

Gardens

(your garden and/or
communal gardens/grounds)



A guide to what you can or can't do in
your own (or communal) gardens

Introduction

In this leaflet we will try to address some of the common issues that are raised regarding gardens and communal gardens/grounds (not car parking areas). In particular, this relates to topics such as trees, bushes, sheds, smoking, noise and sunbathing.

We have tried to cover most eventualities in this leaflet but please contact the office if you want to know about something that we haven't covered.

Please bear in mind that much of the information we are talking about here relates to individual gardens and there are different guidelines and rules that apply for shared communal gardens and grounds.

We add articles in the Sandbourne newsletter to act as a reminder for the more common issues.

Important: If you are on a starter tenancy agreement (which normally lasts for one year) you are not allowed to make any alterations/additions or improvements to your home or garden during that period. After that, you will need to seek our permission.

In this leaflet, the use of 'you' applies to all of our occupiers whether you are a tenant, leaseholder or a shared owner.

The use of 'us' or 'we' refers to Sandbourne Housing Association.

On a general point

The first thing we would say is that you should always think about what you are doing and be considerate when undertaking activities asking yourself how this might impact on your neighbours.

Provided that what you or they wish to do is lawful and reasonable, then please remember that it is their home, as yours is your home. What you or they are doing might not be to everyone's own standard or taste, or undertaken at the time you or we would do it, but that does not make it illegal or wrong. Both we, as a landlord, and you need to accept that even if we don't like it there is a wide variety of lifestyles, standards and tastes out there that we all have to accept, or at least agree to disagree with.

My neighbour's garden is a mess what can be done?

You can report this to us as all our tenants have to take reasonable care of their own gardens as part of their conditions of tenancy. We cannot normally impose things that people must do, for example we cannot say that you must cut the grass once a week, must not gravel the garden, must not lay a patio or not put up a washing line, etc. We cannot normally control the plants you might wish to plant or if you want to have a pond, etc.

Can I mow my lawn when I like?

Yes, but please be considerate towards your neighbours and do not mow your lawn very early in the morning or late at night.

Can I pick fruit off either my neighbour's shrub/trees or off those in communal grounds (public space)?

There's no written law about who owns the fruit that's hanging into a public space, but there is a common law about neighbours. "If fruit hangs over from your neighbour's tree into your yard, then that fruit is technically yours or you can cut those branches out".

Can I trim my neighbour's shrub/tree?

As a general rule of law, you can trim back any part of any shrub/tree that is hanging over/encroaching onto your property, unless it has a Tree Preservation Order (PTO), which the council will have registered details of. You cannot make your neighbour do it or make them pay for it. If you suffer any damage from the overhanging branches, the neighbour is not liable because your remedy is to trim the encroaching branches.

Can I cut branches overhanging my garden?

You can cut the branches and/or roots back up to the limit of your property boundary, say your garden fence, unless there is a preservation order, which the council will know about. However, you are not allowed to go into a neighbour's garden without permission to cut a shrub/tree

back. Nor can you lean over into their garden to cut back the 'offending' branch – you will be trespassing.

What should I do with branches that I have cut back?

You should first offer the branches to your neighbour. If your neighbour does not want to take them (they are not required to), then you should dispose of them responsibly.

Am I allowed to cut down a neighbour's shrub/tree?

By law, you have the right to trim branches and limbs that extend past the property boundary line into your garden. However, the law only allows shrub/tree trimming and shrub/tree cutting up to the property boundary line. You may not go past the property boundary line or onto the neighbour's property or destroy the shrub/tree.

Can I cut back or remove trees/shrubs/plants in the communal grounds?

No, unless they are ones that we have previously agreed and continue to agree that you can look after. We employ grounds maintenance contractors to undertake this work. You might injure yourself or others and you could be accused of causing criminal damage and therefore be in breach of the criminal law and your tenancy or lease.

Who is liable if my tree falls on my neighbour's property?

When a tree falls over onto a neighbour's property, that neighbour should submit a claim to their insurance company immediately. The insurance company is usually responsible for taking care of the damages. This is also true if the tree falls over due to an act of nature.

What happens if a tree falls on my neighbour's house?

If your tree falls on your neighbour's house, the basic (and almost always applied) rule is that the insurance policy of the property that was damaged pays for the loss. In other words, if your tree falls on your neighbour's house, your neighbour's homeowners' insurance covers the damage to your neighbour's house.

Who is responsible when a neighbour's tree falls onto my property?

Trees can be tricky, but for the most part homeowners are responsible for what falls into their own yard. So if your neighbour's tree falls in your yard, your homeowners' insurance would typically help cover the cost of removing the tree and remedying the damage it caused.

Is a fallen tree covered by homeowner's insurance?

Homeowners' insurance typically covers the cost of removing the tree or shrub that has fallen on an insured's structure.

Is wind damage covered by insurance?

Most homeowners' insurance policies will provide cover for roof damage caused by unpreventable reasons such as vandalism or fire ... although wind, rain, and hail are covered by your home insurance policy, there are many factors that determine if your damage will be covered and, if so, how much you will be reimbursed.

What is the law for nesting birds in gardens, bushes, and trees?

All birds, their nests and eggs are protected by law and it is thus an offence to:

1. intentionally kill, injure or take any wild bird
2. intentionally take, damage or destroy the nest of any wild bird while it is in use or being built
3. intentionally take or destroy the egg of any wild bird
4. have in one's possession or control any wild bird, dead or alive, or any part of a wild bird, which has been taken in contravention of the Act or the Protection of Birds Act 1954

5. have in one's possession or control any egg or part of an egg which has been taken in contravention of the Act or the Protection of Birds Act 1954
6. use traps or similar items to kill, injure or take wild birds
7. have in one's possession or control any bird of a species occurring on Schedule 4 of the Act unless registered, and in most cases ringed, in accordance with the Secretary of State's regulations
8. intentionally or recklessly disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.

Can I smoke in my garden or the open communal grounds?

Yes, you can as long as you are not breaking the law, eg smoking unlawful drugs. However, we would ask that you act reasonably for example do not annoy your neighbours by smoking under their open windows allowing smoke to enter their property, or by communal entrances. Please make sure you dispose of your cigarette butts/rubbish responsibly.

Can I have a bonfire or BBQ in my own garden?

Yes, but we would ask that you are considerate and use common sense, for example: don't light a bonfire or your BBQ if your neighbour has, or you know they normally have, their washing out at that time; don't set it alight near a shed or a fence or someone's home; don't burn toxic

substances; and don't leave it unattended or unsupervised (by a responsible adult). Bonfires and BBQs can be annoying but there is no action the landlord can take unless it forms part of a pattern of activity aimed at or likely to cause annoyance or nuisance or damage.

Can I have a BBQ in the communal grounds

No, not without our permission. If permission is granted, then it must not damage the communal grounds and you must dispose of rubbish and hot ashes (letting them go cold first) responsibly. You must also act reasonably, for example do not have it near the communal entrance or windows, or by fences, sheds or trees which might catch fire.

Can someone leave their washing out at any time and what about a rota?

There is no law to say when or how long washing can stay out for. This includes in communal grounds. We, would however, ask that people be considerate to the needs of their neighbours who might also wish to use the facilities in communal grounds. Sandbourne cannot impose a rota as to when laundry facilities can be used. If you remove a neighbour's washing you could find yourself in trouble with them alleging that items have been damaged, lost or stolen and you could end up being the subject of a complaint to us.

Can I have a shed or erect a fence or similar structure in my own garden?

Yes, normally you can in your own garden (not communal areas), provided you ask for our written permission first. We will say what is reasonable and we cannot unreasonably refuse your request. If we refuse, we will have to say why. You will also be expected to agree to maintain and subsequently dispose of any items responsibly and at your own expense.

Can I sit out in my own or a communal garden?

Yes, you can but we would ask that you act reasonably and consider your neighbours, for example do not obstruct communal footpaths, talk loudly or sunbath directly under neighbour's windows or play loud music at unreasonable times.

Can I sunbath in my own garden or in a communal garden?

Yes, of course you can. However, again, we would ask that you act reasonably for example do not 'indecently' expose yourself, obstruct communal footpaths, or sunbath directly under a neighbour's window.

Can I put a garden bench out or garden furniture in communal grounds?

No, we discourage this as they are never likely to be placed where everyone would agree for them to be situated. Also, we or you could be held responsible if they are not maintained or cause a hazard or injury.

Can I put bird feeders or bird tables in the communal grounds?

We would prefer you not to as they can attract vermin. We then have to pay for pest control measures, which will then be recharged to everyone's service charge.

Can I exercise my pet in the communal grounds?

No, we would ask that you take your pet (normally a dog) off site and make sure that you dispose of any mess that it might make on the communal grounds responsibly.

Can my dog sit with me in the communal gardens/grounds?

Provided they are kept on a lead and are kept under control, it is permitted for dogs to sit with you (their owner) in the gardens. You should be conscious of those people who do not like dogs, however, and keep your dog at a reasonable distance from them and under control at all times.

Can I have a party in the communal gardens/grounds?

You should ask our permission first and we will consider each case on its merits. However, we would use the same principle as we do for communal lounges, that political or religious events are not allowed and the party must be genuinely open for all residents to attend, for example a royal wedding party. This is because we cannot stop other residents using the communal lounges and communal grounds.

Can I adopt part of the communal grounds to do gardening or place items in them?

You will need to ask for our permission first and we will consider each request on its own merits. We do not wish to be killjoys, although our experience has taught us that the answer is likely to be 'no' as allowing areas to be taken over can cause friction with other neighbours and affects the long-term maintenance and costs of gardening. It can also have insurance implications if anyone hurts themselves when accessing the area that you have adopted. Plant pots can also cause a trip hazard.

Can I leave rubbish out?

You should only leave rubbish out in designated areas and in the bins provided for that purpose. You will need to arrange to have other items collected and disposed of at your own expense. If you dump item in the communal areas or leave them in your garden for an unreasonable

length of time you will be in breach of your tenancy/lease and will also be recharged if we have to dispose of those items.

Can I use my neighbours' bins?

No, unless you ask them first and they genuinely agree, ie they do not feel obliged or intimidated, etc, to say yes.

Can I trail electric cables across or use power tools within communal grounds?

No, that is a health and safety hazard and must not happen. Please report any such incidents to us for us to investigate and take action.

Can I install CCTV or operate a drone?

If you install CCTV it must only cover your own property and not communal areas or neighbours' doors or gardens, etc. You must obtain a government licence to operate a drone and you should not record your neighbours' gardens or their activities in their own or our communal grounds.

Please see our separate leaflet on Closed Circuit Television (CCTV) and Drones, available either from the office upon request or downloadable from our website (www.sandbournehousingassociation.org.uk).

Can I lean over into my neighbour's garden or take photos over the garden fence?

We would not recommend that you do this as you could be invading their privacy which could ultimately result in a complaint being made to us.

Am I responsible for my guests and visitors?

Yes, as the named tenant or leaseholder you are responsible within the terms of your tenancy or lease for their activities and conduct which may include damage, annoyance, nuisances, harassment or criminal activity.

If initially proven to our satisfaction, you will be in breach of your tenancy or lease conditions. We would then have to consider what reasonable and proportionate action we can and might take. This could be nothing, could be a warning letter or result in an injunction being sought against you. In the most serious cases possession proceedings could be brought against you which means you could be evicted from your home.

What about the consequences of my actions?

Please take care before acting. Damaging or killing or removing trees or shrubs that do not belong to you, including those in communal grounds owned and maintained by us, could also mean that you can be committing Criminal Damage or theft.

People have been arrested, charged by the Police and convicted for theft or damaging their neighbour's or landlord's trees shrubs or possessions/property.

Moreover, any activity that you undertake might be likely to cause an annoyance or nuisance in the locality and is, therefore, technically a breach of your tenancy agreement.

We would have to consider each incident to determine if we should take action. We are unlikely to take action if we consider the incident to be a one-off or infrequent activity and not part of a pattern of behaviour or activity that would likely be an annoyance or nuisance in the locality.

What is reasonable for someone to do or for me to complain about?

Firstly, in all our dealing with issues raised we cannot normally take sides. We will need to consider both sides of any story first. Moreover, by law, as a landlord, we are required to act 'both reasonably and proportionately' to what the situation is. In other words, we must not over-react or automatically take someone's word over someone else's. If we were to take any matter to court for either an injunction or possession action, that is a test that the court would apply to the situation before it considered the matter any further.

There is a phrase frequently used in court and criminal law to help us make any judgement as to what we will or will not do. It denotes a hypothetical person in society who exercises 'average' care, skill, and judgment in conduct and who serves as a comparative standard for determining liability. In other words, would the 'average'

reasonable person on the number 10 bus think about what is being done and is it unreasonable requiring legal action.

Generally, the principle is that you can undertake any lawful activity in your own home, garden or the communal grounds provided that in doing so it is not likely to cause an annoyance or nuisance to anyone in the locality which the 'average' person (as defined above) would consider to be unreasonable.

Moreover, everyone is in law and therefore within our tenancy agreements and leases is expected to have a reasonable degree of tolerance and understanding for the activities of others. Therefore, for example, we would all be expected to 'put up with' infrequent parties, or noise, or children playing outside as that is part of a normal lifestyle and is not exceptional or unusual etc.

Need more information?

You can:

Write to us at our registered office:

Beech House, 28-30 Wimborne Road, Poole, BH15 2BU

Email us on: info@sandbourne.org.uk

Telephone us on: 01202 671222

Please note that telephone calls to the registered office number above may be recorded for information and training purposes.

In addition, we do have a range of other leaflets on specific topics, available on our website or upon request from our office.