

The Ecological Land Cooperative Smallholders Lease Agreement in Plain English

The ELC's Lease Agreement is a complex legal document that gives the leaseholder the right to live and work on their smallholding for 150 years as long as they meet all the conditions laid out in it. It is a Farm Business Tenancy which is defined by the Agricultural Tenancies Act 1995.

The ELC sells this long lease and keeps the freehold of the land in order to protect it for ecological agriculture forever. Buying the lease is exactly the same as buying any property lease and the purchase should be carried out by a solicitor who can complete all the necessary paperwork and register the lease at the Land Registry, which is a legal requirement of the leaseholder.

The lease contains all the conditions that an ELC smallholder must meet in order to remain in their holding for the duration of the lease, including ELC's Management Plan and any conditions set by the Local Authority as part of the planning permission, usually in the form of a Section 106 Agreement.

If a tenant breaks the terms of the lease then the ELC has the right to end the lease and ask them to leave the smallholding. This means that it is very important that anyone thinking of becoming an ELC smallholder understands the terms of the Lease Agreement.

This document sets out to explain in simple language the purpose of the clauses contained in the lease to anyone considering an ELC Smallholding. However,

DISCLAIMER: This document is a guide and any prospective leaseholder should read all of the actual Lease Agreement, the Management Plan and the Section 106 Agreement and seek independent legal advice before purchasing the Lease.

ELC Lease Agreement

Prescribed Clauses

These first clauses at the beginning of the lease are designed to make it easy for the Land Registry to find the information it needs to register the lease. They are a summary of information that is contained within the Lease Agreement such as the date of the lease, the title number, who the lease is between and other information that will assist the Land Registry.

Because this lease is for more than 7 years it must be registered at the Land Registry.

Contents

Hopefully this is self-explanatory – a guide to the clauses contained in the lease.

This Lease

Parties

The agreement is between the ELC and the tenant/s of the smallholding – there can be more than one tenant, with each person named in the tenancy agreement being equally responsible for following all the rules of the Lease Agreement and for each other – so, for example, if one person breaks the rules of the lease then everyone who is a tenant will be considered to have broken the rules.

Recitals

These statements aim to give context to the Lease Agreement by explaining the ELC's mission.

Agreed Terms - clause 1

This section gives the definitions of terms that are used throughout the Lease Agreement.

The Tenancy – clause 2

This section sets out the agreement between the landlord (ELC) and the tenant.

Before signing the lease the ELC will give a written notice to the tenant/s that they are creating a Farm Business Tenancy which is governed by the Agricultural Tenancies Act 1995. The lease will remain a Farm Business Tenancy for its duration.

The 'Term Commencement Date' is the date that the lease begins and is the beginning of the 150 year duration of the lease.

The Lease sets out the terms for the rent to buy options for purchasing the lease and asks the tenant to acknowledge that the terms are below market price because it is recognised that the terms of the lease require the tenant/s to comply with the conditions contained in the ELC's Management Plan and the Section 106 Agreement.

Rights Granted – clause 3

There is a schedule (1) at the end of the lease which sets out the rights given to tenant/s. This section of the lease says that tenants will only have these rights if they comply with the conditions of the Management Plan and the Section 106 Agreement, and if they use the property for its permitted use of residential and agricultural purposes in accordance with the Management Plan.

Clause 3.5 also states that the tenant/s must register the lease with the Land Registry within 1 month of signing otherwise the tenant/s rights contained in the lease may be considered invalid.

Premium – clause 4

The Premium is the deposit which is paid at the beginning of the lease, currently 20% of the purchase price.

Payments – clause 5

This section sets out the way rent is paid in the rent to buy scheme and also has the formula for calculating what is outstanding at any time if a tenant/s decide to pay off the remaining balance of the lease in one go.

Other payments covered in this section are for maintenance of the common areas of the land, utility bills for shared services as a fair proportion for each tenancy, and fees for any services performed by the landlord.

Occupancy – clause 6

This section states that only the tenant/s, their dependants and their partners can live on the land. It makes provision for widows/widowers of tenants to continue to occupy the land as well as business partners in an agricultural business who have the right to make use of the land. It also stipulates that the tenant/s must be members of the ELC.

Encroachments – clause 7

This section makes it clear that access or rights to the smallholding or the ELC common areas of land on the site should not be given to any third party. Any obstruction caused by a third party must be reported to the ELC and the tenant/s must take action to remove it.

Use and Management – clause 8

The tenant/s is required to maintain in reasonable condition:

Their buildings and equipment, if they are not kept in a reasonable condition the tenant/s may be required to remove them from the smallholding;

The natural assets on the land and their boundaries.

The tenant must comply with the ELC's Management Plan and good farming practice as defined by industry standards, and must leave the property in a good state of repair at the end of the term of the lease. The tenant should also keep the ELC informed of any intervention by any statutory bodies.

There are many activities listed here which any prospective tenant should read through to fully understand their rights and responsibilities.

Alterations and Improvements – clause 9

This section outlines the policy for making improvements to the site. It should be read in conjunction with the ELC's Valuation Policy which will be made available with the lease.

Compensation for Improvements – clause 10

The tenant is responsible for maintaining the property in reasonable repair and any work done to achieve this is not classed as an improvement.

The resale value of the land plus any improvements will be capped to maintain affordability for future tenants and the details of the cap are outlined in the ELC's Valuation Policy.

Management Plan – clause 11

The lease requires tenant/s to comply with the ELC Management Plan for the site which will form part of the Lease Agreement. (An example Management Plan is available as part of the application pack.) The ELC will monitor progress against the Management Plan every year. If it is found that a tenant/s is not complying with the Management Plan this section outlines the process for remedying the situation, including the production of an Action Plan for the tenant/s.

Planning – clause 12

The lease also requires the tenant/s to comply with any Section 106 Agreement or other conditions related to the Planning Consent. Tenants must get written consent from the ELC before changing the use of the property or applying for planning permission. The Section 106 Agreement will form part of the Lease Agreement.

Breach of Management Plan or Repair and Maintenance Obligations – clause 13

This section details the rights of the ELC to create an Action Plan to deal with any breach of the tenant/s obligations detailed in the previous clauses.

Termination of this Lease – clause 14

Ultimately the ELC can terminate the lease if the tenant/s fails to comply with an Action Plan to rectify any breach of the Management Plan. ELC must give 12 months' notice of any termination and will pay 95% of the resale value calculated using the ELC's Valuation Policy at the point that the tenant/s leave the property.

Lease Transfer and Subletting – clause 15

A tenant/s may transfer the Lease to another person/s. To do this they must give notice to the ELC with a proposed resale value calculated using the ELC Valuation Policy.

The ELC has reserved a first right to purchase the lease and has four months to reply and confirm that it will purchase the lease at the resale value proposed. If the resale value is disputed then an independent valuation can be carried out, although the resale value cannot exceed the cap outlined in the ELC Valuation Policy.

If the ELC does not wish to purchase the lease then the tenant/s can sell the lease to a third party who must be approved by the ELC. Again the price will be the resale value as determined by the ELC Valuation Policy.

Any new Tenant/s will be obliged to comply with the terms of the Lease Agreement including the Management Plan and Section 106 Agreement.

Resale Value – clause 16

This section contains the formula for calculating the resale value in conjunction with the ELC Valuation Policy.

Put simply the resale value is calculated as the price paid for the land plus the agreed value of improvements made to the property up to the value of the cap on the value of improvements.

There are other considerations such as maintenance, inflation and depreciation which are considered in more detail in the ELC Valuation Policy.

Forfeiture – clause 17

This clause gives the ELC the right to re-enter the property if there has been a breach of the terms of the lease.

At the End of The Lease – clause 18

This details what happens at the end of the lease.

Dispute Resolution – clause 1, Notices – clause 20

This refers to the Management Plan for the resolution of any disputes between the ELC and tenant/s and methods of giving notice.

Miscellaneous Matters – clause 21

If the ELC wishes to enter any property, they must give 7 days notice, visit during normal business hours and promptly make good any damage caused by their visit except in the event of an emergency.

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