is useful reading for anyone interested in this process. It is available to download [here](#).

Finally, CLAS has prepared a briefing note of the specific use of asset transfer requests by community growing projects, available [here](#).

### 5.3.1. Participation Requests – Public landowners only

Under part 3 of the CEA and the Participation Request (Procedure) (Scotland) Regulations 2017 community bodies may seek to engage in an “outcome improvement process”, this being a process which aims to improve the outcome of a service provided by, or on behalf of, a specified Scottish public sector body. Specified bodies include local authorities and Health Boards.

Examples of relevant processes in respect of which community growing groups might make a participation request include:

- Provisions and Management of allotments;
- Planting and maintaining public sector land;
- Processing garden or food waste in a community composting scheme;
- Becoming involved in supplying food and catering services; and
- Providing activities and facilities to support physical or mental health.

Where a Participation Request has been made, it must be agreed unless there are reasonable grounds for refusing it, with the decision to be made within 30 days from the receipt of all necessary information from the community body.

Full details of the process to be followed where a Participation Request has been made are set out in CLAS’s briefing paper on this, available [here](#).

## 5.4. Food Growing Strategies and obligation to provide allotments

Under Part 9 of the CEA, local authorities are required to prepare Food Growing Strategies for their respective areas, with the dual purpose of: (i) identifying land in the area that may be used for allotments or other forms of community growing; and (ii) describing how, where certain triggers are met, the local authority intends to increase the provision of both allotments and other areas of community growing land in that area, especially in areas of multiple deprivation (SIMD areas).

At the same time, part 9 also specifically requires local authorities to take reasonable steps to provide allotments to people within their area who request them, and to ensure that waiting lists for allotments in their area do not exceed certain limits.

At the time of writing, the Scottish Government guidance for local authorities was about to be published. Up to date information on the preparation of the guidance and implementation of these provisions is available on the Scottish Government website [here](#).

## 5.5. Further changes on the horizon

At the time of writing, the most immediate change on the horizon is the right to buy land in the interests of sustainable development. In addition, there are likely to be further changes to communities' rights in respect of land going forward. Options in this regard are currently being looked at by the Land Commission, which was established in April 2017 with the purpose of providing direction, leadership and strategic thought to land reform in Scotland.

Specifically, the Land Commission's work is focussed on four key areas, with the following objectives:

- **Land for housing and development** – to reduce constraints to redeveloping vacant and derelict land for housing and other productive uses, improve land supply for housing and stimulate a more active approach to developing land in the public interest.
- **Land ownership** – to examine the impacts of scale and concentration of land ownership and tax policy, as well as reviewing the effectiveness of the Community Right to Buy mechanisms.
- **Land Use Decision-making** – to improve the quality and accountability of decision making, including engaging communities in decisions about land use and providing guidance where necessary.
- **Agricultural Holdings** – to increase access to land for those who want to farm, improve the relationships between landowners and tenant farmers and stimulate the tenant farming sector.

As part of its work, the Scottish Land Commission has expressly said that it wishes to engage with as many people and organisations as possible, and CLAS would encourage any landowners with an interest in this process to get in touch through the Commission's website [here](#), which also contains further details of its work.

In addition, and as required by the Land Reform (Scotland) Act 2016, the Scottish Ministers published a Scottish Land Rights and Responsibilities statement in September 2017, stating that this underlines their commitment to on-going and long-term land reform. In particular, this supports work towards greater diversity of ownership, including more community ownership, high standards and transparency of land ownership, and greater collaboration and community engagement in decisions about land.

At present however, there are no concrete proposals for further reforms, and landowners are encouraged to continue to pro-actively engage with community groups within the current framework.

## Case Study: Falkirk Council Food Growing Strategy site identification

Falkirk Greenspace: a strategy for our green network (2013) details the Council's aspiration to encourage more community growing across the Falkirk Council area. The vision is that "people wishing to grow their own fruit and vegetables will be able to choose from a range of community growing opportunities in their area".

With the Community Empowerment (Scotland) Act 2015 requiring local authorities to set out how they intend to meet demand for allotments and community growing, and a steer from Falkirk Allotment Society that there is more demand for allotments than there are



plots available, there was a clear need to start looking seriously at how the amount of land available for people to grow their own would be increased.

Community growing has been identified as a key opportunity within the green network component of the second Local Development Plan (LDP2) which is currently being prepared by Falkirk Council.

Initially, a small team of Council Officers worked together to identify potential growing spaces by using maps and their knowledge of the area. This provided a long-list of around 20 sites which were visited to assess their suitability for community growing projects against a matrix (below). Falkirk Council's Housing department has also provided map information about their landholdings so that these sites could be considered and surveyed to assess their suitability as community growing spaces alongside the long-list. The matrix used on the site audits was based on various allotment and community growing strategies that had been prepared in other areas across the UK and included the following information:

Site Name:	Reference:
<b>Landowner:</b>	<b>Potential Size:</b> Possible allotment site area (Ha); Potential maximum number of full-size plots
<b>Land use:</b> Current Open Space Strategy category; Neighbouring land use	<b>Site access:</b> Vehicle/road access; Distance to public road
<b>Constraints:</b> e.g. contamination, physical, natural features (site designations etc), watercourses / flood risk	<b>Opportunities:</b> e.g. usable features/assets; suitability for allotments, informal community growing, orchards

Following on from this, Falkirk Council is working with Forth Environment Link, greenspace scotland and Falkirk Delivers on the 'Dig in Falkirk' project which aims to promote community growing and have conversations about growing with people living and working in the Falkirk Council area. This process also involves people marking potential growing spaces on maps.

As a result, LDP2 now highlights 7 potential community growing opportunities across the area. In addition, a new project has been set up in Kinneil Walled Garden, more than half of Falkirk Council's schools now have their own orchard, and the 'Dig in Falkirk' project has established Pocket Allotments in 8 of the raised planters along Falkirk High Street.

Through 'Dig in Falkirk', Forth Environment Link and Falkirk Council are running a series of workshops to share ideas, skills and expertise to help build confidence amongst our communities so they feel comfortable running their own community growing projects. There has also been a community event (Falkirk Grows Food) and a follow-up stakeholder event to identify barriers to growing and opportunities for working together to resolve these.

The information gathered is being pulled together to create a project-focused Food Growing Strategy and Work Plan due to be published in autumn / winter 2018. For the strategy to make a real difference in terms of the number of people involved in community growing in the Falkirk Council area, and to help sustain and expand the level of interest, adequate ongoing support for groups is required. New sources of funding will be needed so that communities can realise their ambitions for growing their own. It is hoped that a 'Dig in Falkirk' Project Officer could be funded to expand the project, with workshops, advice and support for new and existing groups across the Council area. Ideally, this would create a community of growers who can help and support each other.

## 6. To sell or to let, and on what terms?

The perfect site has been identified, the community is keen to get growing – the main question now is whether the land should be sold to the community outright, or let out to them for a set period of time (most likely under a lease, or perhaps by way of a licence or a landshare agreement)? And, whichever the preferred option is, what is the best way to approach negotiations, and what are the key things to bear in mind? A number of points to consider in this regard are set out below, together with potential advantages and disadvantages of each option (depending on the specific circumstances). For ease of reference, in this section the terms 'let' or 'letting arrangement' should generally be understood as referring to any form of lease, licence or landshare agreement, unless expressly stated otherwise.

### 6.1. Negotiations

To aid communication with any group it is important to:

#### **Aim to provide a single point of contact**

The single most effective way any landowner (particularly a public body) can improve communication with community groups is to designate a single point of contact, and make that single point of contact responsible for giving one, complete, corporate response to



any proposals involving land or assets. The public do understand several departments may need to be consulted, and that this takes time, but a single point of contact keeps lines of communication clear and helps streamline the process. This in turn can save the landowner time and money by avoiding duplication and delays.

## Use plain English when negotiating

It is not necessary to use archaic and obscure language in legal documents, and doing so is a barrier to community groups with limited access to professional support, or the funding to pay for this. It is of course stressed in this Guide that legal advice should always be sought where there is any doubt about the implications of an agreement, but any such agreement should be drafted such that anyone can read and understand what is written on the page themselves, even if some words need a glossary.

A more detailed introduction to the topic of communications and negotiation is available on the CLAS website and, while primarily focused on negotiations over the terms of a lease for community growing purposes, the key principles are applicable to any communication or negotiation over land. This is available at the CLAS website [here](#).

In addition, it's often worth involving an independent third party to help mediate in negotiations, for example a CLAS advisor. This may or may not be in addition to instructing a solicitor or other agent to deal with negotiations on your behalf but, whereas solicitors on both sides can sometimes see the process as an adversarial one, an independent third party can help bring the sides together and improve the chances of reaching an agreement that works for everyone.

## 6.2. What's being negotiated for?

An important starting point for any negotiation is knowing what the ultimate aim is, and how this fits in with wider estate management plans in the future. For example, is the main objective income generation, or is it management of the land, or improved community relations, or something else? At the same time, what are the market opportunities for the land, and how do these affect your plans? And, finally, is the land to be dedicated to local authority allotments or agricultural use (both of which are regulated by statute in ways that other uses are not)? All of these considerations will then feed into a decision as to whether it's more appropriate to sell the land or to let it out.

At its very simplest, a sale provides immediate capital, while letting land out can provide a regular revenue stream (plus the future return of the land to your own use/control at the end of the agreement).

On the other hand, from a community's perspective, ownership has more far reaching financial and practical implications than letting it, and so groups may sometimes prefer to start with a temporary arrangement at least, perhaps with the option to either extend this or acquire the land outright in the future. That said, every community is different, and the best approach will always vary from project to project.

The following section explores the respective pros and cons of different options, starting with a high level look at a sale compared to letting land out in general, and then looking at different letting arrangements in more detail. As well as leases (including specific provisions in respect of leases of land for agricultural or allotment use), this also covers common law licences and landshare arrangements.

Subsequently, on the basis that the most commonly favoured option is some form of lease, the next again section looks in more detail at some of the key things that should be considered when negotiating these specifically.



### 6.2.1. General Overview: For sale or to let?

Sale of land	
Advantages	Disadvantages
<ul style="list-style-type: none"><li>• Immediate capital receipt</li><li>• No requirement to be involved in ongoing management</li><li>• No ongoing costs for insurance, maintenance, legal agreements, etc.</li><li>• No concerns as to whether community able to pay rent in future years.</li></ul>	<ul style="list-style-type: none"><li>• Very difficult to control future use, management and activities</li><li>• No ability to influence who occupies the site</li><li>• Asset permanently disposed of</li><li>• No future opportunities</li><li>• Potential for Capital Gains Tax liability</li><li>• Capital funding rarely available initially</li></ul>

Letting of land	
Advantages	Disadvantages
<ul style="list-style-type: none"><li>• Potential stream of income going forward, however modest</li><li>• Asset returns to the land owner at end of agreement</li><li>• Can exert a level of control over use of land, including potential to use agreement to promote practices favoured by the landowner, e.g. organic or other sustainable growing methods</li><li>• Can control who occupies the site through restrictions on sub-letting or assignation</li><li>• Occupier may take on a share of maintenance costs as part of agreement</li><li>• In some cases, the asset may be improved by the occupier during the course of the agreement.</li><li>• The length of the agreement can be suited to future plans, from a few weeks up to 175 years</li></ul>	<ul style="list-style-type: none"><li>• Ongoing responsibilities in terms of managing the site, dealing with occupiers, and maintaining relationships with neighbours/local authority, etc.</li><li>• Potential for ongoing expenses (insurance, maintenance, ongoing legal work, etc.)</li><li>• Potential financial challenges, especially where a less than full commercial rent is charged</li><li>• Need to be confident that community will be able to pay rent in future issues</li></ul>

## 6.3. Specific types of lets – leases of agricultural land and allotment sites

### 6.3.1. Agricultural Leases

Agricultural leases are heavily regulated by agricultural holdings legislation, and it's important to be aware of the implications of this when considering any lease of agricultural land. In this regard, the legislation defines 'agriculture', 'agricultural land' and 'agricultural lease' respectively as follows:

*Agriculture includes (but is not limited to) "horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, the use of land as grazing land, meadow land, osier land [growing willow], market gardens and nursery grounds and woodlands if ancillary to other agricultural purposes";*

*Agricultural Land is "land [including buildings] used for agriculture for the purposes of a trade or business"; and Agricultural Lease is any lease where an owner lets agricultural land to an occupier in exchange for money or money's worth (for example a service).*

In broad terms, where ground is let for growing but no trade or business is carried out, then the agricultural holdings legislation will not apply. However, some community groups may want to run a business – for example a community market garden – and this may well fall under the provisions of the legislation. In all cases, where the legislation does apply, then the tenant may acquire statutory rights under this, whether intended or not.

Where both parties are agreed that the proposed use of land would not constitute agriculture as defined in the legislation, then any lease should be drafted carefully to reflect this, including an express statement that the lease doesn't create an agricultural tenancy. However, just stating that a lease doesn't create an agricultural tenancy may not effectively do so if the land is in fact being put to agricultural use in practice. At the time of writing, there are six different types of agricultural tenancy to be aware of, the key features of which are briefly described below. This is, however, just a very high level summary of a particularly complicated topic, and is intended as an introduction only. In addition, in all agricultural leases there are strict rules governing each party's respective obligations, when/how the agricultural tenancy can be terminated, and with regards to potential payment of compensation by or to either party (depending on the circumstances) on termination. However, covering these in any meaningful way would fill a book on their own, and so this is not dealt with here. As may be becoming apparent, the law relating to agricultural leases is complex and, where any questions about these arise, appropriate legal advice should be sought.

#### 1991 Act Tenancies

- Either began before 2003 or, if post 2003, expressly states that the tenancy is regulated by the Agricultural Holdings (Scotland) Act 1991 – i.e. new 1991 Act tenancies cannot now be created inadvertently.
- Subject to agricultural right to buy (see section 5.2).
- May be converted to Modern Limited Duration Tenancy (see below).

#### Limited Duration Tenancies (LDT's)

- Must have been entered into after 27 November 2003 but before 30 November 2017.
- Lasts at least 10 years (previously 15, but reduced to 10 in 2011) or, if lease states that the tenancy lasts more than 5 but less than 10 years, will last for 10 years by default (unless converted from 1991 Act tenancy to LDT, in which case must run for at least 25 years).





- Replaced by Modern Limited Duration Tenancies (MLDT) from 30 November 2017, such that no new LDTs can now be created. Existing LDTs are not affected, but can be voluntarily converted to a MLDT.

### Short Limited Duration Tenancies

- Must have been entered into after 27 November 2003.
- Lasts for not more than 5 years.
- If allowed to run on for more than 5 years, automatically converts to an LDT (now a MLDT) of 10 years (i.e. is extended by 5 years).

### Grazing or Mowing Lets

- Temporary agreement for purposes of grazing or mowing only.
- Duration of less than 364 days, held during a specified period of the year.
- Failure to ensure the land is vacated at the end of each grazing period means it becomes a 5 year Short Limited Duration Tenancy (SLDT).



## Modern Limited Duration Tenancies "(MLDT")

- From 30 November 2017, replaced LDTs as the vehicle for new agricultural leases of 10 years or more (unless a 1991 Act tenancy).
- Lasts at least 10 years or, if lease states that the tenancy lasts more than 5 but less than 10 years, will last for 10 years by default (with potential break after 5 years in a MLDT to a new entrant to farming).
- If a MLDT is not terminated on expiry, it will roll on for a further seven-year term.

## Repairing Tenancies

- New tenancy being brought in by LRA 2016 but, at the time of writing, provisions not yet implemented.
- Intended to encourage the long-term letting of land that requires a significant amount of input to bring it into a condition where it can be farmed according to the rules of good husbandry.
- Lease must be for at least 35 years with first 5 years (or more by agreement) designated as the 'repairing period', during which the tenant is exempt from liability to farm in accordance with the rules of good husbandry.

### 6.3.2. Statutory allotments (public landowners)

Allotments tenancies are different to other types of leases for growing for number of reasons. Until recently, this was the subject of a number of different pieces of legislation, but the position has now been simplified by the coming into force of CEA Part 9 in April 2018. However, it should be noted that these provisions apply only to allotment sites that are owned or let by local authorities, and not those that are controlled by private landowners (on which, see below).

In general terms, CEA Part 9 updates and simplifies the existing legislation on allotments and, in particular, regulates allotment leases as follows

- Allotment plots should be approximately 250 square metres, unless a smaller size is requested by prospective plot-holder;
- Reasonable access to an allotment site and/or to the individual plots within that site must be provided;
- For a lease to be brought to an end, notice to this effect must be served in accordance with the timescales and other provisions set out in the Act.
- There are restrictions on a local authority's power to dispose of land that is being let for allotments.
- A local authority may delegate management of some of their functions in respect of allotments to a person or group of persons who represent the interests of all or a majority of the allotment tenants.
- It is permitted to sell surplus produce grown on the allotments.
- Provision is made for the payment of compensation on termination of an allotment lease as follows:
  - **Tenant** – compensation may be recovered for any disturbance of the enjoyment of the allotment plot as a result of the termination of the lease, and/or for the loss of crops.
  - **The Tenant's Landlord** – compensation may be recovered for any deterioration of the allotment during the course of the lease.



In addition, local authorities are required to make regulations about allotment sites in their area, which are to include provision for or in connection with:

- Allocation of allotments
- Rent
- Cultivation of allotments
- Maintenance of allotments
- Buildings or other structures that may be erected on allotments
- The keeping of livestock (including poultry) and
- Landlord inspections

### 6.3.3. Private allotment sites (Private Landowners)

As set out above, the new statutory provisions for allotment leases in CEA Part 9 expressly define allotments as being on land that is either owned or let by a local authority. As such, private sites will not be caught by the legislation, and leases of such sites will just be subject to the same rules as a lease of any other growing site would be (as discussed in more detail below).

### 6.3.4. Templates

CLAS has commissioned templates for basic agricultural and allotment leases, and these will be available soon.

The templates are very much intended to be a starting point/guide rather than a finished document, and it is strongly recommended that you take legal advice before formally entering into any type of agreement.

Please Note: The Community Land Advisory Service accepts no liability for any loss, damage or injury suffered or caused by any party as a result of entering into any Agreement based on the indicative style of these templates.

### 6.3.5. Common Law lets

Other than agricultural land and allotment sites, common law largely allows the terms on which land is let to be agreed between the relevant parties, with any such agreement usually taking the form of either a lease, a licence, or a landshare arrangement. A brief overview of each of these is set out below, together with some key points to consider in respect of each one.

## Case Study: Kirknewton Allotments

### Overview

The Kirknewton Allotments site is in a field at Overton Farm, Kirknewton in West Lothian. There are currently 25 plots, varying in size, with the average being 70m<sup>2</sup>. This is just over a quarter plot size. The allotment is full at present with 25 members.

### Aims & Objectives

The Kirknewton Allotment Association arose from the Kirknewton Development Plan, a community driven plan produced by the Kirknewton Community Development Trust. This plan identified that there was a desire to grow food locally, and a small volunteer group was founded in 2010 in order to find a suitable site. After approaching various land owners (West Lothian Council, Network Rail) the Wellwood estate offered a field at Overton Farm, which was opened in March 2012.

### Activities & Management

The allotment site is run entirely by a committee. The landowner has had some input into the site rules and constitution, but has no input to the day to day running of the site. The site rules specify that no permanent fixtures or structures are allowed on individual plots, though a communal shed is provided for the storage of tools and equipment. There is no running water on the site, though communal rainwater harvesting systems have been put in place.

The Association has been growing on the site for 5 years, and have undertaken a range of improvements, for example to the storage sheds and paths, maintaining the hedgerows and planting new wild borders. The Association also takes part in community activities, such as the local Gala, plant sales and Christmas Fair.

Most plot holders are time poor, so the smaller growing spaces are ideal, meaning that they don't get overwhelmed by the amount of work. There are a broad mix of people growing on the site, and varied success! The site has minimal overheads, allowing the Association to keep fees low and provide a great growing site within walking distance of most plot holders.

### Land Access Arrangements

With no formal lease or licence to occupy the land in place, there is the possibility that the Wellwood Estate could withdraw the site, however the Association has been successfully growing for 5 years and the landowners are very supportive of the allotments. A formal lease is now being negotiated to provide greater security and to allow the Association to apply for grants in the future.



## 6.4. Leases

In its essence, a lease is simply a contract by which one person is allowed to occupy another's property for a finite period in return for the payment of some form of rent (whether in cash or in kind). Where a lease differs from a regular contract however is in the way that, if properly constituted, the rights that are conferred are not just enforceable against the landowner who entered into the contract in the first place, but also against anyone to whom that landowner subsequently sells the land. To be properly constituted in this regard, a number of criteria must be met, in particular that the lease must specify:

- The parties to it;
- The land to which it relates;
- The length of time for which this is let; and
- The rent to be paid.
- Each of these elements are looked at in more detail in section 6.7 below, along with other key terms that should either be covered expressly in any lease, or might be implied in this.

In addition, for the tenant under a lease to gain a right that is enforceable against a landlord's successors in title, it is essential that:

- Where the lease is for a year or more, this is in writing (this is advisable for shorter leases too, to make sure both parties are clear as to what has been agreed, and what their respective rights and responsibilities are);
- Where the lease is for 20 years or more, this is registered in the Land Register of Scotland;
- Where the lease is for less than 20 years, the tenant has taken up occupation of the subjects of let; and
- No lease can be for a period of more than 175 years.
- Finally, a lease would normally be expected to grant the tenant exclusive possession of the property being let, with only limited rights for the landowner to enter on to this to check that the terms of the lease are properly being complied with.

Other than the above, the contractual nature of a lease basically leaves it to the landowner and tenant to agree the terms on which they wish to enter into this, and what their respective rights and responsibilities might be, and there is no one set model that will fit all scenarios. In very simple terms though, all leases can be seen as falling into one of three categories, namely temporary leases of less than a year; short leases of up to 20 years; and long leases of between 20 and 175 years. Some of the key pros and cons of each are looked at below.

Temporary or meanwhile leases: year-to-year basis or less	
Advantages	Disadvantages
<ul style="list-style-type: none"><li>• Productive use of land while awaiting a future use</li><li>• Income while awaiting a future use</li><li>• Shorter term avoids expectation of continuation</li><li>• Regular opportunities to review tenant and terms</li><li>• Writing not necessarily required if for less than a year (although still advisable in the interests of clarity)</li></ul>	<ul style="list-style-type: none"><li>• High ratio of initial financial and time investment in proportion to return over time</li><li>• Much more difficult for funding applications</li><li>• May be less appealing to tenants in some cases as it is less secure</li></ul>

## Short lease: up to 20 years

### Advantages

- Better value for cost of initial set-up than above
- Allows for medium-term estate planning to change site use
- Allows group and project to establish, but not be committed for long term
- At three years plus, more likely to attract funding
- At three years plus, majority of maintenance should rest with tenant
- Opportunity at end to re-consider terms and conditions for future lets based on past performance.

### Disadvantages

- Moderate ratio of initial financial and time investment in proportion to return over time
- Tied into the arrangement for whole term unless an early termination option included

## Long lease: between 20 and 175 years

### Advantages

- Best ratio of initial financial and time investment, in proportion to return over time
- Allows for reliable future planning of income
- More likely to attract funding and particularly suited to long-term crops, e.g. forestry
- Groups taking this length are aiming for a lengthy and settled contribution to their community

### Disadvantages

- Tied into the arrangement for whole term unless an early termination option included
- A very long lease may be too much commitment for some groups
- Additional costs associated with registration
- Inflexible (although can include a break clause)

## 6.5. Licences

The concept of a licence is less well developed in Scotland than it is in England, but this can be defined as “a contract, falling short of a lease, whereby not the heritage itself but a right to use a particular part of it or to put a particular part of it to some use is granted.” [McAllister, Scottish Law of Leases, Edition 4, 2.51]. Importantly, whereas a properly constituted lease will be enforceable against anyone to whom the land is sold during the course of lease (as discussed above), a licence is purely a contractual relationship between the two parties who originally entered into it, and does not therefore offer this level of security.

It should also be noted that, just because a document describes itself as a licence, whether or not it is interpreted as such very much depends on its terms. And, if an agreement

bears all the key hallmarks of a lease (as identified above), then it may well be interpreted as such. This is however a somewhat nuanced legal point and, if there is any doubt about this, professional legal advice should be sought.

As a general rule, it might be said that licences should only be used where both parties are genuinely looking for a temporary arrangement, in which the occupier may not have exclusive use of the land. They should not however be used to try to circumnavigate certain rules relating to leases, or to create a lease in everything but name (which, as highlighted above, may not necessarily be effective anyway).

A template licence agreement and guidance notes on the use of this are available from the property standardisation group [here](#).

Some of the key pros and cons of a licence are as follows:

Advantages	Disadvantages
<ul style="list-style-type: none"><li>• Relatively simple and inexpensive to set up</li><li>• Template agreement available online</li><li>• Agreement can be tailored to specifics as required</li><li>• Cost effective option for short term/ temporary use of a site</li><li>• Doesn't trigger the need to submit an LBTT return (see section 6.8.4 below)</li></ul>	<ul style="list-style-type: none"><li>• Concept not always well understood, and so can lead to confusion</li><li>• If not properly drafted, potential to be interpreted as a lease irrespective of intentions</li><li>• Lack of security for growers, particularly if land sold on to a third party during course of licence.</li><li>• Rental income likely to be minimal or nil</li></ul>

## 6.6. Landshare agreements

Landshare agreements, as the name suggests, allow for the use of land to be shared between landowner and community growers. This may be through schemes such as Edinburgh Garden Partners (See [here](#) for more), where local residents with more garden space than they can manage are matched with others without a garden of their own to grow in), or they may be ad-hoc arrangements allowing for community growing on a wide range of sites, including land around the likes of schools and hospitals. In lieu of rent, growers and landowners may share in the produce from the land, with the percentage of this due to each to be agreed between the parties.

A national landshare scheme that was set up a number of years ago was unfortunately wound up in 2016, but sample agreement templates that were produced as a part of this are still available through the CLAS website at [here](#).

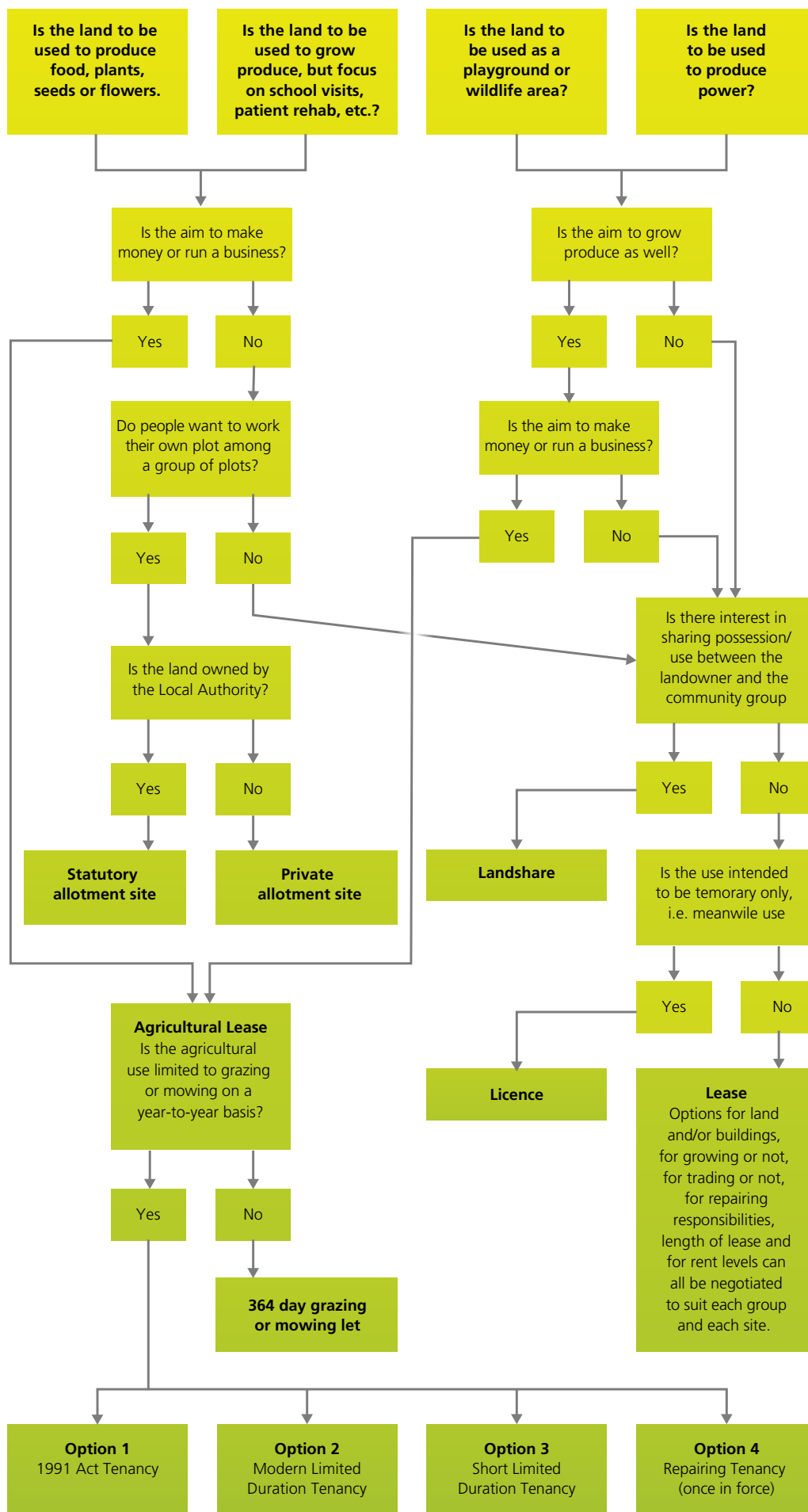




Some of the key pros and cons of a landshare agreement are as follows:

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Allows specified occasional but regular access to land for specified growing/ cropping, but does not preclude landowners' use</li> <li>• Useful where land cannot be easily sub-divided or owner wants to be involved</li> <li>• Template agreement available online</li> <li>• Inexpensive to set up</li> <li>• Agreement can be tailored to specifics as required</li> <li>• May help to maintain areas in productive use that cannot be let or sold</li> </ul>	<ul style="list-style-type: none"> <li>• "Fee" is likely not to be financial but a share of any produce</li> <li>• Shared use may have more potential for friction between users and require more active management/participation</li> <li>• If there is any breakdown of a successful sharing agreement, the results may be close to home on land that has personal value</li> <li>• Consider taking references especially where site is in or near your home</li> </ul>

As seen above, there are a range of ways in which land can be let out for community growing purposes, each of which has its own advantages and disadvantages, depending on the relevant parties' particular circumstances. Drawing this together, the flowchart below is intended to help identify which particular type of agreement might be most appropriate for any proposed project, depending on what the land is to be used for, and what the key features of this use might be.



## 6.7. Lease Terms

If you decide to lease land to a community group, careful considerations need to be given to terms of this, and some of the key things to think about in this regard are set out in this section.

As a starting point, a balance should be struck between simplicity and careful protection for both parties, taking into account factors such as the length of the agreement, the nature of the site being let, and the purpose it is being let for. So for example, a short agreement of a small piece of land for growing use only could be covered by a relatively simple document, which could place relatively limited responsibilities on the tenant. On the other hand, a longer agreement of a large site is likely to require a more complex document, with more responsibilities placed on the tenant (particularly if the site includes buildings).

At the same time, although leases and licences are fundamentally different in terms of the security they offer (as set out above), many of the key terms that might be included in either are broadly similar. As such, while the focus here is on leases, the same generally applies to licences unless expressly stated otherwise.

In all cases, it is important to stress that leasing land to a tenant doesn't free a landowner from all responsibilities in respect of this, and you should ensure these are fulfilled by requiring your tenant to also comply with all relevant legislation as a term of the lease. You should take legal advice to ensure that the lease does this. At the same time, your tenant has a reciprocal responsibility to ensure they make themselves aware of any such relevant legislation, and take steps to comply with this.

### 6.7.1. Heads of Terms

Before diving straight into detailed lease drafting, it is advisable to first agree the key terms to be included in this. Often called 'Heads of Terms', this allows any potential stumbling blocks to be identified (and hopefully resolved) at an early stage in the process. At the same time, this can also allow a group to secure funding before the lease is finalised, with flexibility to make sure that those final lease terms are suitable in light of the level of funding secured.

Some of the key things to consider under Heads of Terms of set out below, and further guidance is available at the CLAS website [here](#).

#### Items to consider under Heads of Terms

##### Basic Details

- Identity of the landlord and tenant (copy of community group constitution, if applicable).
- A description of the property including boundaries. Draw up a plan, preferably on an OS base map of suitable scale.

##### Access

- Access provisions: pedestrian, regular, occasional vehicular, extraordinary events.
- Access for landowner to inspect property if required

##### Rent Details

- What rent am I looking to charge and when do I want to receive it? (use section 6.7.3 below to answer this)
- What provision do I make to counter late or non-payment of rent?
- Is there to be a review of rent during the course of the lease? And, if so, how and when?
- Is there to be any rent-free period?





### **Condition, maintenance and safety**

- What insurance arrangements should I have in place? What do I want the tenant to have?
- Who is responsible for security?
- Are there any known hazards on the site that require management, such as a pond?
- What needs to be agreed in terms of any maintenance provisions?
- Have I retained a right of inspection? (see also access above)
- Will a photographic record of conditions be taken at the start of the lease?

### **Length of agreement and notice period**

- When do I need vacant possession of the land?
- How long does the lease last for?
- What period of notice is required to end the lease?
- Are there to be any options to break the lease? And if so, by whom, when and how?
- Are there to be any options to extend the lease? And if so, by whom, when and how?
- Where should any notices to each party be served?

### **Other Key Points**

- Should any restrictions be imposed on structures, signs and/or boards which are not directly required for growing purposes?
- Are all terms in line with any funding conditions? Am I prepared to consider varying agreed conditions if future funding comes along?
- Is there a procedure for dispute resolution?

- Who is responsible for the costs of preparing the lease and (if relevant) registration?
- Do I want to prohibit sub-letting or assignation (transfer) of the lease to other people?
- What uses are permitted, and what provisions should be included to prevent activities causing a nuisance? For example, is trade or business use to be prohibited? What about disposal of surplus produce in a community garden? And do you perhaps want to restrict things like noise after a certain time of night, or the use of pesticides?

Where relevant, these points are expanded on further below.

### 6.7.2. Access

Depending on the access arrangements, it may or may not be appropriate to make the tenant responsible for maintaining this. If the access is wholly within the leased area and for the sole use of the tenant, then it might be reasonable to expect the tenant to be solely responsible for this. On the other hand, if access is shared, or covers land outside the leased area, then maintenance costs should perhaps be shared. This is particularly so when access is not solely pedestrian.

### 6.7.3. Rent Options

As noted above, rent is one of the essential elements to a lease. As such, if an agreement allows the occupation/use of land without payment of rent, this generally wouldn't be interpreted as a lease, but as a licence. It is not however essential for this to be a market rent, and it is quite common to see leases for community growing sites which just stipulate a token rent of, say, £1 a year, payable on demand. At the other end of the spectrum, rent from some community growing sites can contribute to a landowner's commercial income. Ultimately, the level of rent is a matter to be agreed between the parties, in terms of which some of the things you may wish to consider are:

- How much the community is able to pay. Bear in mind that community groups vary enormously in their ability to generate funds. This is because community groups are responding to local needs, rather than planning to make the biggest profits. For example, a community group responding to local people's desire for a wildlife garden site may not attract as much funding as a group wanting to create an educational site in an area of multiple deprivation.
- Whether you want the tenant to carry out site improvement works instead of, or in addition to, paying annual rent? For example, this could be done by making it a condition of the lease that a community group should erect fencing, improve access, drainage or parking, or erect a building that will benefit you at the end of a lease. The group may be willing to invest time, money and effort in doing this work, rather than pay rent, or may be able to achieve funding through grants for such works (if they are integral to the project and the lease terms are suitable for the funding rules).
- Payment in kind. For example, a food growing group could offer you a portion of its produce or provide you with expert help from one of its skilled volunteers, such as horticultural advice, book-keeping services, or computing skills.
- Performance-related rent if that suits the group and their aims. For example, a rising rent over a number of years, depending on the increase in scale/success of a project.
- A profit-related rent if that suits the group and their aims. For example a percentage of profit from sales from a community market garden. It would be prudent to consider a balance between maximising income and facilitating the longevity of a community group – a rent review clause in a lease of more than 3-5 years would allow for a re-consideration of the situation in the future.

- For public landowners, consider the duty of best value, and the possibility of granting a lease for less than market value, as discussed in Sections 3.2.2, 5.2.4 and 5.3 above.
- Realistically, in terms of income, returns from small parcels of land are likely to be modest as community groups are not wealthy and funding is often limited. Setting a higher initial rent may seem attractive, but could result in the collapse of the project with a consequent loss of rent and other site-related problems for you as owner.

#### 6.7.4. Rental Rates

Specifically in terms of rental rates, things to consider include:

- Size of plot
- Method of rent collection
- Due date (normally in advance)
- Calculation for part years
- Interest for rent arrears by the tenant
- Whether water charges are included
- Whether any other services are provided
- Any annual fee or service charge in addition to the rent
- Where work is required to utilise the land, for example weed clearance, fencing, water supply or improved access – in order to make it more ‘user-friendly’ or to enhance a specific project – there may be potential for a reduced rent to be negotiated in the first year/years of the lease to take this into consideration.
- Where you are unsure about an appropriate level of rent, it may be appropriate to instruct a surveyor.

#### 6.7.5. Length of Agreement

There are various factors to take into account when considering how long any agreement should last for, including:

What is the group proposing to do with the site? If quite extensive works are proposed, this is likely to require a longer agreement.

What funding is the group looking for, and from where? Many funders will look for a lease of at least three years, but others look for significantly longer. Also, the longer a community group has to establish itself, the more likely it is to be able to apply for funding for significant site improvements.

How does community growing use fit with future plans for the site? And is there a fixed date that you would like the option of getting the land back by?

How well established is the group and, if looking for a longer agreement, do they have the capacity to take this on? In some circumstances, one option may be to look at entering into a shorter agreement initially, with an option for this to be extended or varied to something longer term if the initial let is successful.

In all cases, account should be taken of the growing season, and consideration given to drafting any agreement in a way that means it doesn’t come to an end just before everything is ready to harvest such that hard growing work is lost.



# Case Study:

## Braehead Community Garden, Stirling

### Overview

Braehead Community Garden (BCG) is an 11,000 square metre facility in Stirling. On site there are outside raised beds for growing fruit and vegetables, three polytunnels (1100 square metres in total), a clubhouse, toolshed and workshop. The garden also has a picnic area, an orchard, an apiary, a composting area, a wetland and a flock of 15 egg laying hens.

BCG is a membership organisation, with a variety of membership levels, from independent access to the garden to enjoy the space to hiring a raised bed for growing fruit and vegetables.

### Aims & Objectives

The project started in 2011 when the Community Council acted on a demand from residents to start allotments. Through community consultation, it was agreed that, rather than 20-30 allotment sized plots for established gardeners, it was preferable to create “micro-plots” for more people in order to reintroduce growing skills in more people, and to create a “hub” space to address social issues such as loneliness and environmental issues such as food waste.

### Activities & Management

All tools, seeds, soil, etc is included in BCG membership – all members have to do is turn up and grow. Members are required to commit to a minimum of ten hours each per year in “Maintenance Hours”. There are three “skill categories” by which tasks are categorised – gardening (weeding, propagating, etc), organising (skill sharing, event running, fundraising, etc) or maintaining (fixing raised beds, composting, etc) and volunteers assigned according to skills and abilities.

Members are also encouraged to undertake volunteering opportunities within the garden to assist with maintenance, community outreach and member events. This has led to monthly members BBQs during the growing season and various community events, including an annual Horticultural Show and a Halloween Pumpkin Festival. There are also a number of “clubs” developing in the garden, such as a “propagating club” which meets at the weekend and grows seedlings for sale to members and as a fundraising opportunity with an annual plant sale in May. There are craft clubs, beer clubs, after school clubs and beekeeping clubs, all run by members for members.

### Land Access Arrangements

The land is owned by Stirling Council and leased to the Braehead Community Development Trust, who run the community garden on a 10 year lease. During the lease negotiations, Stirling Council were concerned about potential noise and contamination issues, and therefore attached conditions to the lease that are similar to those given to a tenant moving into a council house. The Trust is run by a volunteer management Board.

The land is part of a much larger 70,000 square metre site on the edge of the community that has been allocated for housing. For a number of reasons, the housing hasn’t materialised on the land in over forty years, which gave the community enough leverage to request a proportion of it be considered for the garden project.

## Successes and Challenges

Our greatest achievement has to be securing £249,000 from the Big Lottery Fund to develop the project. We've supplemented it with another £40,000 for additional projects. The Society of Garden Designers named the project "Best Community Space in the UK" at its 2015 annual awards. The site is fully developed in terms of space, but we're always looking for ways to enhance the activities available on site. The Trust has joined the "Men's Shed" movement and has converted a shipping container to accommodate a workshop.

## Advice

Test thoroughly all your assumptions through community consultation. Always look for ways to say 'yes' to members. Projects need to evolve beyond their initial ideas and there are no better people to drive that evolution than the project users. Building a consensus around an idea, no matter how good or worthwhile it is, takes time, patience and diplomacy.

Scale is important. If we built a smaller garden I'm not sure we would have attracted the same attention from funders, public sector organisations or the community. Also, only 5-10% of your membership will ever be active in the running of your project, so the bigger the project, the more members you will have and the more "committee" members you'll be able to develop.

### 6.7.6. End of the Agreement

In Scotland a lease does not end automatically on the contractual date of expiry, but only if 'Notice to Quit' has been duly served by either party, provision for which should be made in the initial lease. The content of the notice depends on several factors including (but not limited to) the length of the lease, the type of lease, and the size of the subjects of lease, with minimum notice periods as follows;

#### Site of less than 2 acres

- Lease of less than 4 months – 1/3 of the duration of the lease (although, in all cases, it is recommended that at least 28 days notice is given).
- Lease of more than 4 months – 40 days

#### Site of more than 2 acres

- Lease of less than 3 years – 6 months
- Lease of more than 3 years – 1 year (but not more than 2 years)

Serving notice on the wrong party, at the wrong time and/or otherwise incorrectly may result in the obligations of both landlord and tenant continuing under tacit relocation.

Tacit relocation is the process by which, if no Notice to Quit has been validly served by either party, the lease rolls over for an additional period of time, and both parties are bound to it for an extended period as follows:

- For leases of up to year – the period of the lease again
- For leases of a year or more – a year.

If the agreement is a licence rather than a lease, then tacit relocation will not apply, and this will automatically end on the date specified unless the licence terms expressly provide for automatic renewal at the end of the initial term, or an extension is agreed between the parties prior to expiry.



As will be appreciated from the above, if it is intended to bring a lease to an end at the termination date, it is important to get the drafting and service of the Notice to Quit right, and it is recommended that legal advice is sought on this at an early stage.

In addition, provision should be made in any lease for this to be brought to an end early in the event that the tenant doesn't comply with any of their obligations, and consideration should be given to circumstances in which this might be appropriate.

## 6.8. Other Key Points

### 6.8.1. Buildings and Other Structures

If there are any buildings on the site already, then a complete set of terms and conditions need to be included in a lease to cater for the initial condition, maintenance, improvement and uses of these.

In addition, you may want to impose limits on any additional structures that can be erected during the course of the lease, and require your permission to be sought before any such works are carried out.

In all cases, think about what will happen to anything erected on the site by the tenant when the lease ends (bearing in mind what is said in section 3.1.4 above about buildings running with the land).



### 6.8.2. Nuisances

There should be a general requirement for prevention of nuisance in the lease (and specific definitions of activities which constitute it) together with provisions for the tenant to manage the site responsibly, and to comply with all relevant legislation. This would include, amongst other things, legislation for the control, use and storage of pesticides, and disposal of any contaminants, controlled substances, or other waste. You may also decide to incorporate rules about bonfires and the good management of any compost heaps in the lease.

If the site is not being worked and looked after, then it will deteriorate and may become an opportunity for fly-tipping, vandalism and unauthorised uses. Provisions should be made within the lease for termination in this event but allow for some fallow or inactive times. Agree a suitable timeframe with your tenant.

### 6.8.3. Registration

Although not a legal requirement, it is common practice to register leases in the Books of Council and Session for preservation, which effectively ensures that the original is kept safe, and formal copies of this can be obtained from the register as required. A small fee is payable for this, plus an additional charge for each copy that is required. At the time of writing, this is £10 for the registration of the deed and one copy, which goes up by increments of £12 for each additional copy that is required. Further information on this is available at the Registers of Scotland website [here](#).

In addition, any lease of 20 years or more needs to be registered in the Land Register of Scotland, with it being the tenant's responsibility to do this. This should be clearly stated in the lease. Again, this is subject to payment of a fee, the amount of which depends on the level of rent charged in the lease. More information on this is available at the Registers of Scotland website [here](#).

At the same time, if the landowner's title is not already registered in the land register, the registration of the lease will automatically trigger registration of this as well, but only the part that is covered by the lease. In other words, if the site forms part of a larger landholding, then the leased part will enter the land register, but the rest will not. Under these circumstances, it may be worth thinking about registering the landowner's whole title first, and then registering the lease afterwards. This is something that your solicitor can advise on.

### 6.8.4. Land and Buildings Transaction Tax (LBTT)

LBTT replaced UK Stamp Duty Land Tax (SDLT) in Scotland from 1 April 2015, and applies to all leases as well as to purchases. Information on LBTT, when a LBTT return is due, and current tax rates and exemptions are available from the Revenue Scotland website [here](#).

It should be highlighted here that, even when no tax is due, it may be necessary to make a LBTT return. This should always be checked for every lease and, if there is any doubt, professional advice should be sought.

### 6.8.5. Lease Templates

While CLAS provides lease templates for basic agricultural and allotment leases, no general template is provided on the basis that there is such a large number of variables to be taken into account for any individual agreement. For anyone looking for support in the drafting of a lease, however, we are happy to talk through your particular circumstances, point you in the direction of example agreements that might provide a suitable starting point, and work with you to agree the key terms for your specific agreement. For more information, please visit the CLAS website [here](#).

## 7. Further Information

### 7.1. Glossary of land transaction terms

For those without previous experience of land transactions, many of the words used in property and land transactions may be unfamiliar. A Glossary of these terms, together with their meanings, is available to download as a supplementary document to this Guide (some are abstracted from the HMRC website and the Scots law online website). Remember: if you are in any doubt, please take appropriate legal advice before committing yourself to anything. Use the following link to download the Glossary **here**.

### 7.2. Websites – links to online information

Further resources, publications and links to online information are available by using the following websites:

- Community Land Advisory Service: [www.communitylandadvice.org.uk](http://www.communitylandadvice.org.uk)
- Grow Your Own (Scotland): [www.growyourownsotland.info](http://www.growyourownsotland.info) (This site has a page listing funding sources relevant to community growing).
- Social Farms & Gardens: [www.farmgarden.org.uk](http://www.farmgarden.org.uk)
- Scottish Land & Estates: [www.scottishlandandestates.co.uk](http://www.scottishlandandestates.co.uk)
- Scottish Allotments and Gardens Society: [www.sags.org.uk](http://www.sags.org.uk)



# Appendix 1

## Different types of community growing

**Community farms and gardens:** Community farms and gardens range from tiny wildlife gardens to fruit and vegetable plots on housing estates, from community polytunnels to large city farms. They exist mainly in urban areas and are created in response to a lack of access to green space, combined with a desire to encourage strong community relationships and an awareness of gardening and farming. Community farms and community gardens are often developed by local people in a voluntary capacity, and commonly retain a strong degree of volunteer involvement. Some larger community farms and gardens employ many workers. Most are run by a management committee of local people and some are run as partnerships with local authorities. For more information, visit the Social Farms & Gardens website [here](#).

**Allotments:** An Allotment is a plot of land normally about 250 square metres within a community of other plots, tended by a plot holder singly or in partnership with others, holding the rental agreement with the landowner. An allotment site is the land worked by the community of plot holders. It is permanent and should have legal guarantees for its continued existence. It should be recognized within the Local Authority Green Space Audit. For more information, visit the Scottish Allotments and Gardens Society website [here](#).

**Community Supported Agriculture:** Community Supported Agriculture is a social enterprise idea, based on a direct, active partnership between farmers (or a growing project) and the local community. This helps reconnect people with the land where their food is grown, allows farms to share the risks of production and creates a better market for their produce. No two CSAs are alike, due to the differing needs and structure of the farms and their local communities, but in general the consumers make a financial commitment through regular payments. In return, they often then have a say in what and how produce is grown. Types of CSAs include: vegetable box schemes (sometimes including dairy and meat), community market gardens, orchards, and co-operatives/networks to access a variety of products. For more information visit the Community Supported Agriculture website [here](#).

**Guerrilla Gardening:** Guerrilla gardening is, in its basic form, a type of anarchic direct action where gardeners identify a disused, neglected or abandoned piece of land - which they do not own - and use it to grow either crops, flowering plants or to create wildlife areas. Some guerrilla gardening activities are secretive and technically illegal. The idea has spread throughout the world, with guerrilla gardening becoming particularly popular in urban areas, although critics say that illegal activities should be discouraged. There is also criticism that guerrilla gardening is more about quick fixes and impact, rather than a meaningful solution to problems associated with land use. For more information, visit the Guerrilla Gardening website [here](#).

**Care Farming:** Care farming promotes mental and physical health through giving people the opportunity to spend time working on the land. Those who can benefit include people with learning difficulties, work-related stress, mental health issues, drug and alcohol problems or employability challenges. Care farming is a partnership between land manager, service provider and client. Participants can work on traditional farms or in forestry, horticulture and other land management activities. For more information, visit the Social Farms & Gardens website [here](#).

**Forest Gardens:** Edible forest gardens are modelled on natural woodland. Like natural woodland, they usually consist of three layers: tree layer which contains fruit and nut trees, shrub layer for fruit and nut bushes, ground layer for perennial vegetables and herbs.



**Land Sharing Schemes:** Lots of people have gardens that are underused, or that go unmanaged due to a lack of time, interest, or physical mobility. At the same time there are many residents living in flats, town houses and rented accommodation, who have no access to a garden, and who would love the chance to grow their own food, herbs and flowers. Garden sharing schemes are local initiatives linking up people who have unused corners of their garden with local committed growers. For more information, visit the Landshare website [here](#).

**Community Orchards:** Community orchards are places where varieties of fruit are grown by and for local people. They provide healthy fruit to share as well as a green haven for simple contemplation and enjoyment. Community orchards are also excellent wildlife habitats and carbon sinks. Many community orchards are centres for local festivities (for example based around national Apple Day), as well as more traditional activities such as wassailing. Community Orchards can help to reinforce local distinctiveness as people group together to save vulnerable varieties of apple, pear, cherry, plum and damson orchards. In a similar way to community gardens, community orchards can revive interest in growing and providing a way of sharing knowledge and horticultural skills. For more information, visit the Scottish Orchards website [here](#) and the Scottish Heritage Fruit Trees website [here](#).

**Workplace growing:** Employers are beginning to provide space for staff to grow during their own time, recognising the benefits this will provide (eg: better health, reduced stress). For example, in 2012, 25 individual plots and one community garden training plot were created for civil service staff working at the Stormont estate (the base for the Northern Ireland Assembly). The plots will be used year round to grow fresh fruit and vegetables.

**School farms and gardens:** There is a long tradition of using the outdoors as a classroom in schools and other educational settings. Many school farms were set up during the Dig for Victory campaign during the Second World War, and, despite a decline in the post war years, they are currently increasing in popularity. It is now estimated that 60 per cent of schools now grow something in their grounds, mainly vegetable patches. The size and scale of such plots vary enormously from a single raised bed through to large gardens which provide produce for school canteens. For more information, visit the Growing Schools website [here](#) and the School Farms website [here](#).

**Street Schemes and Public Plantings:** Traditionally street greenery was made up primarily of flowers and shrubs, from municipal hanging baskets to flower borders or trees. Now, however, there are several innovative projects that are using public areas (eg precincts, alleyways between terraced houses and marginal areas bordering streets or roads) for growing vegetables and fruit. Transition towns and Local Food Coalitions have been prominent in this area, for example Incredible Edible Todmorden, which has a website [here](#).

Further information about these types of community growing, including case studies, is available from Social Farms & Gardens' website [here](#).

Community Land Advisory Service:  
[www.communitylandadvice.org.uk](http://www.communitylandadvice.org.uk)