The Law and Allotments

Introduction to the Law and Allotments

Understanding the legislation applying to allotments can be a major hurdle for local authorities wanting to tackle their allotment responsibilities in a comprehensive way. All of the statutes need to be used if local authority roles and responsibilities are to be carried out effectively. It can be difficult to determine whether allotment sites are statutory or temporary and what status and protection is afforded to statutory and temporary allotments. The processes governing the disposal of allotment land, the framework within which the demand for allotments is met, and the regulations governing plot use are the major concerns of allotment holders and local authorities.

Statutory sites are those that a local authority has acquired for the purpose of allotment gardening, whilst temporary sites have been acquired for other purposes and are being used as allotments in the interim. Statutory sites have legal protection whilst temporary ones do not. Some allotments may have been in use for years and the reason for acquisition in the first place forgotten. Their legal status and level of protection may be uncertain. However if a site has been in continued use for a number of years as an allotment site, it ? be treated as a statutory site.

Present allotment law is set in statutes that were passed in the period from 1819 to 1950. Requests for overhauling the legislation have not been complied with. Legal requirements, a combination of existing legislation, planning issues and sustainable development needs should be the approach taken to ensure compliance.

Major Legislation:

The first Public Act to make specific reference to the provision of allotments for the poor came in 1819. The Act empowered parish wardens to let up to eight hectares (20 acres) of parish land to individuals at a reasonable rent. The common feature of early allotment campaigns was the emphasis on the relief of rural poverty. By 1850
allotments were recognized as areas of land provided by individuals or public bodies as acts of charity on which the labouring poor might supplement their low income by cultivating fruit and vegetables or carrying out stock keeping in their spare time.

Against a backdrop of oppression and civil unrest the **General Enclosure Act of 1845** made a serious attempt to set aside land as allotments for the labouring poor.

During the period 1850-1870 the establishment of urban and rural allotments continued mainly as a result of private and charitable initiatives. **The Allotment Act of 1887** was the first to compel local authorities to provide allotments where a demand was known to exist.

**Small Holdings and Allotments Act 1908** -
This Act consolidated the allotment acts dating from 1887, 1890 and 1907. The 1908 Act regulates the provision of allotments and the amount of compensation payable to tenants on termination of their tenancies. Sites should be suitable with sufficiently sized plots, and with adequate facilities.

**Section 22 of the Act** covers use. It defines an “allotment garden” as “not exceeding 40 poles (1,012 square metres) in extent, which is wholly or mainly cultivated by the occupier for the production of vegetable and fruit crops for consumption by himself or his family.” This precludes the use of an allotment garden for carrying out any trade or business, but provided that it is cultivated mainly for growing fruit and vegetables, other activities are not prohibited. These include:

- The use of a plot as a leisure garden – There is no legal restraint on using part of the plot as a leisure garden for recreation or for growing flowers or crops that take longer than twelve months to mature.
- Limited sale of surplus produce – provided that the allotment is mainly cultivated for consumption by the plot holder and their family there is no legal constraint on selling surplus produce.
- Use of part of a plot for keeping livestock – permitted by section 12 of the Allotments Act (1950), but not in such a manner as to create a nuisance. The
1950 Act also allows for the construction or erection of shelters for hens and rabbits.

**Section 23.** This requires that authorities are duty bound to provide allotments for residents if they consider there is a demand for them.

**Section 27.** This provides for the temporary use of allotment land for other purposes if it cannot be let as allotments. However, if the land is subsequently required for allotment use, the authority must be able to regain possession by giving no more than twelve months notice.

**Section 32.** Revenue obtained from the sale or exchange of statutory allotment land must be spent on discharging debts associated with the acquisition of allotment land, acquiring new land for use as allotments, or improving the existing stock of allotments. Only the surplus may be used for other purposes.

**Allotment Act, 1922**
This Act covered the release of land requisitioned for allotment use during the First World War. The Act also gave some measure of security of tenure to tenants of allotment gardens and improved rights of tenants to compensation on termination. The Act has since been amended by the Local Government Act 1972. Allotment committees are no longer compulsory for urban authorities.

**Allotment Act, 1925**
Required town planning authorities to give special consideration to allotments when preparing town planning schemes. This safeguard was removed by the Town and Country Planning Act, 1947.

**Smallholding and Allotment Act, 1926**
This Act made a number of improvements to the 1925 and preceding acts.
- The provisions relating to rents that may be charged for allotments was amended.
• The period of notice to quit was extended to 12 months as far as allotment gardens were concerned.
• Compensation should be payable to an allotment-holder at whatever season of the year a tenancy terminates.
• Allotment-holders who have allowed their allotment plot to deteriorate through neglect should be made liable to pay compensation for dilapidation and quitting.

Allotments Act 1950

Section 10 – fixing of rents. Although there is no requirement to exact a full fair rent, land let by a council for the purposes of allotment gardening shall be let at such a rent “as a tenant may reasonably be expected to pay for the land taking into account the proposed letting terms. This section also has provision for reduced payments of rent in special circumstances, which might include retired, elderly, unemployed, or disabled tenants, or tenant of long standing, or any other circumstances the authority may see fit.

Town and Country Planning Act, 1971

This Act covered forward planning of allotments.

Local Government Planning and Land Act, 1980 and Local Government and Planning (Amendment) Act 1981 – Consolidated planning legislation which has further influenced the forward planning of allotments. The Council must safeguard existing land used as allotments. Development proposals resulting in the loss of allotments should only be considered where:
1. There is evidence of long-term insufficient demand for continued use of land as allotments
2. Suitable land is made available, either by retention or relocation, to replace allotments that are in use
3. Where it is necessary to develop a site for other purposes, suitable sites are made available to relocate tenants
4. Any proceeds from land sale is re-invested in developing the allotment service.
Allotments Act 1925: Section 8 Consents – Assessment Criteria.

This Act states that statutory allotment land may only be disposed of with the Secretary of State’s consent, which will not be given unless the Minister is satisfied that adequate provision will be made for allotment holders displaced by the action of the local authority or that such provision is unnecessary or not reasonably practicable. The consent may be subject to conditions. The Revised Planning Policy Guidance note (PPG) 17: Sport, Open Spaces and Recreation recommends the following criteria against which applications for consent to dispose of statutory allotments are determined.

The revised criteria are that:

- The allotment in question is not necessary and is surplus to requirements.
- Consent of the secretary of state is required for the erection of any dwellings (but not sheds or greenhouses) by the council on allotment land (Land Settlement (Facilities) Act 1919).
- Adequate provision will be made for displaced plot holders, or that such provision is not necessary or is impracticable.
- The number of people on the waiting list has been taken into account.
- The authority has actively promoted and publicised the availability of allotment sites and has consulted the National Society of Allotment and Leisure Gardeners.
- The implication of disposal for other relevant policies, in particular development plan policies, has been taken into account.

Planning Policy Guidance note (PPG) 17: Sport, Open Spaces and Recreation

Annex 3 of PPG 17 includes allotments as a specific category in the classification of open space. PPG 17 places an obligation on local authorities to undertake assessments of need for all open space classifications, combined with an audit of existing provision, incorporating both quantitative and qualitative criteria. These should feed into the establishment of local standards for provision, and the preparation of a strategy ensuring these local standards are met before any surplus land can be released. Plots that are well maintained and in full use, delivering the full range of benefits to the local community are likely to enjoy strong protection under the planning system. Development that would result in the loss of allotments should
not be permitted unless replacement allotment sites are provided, and these should be of acceptable quality:

1. Be comparable in terms of size, accessibility and convenience, and should not normally be ¼ of a mile from the centre of demand
2. Have a soil quality and condition comparable or superior to that of the existing allotments
3. Avoid detrimental impact on landscape character and other landscape features.

**Notices to quit**

**Allotment Act, 1922** — Section 1 — tenancies of allotment gardens can be terminated by giving twelve months or more notice to quit. This must expire on or before 6 April, or on or after 29 September in any year, otherwise it will be invalid. The authority has the power of re-entry after 3 months notice if the land is required for “building, mining or any other industrial purposes, or for roads or sewers necessary in connection with any of these purposes.”

**Small Holdings and Allotments Act 1908** — Section 30 — the authority has the power to determine the tenancy on giving one month’s notice if:

- The rent is unpaid for 40 days or longer.
- The plot is not cultivated to the required standard for 3 months after commencement of the tenancy.
- Conditions of the tenancy have been breached.

An allotment authority needs to provide allotments only to the residents of its district. A tenancy agreement can be terminated on a month’s notice if the tenant becomes resident more than a mile outside the district. However, if there is adequate provision, there is no reason why an allotment plot should not be provided to a resident outside the area.

**Occupiers’ Liability Act (1957)**

Places a common duty of care on anyone involved in allotment management to ensure their allotment site(s) is run in as safe and appropriate manner as possible
Summary

There are essentially 4 key requirements on a local authority in relation to allotments. It needs to ensure that it is:

1) Advertising allotment provision
2) Supplying enough plots to satisfy demand
3) Providing a tenancy agreement with a compensation clause
4) Keeping allotment sites in a “fit for use” condition.

There is no generally accepted procedure for assessing the gap between current use levels and the potential need for allotments that would be realized if the allotments were actively promoted. Planners will have to work with the allotment management to generate the assessments required by planning policy. In areas where open space is deficient, any developments on allotment land must include an element of open space. A council’s policy for the management of its allotments should be linked to other leisure and recreation strategies.

If allotment land is made redundant, it should be considered what alternative uses the site could be put to. If allotment land is genuinely surplus due to falling demand, and the council is unable to promote sufficient level of allotment use to secure proper management of a particular site, then consideration must be given to alternative community based, sustainable land based activities. For example community gardens, city farms, nature reserves, but provision must be made for converting back if demand increases.

Allotments provide a much-needed facility especially in areas where private gardens are limited and should be protected as above. If planning permission is granted for other forms of development on part of or whole of the site, this should be subject to providing an appropriate community recreational benefit, or improving the allotment service generally.

Where new sites are proposed, future conversions to other acceptable activities should be born in mind. So new sites should, if possible, be provided next
to existing open spaces to facilitate conversion (in either direction), as well as to encourage passive security for the open space as a whole. If future demand on unlet plots is uncertain, then minimal maintenance, such as strimming vegetation, must be encouraged.

Relocation to a new site provides an opportunity to start afresh, with new layout and facilities. The design must be carried out in consultation with the plot holders and their association, the National society of allotment and leisure gardeners (NSALG) and should be ready before the old site is disposed of. Many plot holders have invested a lot of time and effort in their plots, and have emotional ties to their plots, so any consultations must be handled sympathetically, and assistance with relocation and possibly smaller plots should be considered. The active promotion of allotment and conversion of latent demand into new tenancies, two key components of the strategy, are essential to underpin the safeguarding of allotment land within the planning system.

**Challenges:**

1. *Ensure that publicity is adequate*
2. *Carry out thorough assessment of need, to assess gaps in the service.*
3. *Better use of section 106 agreements for allotment provision and development*
4. *Using surplus land as temporary allotments rather than mothballing it.*
5. *Ensure that the management of allotments is linked to other council strategies*
6. *Ensure surplus land is put to alternative uses rather than disposal*
7. *Regularly consult with users*
8. *Install a compensation system*
9. *Develop an allotments charter*
10. *Recognise demand in planning policy*