



The BALGA Non-Cultivation Procedure – Version 2 May 2024

1. Introduction

- 1.1 Many Local Authorities, Town & Parish Councils and Self Managing Associations, such as BALGA, who are responsible for managing allotment sites, will conduct non cultivation inspections as part of their management processes. Such action is endorsed by the National Allotment Association (NAS) which includes the following paragraph on the subject in one of its leaflets published on allotment gardening entitled ‘*Obtaining an Allotment and What You Can Expect*’: -

“A non-cultivation clause is very common in Tenancy Agreements and stipulates that a plot must be worked and cultivated on a regular basis. Failure to use your plot and cultivate it appropriately will result in you being asked to leave. The Council or Association will generally have a written procedure for cultivation which tenants must adhere to.”

BALGA is a member of NAS and this leaflet is now included in the Tenancy packs issued to all new BALGA tenants and is available to any member on request.

- 1.2 BALGA’s cultivation requirements are set out in paragraph 4.3 of schedule 1 (Conditions of Use) of the Tenancy Agreement and at paragraph 2.2 and 8.2 of its Constitution. BALGA will use the meaning of the word ‘cultivate’ and ‘cultivation’ as taken from the Oxford Dictionary of English, which is: -

‘Prepare and use land for crops or gardening, raise or grow plants, break up soil for sowing or planting.’

Also, from Collins Shorter Dictionary and Thesaurus which is: -

‘Till and prepare ground to raise crops’

- 1.3 Since Self-Management of the two Baldock allotment sites began in April 2016, BALGA has each year carried out non-cultivation checks to ensure compliance with its cultivation requirements, resulting in a small number of tenancies being terminated.
- 1.4 This document outlines the factors that are taken into consideration and then sets out the BALGA process for checking for non-cultivation in a fair and equitable way. **The intention is to support all BALGA tenants in ensuring that their plots meet the required standards that they agreed to when their tenancy agreements were signed.** BALGA’s criteria for inspections can be found at Appendix A of the document.

2. Factors taken into consideration

- 2.1 The Balga Committee is aware that a number of tenants may choose to exercise a 'no dig' policy on all or part of their plot and this will be taken into account by those conducting inspections, particularly so far as they relate to the term 'cultivation'.
- 2.2 BALGA will also consider the impact of relevant weather and growing conditions prevalent in that season when the inspections take place.
- 2.3 **BALGA will take fully into account any genuine extenuating circumstances that, for a short time, are likely to hamper the ability of the tenant to cultivate their plot to the minimum standard expected**, as set out in paragraph 4.4 of the Schedule and Appendix A to this document. This does rely on the timely written reporting by the tenant, or their representative, of such circumstances, and their likely duration, to the General Secretary. Any information so given may be shared with Committee members relevant to any decision they may need to make, but this will be treated as strictly confidential in accordance with their Code of Conduct.

3. Exceptional Circumstances

- 3.1 In exceptional circumstances (which could for example include significant illness, accident or maternity related), a longer period of time may be needed before a tenant is able to resume cultivation of their plot. Under such circumstances the Committee may agree 'mothballing' or 'caretaking' arrangements with the tenant. Any mothballing or caretaking agreement would be subject to the following conditions:
 - a. The period of dormancy must be formally agreed by the Committee
 - b. The plot can be 'mothballed' (i.e., Covered by standard weed suppressing materials or managed by a nominated caretaker, or by a combination of both. The caretaker must either be a member of BALGA (for insurance purposes), or a contractor with their own public liability insurance, and would be responsible for maintaining the plot to the expected standard. It is the responsibility of the tenant to ensure that they check that the contractor they hire has public liability insurance.
 - c. Full rental charges continue to apply throughout the period of dormancy and responsibility for plot rental remains with the tenant.
 - d. The arrangement should be time limited for a period not less than a month and not exceeding 12 months. The Committee may, in exceptional circumstances, agree to extend the period of dormancy beyond 12 months. Otherwise, BALGA will have no option but to terminate the tenancy if management of the plot hasn't been resumed by the tenant after 12 months.

- e. The plot must meet the inspection standards (Appendix A) throughout the agreed period except that the plot will be exempt from the requirement to be in a good state of cultivation.
- f. The arrangement will be subject to regular reviews by the Committee.
- g. The tenancy of the plot may be terminated at the discretion of the committee should the condition of the plot fall below the expected standards with no extenuating circumstances identified.

4. The Inspection Process

- 4.1 The following section sets out in more detail how and when inspections will be conducted and by whom, together with the criteria that will be used. These criteria are taken from, and reference is given to, the relevant paragraph of the BALGA Tenancy Agreement and the latest approved version of the Constitution. See appendix A for the criteria for inspections.
- 4.2 Informal checks and formal inspections will be in four stages over a three month period from late May to late July and will take into account concerns that may be raised by other tenants about the alleged condition of a particular plot.
- 4.3 A BALGA newsletter will be sent out to all plot holders ahead of the inspection process, to provide a reminder of BALGA's need to conduct checks on all plots to encourage everyone to actively cultivate their plots where possible, and to encourage plot holders to inform the committee in advance if they are struggling to cultivate their plot as they would wish to, for whatever reason.
- 4.4 Informal checks will be carried out by the respective Site Representatives appointed by the BALGA Committee.
- 4.5 The subsequent more formal inspections are conducted by a team of five Committee members, both male and female, with two from one site and three from the other. The same team will, as far as possible, carry out inspections on the same day, of all plots on both sites, using the criteria in Appendix A.

5. Informal Checks

- 5.1 A first informal check by Site Representatives during late May will identify plots on which little or no progress has yet been made that year. Site representatives will make informal contact with those plot holders whose plots show insufficient levels of cultivation (**either in person when on site, or by email**) to encourage sufficient cultivation in line with the tenancy agreement, and importantly, to understand any potential extenuating circumstances, so that it does not become subject to the more formal inspections that follow.

6 Formal Inspections

- 6.1 A first formal inspection by a Team of five Committee members in late June will check all plots against the criteria as set out in Appendix A.
- 6.2 The condition of any plot below a satisfactory standard will be noted, photographed and reviewed at the next Committee meeting, with any extenuating circumstances fully considered. For this reason, it is important for tenants to inform the committee if there are circumstances preventing them from cultivating their plot as they would wish.

Only if considered appropriate and necessary by the Committee, a formal letter will be sent to the tenant giving 28 days in which to make sufficient progress. This will include an offer to agree a Cultivation Support Plan with a committee member for those who may be struggling to maintain their plot and who would welcome specific guidance to help them to actively cultivate their plot. Copies of photographs taken of the plot on the day of the inspection will be held on record and included with the letter. As determined at paragraph 8.2 of the BALGA Constitution, any tenant receiving such letter in each of three consecutive years will automatically have their tenancy terminated, unless agreed extenuating circumstances apply where this will be taken into account.

- 6.3 A second formal inspection by a Team of Committee members during the last week of July will identify any plot in respect of which the tenant has been sent the 28-day notice from the first formal inspection, where no extenuating circumstances had been identified, and which is still judged to be below a satisfactory level of cultivation. (Where extenuating circumstances had previously been identified, there will be no further checks during the cultivation season). The condition of any such plot that is still giving cause for concern will be discussed at the next Committee meeting, at which any new extenuating circumstance will be taken into account. If considered appropriate and necessary by the Committee under paragraph 8.2 of the BALGA Constitution and 4.3 of the Tenancy Agreement, a formal termination of tenancy notice will be issued to the tenant giving 28 days to clear the plot of any item or crop they wish to retain. Copies of photographs of the plot taken on the day of the inspection will be held on record and included with the letter. In such circumstances it is unlikely the deposit paid (if the plot was tenanted after 1st April 2016), will be refunded but will instead, be used by BALGA towards the cost of clearing the plot for the next tenant.
- 6.4 Any tenant receiving such notice of termination of tenancy has the right to appeal against the decision within 28 days of receipt of that notice.

7. Final check prior to next tenancy year

- 7.1 A final check by Site Representatives will be conducted in early September before rent invoices are prepared for the next tenancy year beginning on 1st November. The sole purpose of this check is to contact any tenant whose plot does not now appear to be in reasonable order (accepting that most crops may now have been harvested) to determine if he or she wishes to retain their plot for the next tenancy year. This is clearly intended to be in the tenant's interest. Rather than receiving and then paying the invoice, and then perhaps being at risk of being subject to the non-cultivation process the following year, when any tenancy rent paid is non-refundable, they have the choice of whether they wish to receive and pay that invoice or end their tenancy.

Appendix A

BALGA Non-Cultivation Procedure

Criteria For Inspections

1. For plot holders of 12 months or more, at least 75% of the plot is in a good state of preparation and/or cultivation and the plot is reasonably free from weeds and noxious plants.
2. For new plot holders, i.e. within 3 months of the start of the tenancy, at least 25% of the plot is in a good state of preparation and/or cultivation and the plot is reasonably free from weeds and noxious plants.

These criteria are in accordance with the following tenancy agreement clauses:

The plot should be: -

- a) In a good state of cultivation and fertility and in a good condition (Tenancy Agreement paragraph 4.1)
- b) Reasonably free from weeds and noxious plants (Tenancy Agreement paragraph 4.1)
- c) With at least 25% of plot area under cultivation within 3 months of the start of the tenancy and 75% of plot area within 12 months (Tenancy Agreement paragraph 4.3)

Please note that the following requirements within the tenancy agreement do not form part of the non-cultivation inspection process. Any concerns in respect of these issues will be discussed with plot holders by the respective BALGA site representatives.

- d) With no more than 20% of plot area hard landscaped i.e., by patio, internal paths, or grassed area. (Tenancy Agreement paragraph 4.4)
- e) With no legally restricted plants cultivated or growing (Tenancy Agreement 6.4)
- f) With pathways between plots well maintained, up to the nearest half width, by each adjoining tenant. Plot fences, gates, sheds, greenhouses, or other

structures maintained in good and safe condition. (Tenancy Agreement Schedule 1, Conditions of Use paragraph 2.1)

- g) With the plot free from hazards i.e., broken glass, scrap metal, and have no deposited rubbish, refuse or decaying matter other than manure or compost. (Tenancy Agreement Schedule 1, Conditions of Use paragraph 9.1)
- h) Maintained in a satisfactory condition and state of tidiness. (Balga Constitution paragraph 8.2)