



Department
for Education

EBDOG Conference School Land Transactions

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Land Transactions Team – what do we do?

- The **Land Transactions Team** sits within the Legal & Transactions Division and deals with a range of work, but our main work stream is dealing with school land consent applications and enquiries.
- Approx. **20 team members** with a mixture of knowledge and experience – solicitors, surveyors, experienced caseworkers – split into 3 x sub-teams: Customer Engagement & Support Team (CEST); Disposals; and Change of Use & Acquisitions.
- We receive on average **50** applications per month from applicants seeking SoS consent to deal with their land.
- The LTT dealt with (closed) **645** applications between June 2022 and May 2023.

What is a land transaction?

Overview

- Anyone holding publicly funded land for the purposes of a school (or whose land has been used as a school in the past) may need to obtain the SoS' prior consent in relation to certain land transactions.

What is a land transaction?

In broad terms, any dealing with land including:

- Sale of freehold of land or buildings (e.g. sale of caretaker's house);
- Granting (where any LA is landlord) a lease of land or buildings (e.g. substation/nursery/solar);
- Changing the use of playing field land (where the land is or has been used by a maintained school in the past 10 years) – LA needs consent – even if academy site and AT is procuring and undertaking the works itself. If trust owns freehold, no consent is required.
- Academies (but not LAs) require consent to acquire the freehold of land or buildings or taking a lease for 7 years or more (e.g. satellite site);

Why is consent or notification required?

Protection of publicly funded assets/public purse. The educational estate is an important and valuable long-term asset.

The requirement for LAs to notify or seek consent is contained in:

- Schedule 1 to the Academies Act 2010 = **school land**
- Section 77 of the School Standards and Framework Act 1998 = **playing field land**
- Playing field land – wide definition.



Disposals of school land

- The disposal of **school land** held by a LA requires the Secretary of State's prior consent under the Academies Act 2010. This applies to all land which has been used wholly or mainly by a school or 16-19 academy in the last eight years, whether still open or now closed.
- In addition where a LA proposes to dispose of **playing field land**, the SoS' prior consent may also be required under Section 77(1) of the School Standards and Framework Act 1998. This applies if the land is, or has been in the last 10 years, used by a maintained school (including where the land is now being used by an academy).

Disposal includes:

- selling or transferring a freehold or leasehold interest;
- the grant of a new lease;
- surrendering the whole or part of a lease of land;
- see DfE's [guidance](#) for the meaning of "disposal" under the AA 2010 and SSFA 1998.

Meaning of playing field land

- **Playing field land** is defined for the purposes of a disposal or change of use as *“land in the open air which is provided for the for the purpose of physical education or recreation”*.
- Wide definition and it does not matter if the land is not currently in use for sport or recreation.
- Five types of playing field:
 - Soft outdoor PE (traditional grass marked pitches);
 - Hard outdoor PE (hard surface games courts);
 - Soft informal and social (unmarked fields/marginal areas);
 - Hard informal and social (hardstanding playgrounds);
 - Habitat areas (meadowland, wildlife habitats, gardens).
- Presumption against disposal of playing field (the benefits to the school or schools in the area should outweigh the presumption against loss).
- Any loss of PF land should be mitigated by improvements to sports provision.
- Playing field disposals are referred to the independent playing field panel who advise on the extent to which each application meets current policy and legislation.



Hard outdoor PE areas, surrounded by soft informal



Soft outdoor PE areas



Hard outdoor informal with habitat area behind



Non playing field (e.g. school buildings, car parks, access roads and caretaker's houses)

Also technically playing field land



Appropriation of school land

- Local authorities have statutory powers to allocate land for specific purposes and transfer the use of land from one purpose to another.¹ This transfer of use from one purpose to another is known as an appropriation.
- Under the Academies Act 2010, LAs must seek the SoS' prior consent to appropriate land they hold where it has been used wholly or mainly for the purposes of a school or 16-19 academy in the last eight years, whether still open or now closed.
- Consent may also be required under s.77(3) SSFA where the land is **playing field**.
- In some cases we may expect to see some form of payment for the appropriated land but this can be discussed on a case-by-case basis.

¹ under section 122(1) of the Local Government Act 1972

Change of use of playing field land

- Any change of use of school playing field land requires SoS consent under s77(3) of the SSFA where:
 - the land is, or has been in the last 10 years, used by a maintained school (including where the land is now being used by an academy); and
 - the local authority holds the land (either a freehold or leasehold interest) at the time of the proposed change of use.
- This need for consent does not apply to freehold academies BUT may apply to a LA where an academy has a lease from the LA.
- Most common example of a change of use is the construction of new school buildings on playing field land.
- New GCO came into force in May 2023 – takes the “fast-track” process a step further.

Revised General Consent Orders – May 2023

The revised GCOs came into effect on 15 May 2023 and are now published on [GOV.UK](https://www.gov.uk).

- [The School Playing Fields General Disposal and Change of Use Class Consent \(No 7\) 2023 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- [The Academies General Disposal and Appropriation Class Consent \(No 4\) 2023 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

The Land Transactions team will consider if the new GCOs apply to any **current applications** received before 15 May 2023 where a decision has not yet been taken.

LA should continue to notify the Land Transactions team if they consider that a GCO applies to a proposal.

We have updated the notification forms on GOV.UK.

s77 GCO

The School Playing Fields General Disposal and Change of Use Class Consent (No 7) 2023 –

Paragraph 11 has been inserted in relation to a minor change of use of playing field land to accommodate an expansion in pupil places. This is subject to the paragraph having not being relied upon for the same school site in the past three years and the school supports the proposal.

A minor change of use is defined as up to 5% of the school's playing field land, or up to 15% if the school will remain over the maximum amount of playing field land required following the change of use.

Paragraphs 2 and 7 are amended to include a requirement that the school supports the proposal and to clarify the meaning of "broadband" to ensure that only underground cables for broadband fall within the class consents.

Schedule 1 GCO

The Academies General Disposal and Appropriation Class Consent (No 4) 2023 – Sch. 1 GCO

A new paragraph 7 has been inserted in relation to specific low-risk non-playing field land disposals where the land is not required for operating a school. This is subject to several requirements set out in the paragraph, including the school supports the proposal and that playing field land is not included. Low risk non-playing field land disposals are defined as:

- the sale or lease of caretaker's houses;
- leases to other public sector education providers for no consideration; and
- renewals of nursery leases.

Paragraph 2 has been amended to include a requirement that the school supports the proposal and clarify the meaning of “broadband” to ensure that only underground cables for broadband fall within the class consents.

When should you apply for consent and how do you do this?

- **Before** committing to the land transaction so prior to entering any contract, lease, transfer etc.
- Guidance published in February 2021 (last updated in September 2021).
- [Submit a school land transaction proposal - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- Use an on-line form to apply for consent (portal for acquisitions only currently).
- Complete electronically and email to mailbox - land.transactions@education.gov.uk
- Encourage early engagement and discussion prior to making your application.

Application process

- Applications are assessed against the department's detailed **published guidance on GOV.UK** to determine compliance with policy and legislation. This includes:
 - that the proposal is justified and achieves best value on the best possible terms;
 - the expectation that capital receipts from the disposal of PF will be reinvested in sporting provision and NPF will be reinvested in school capital projects;
 - mitigating loss of any PF land particularly where the school is under its guideline amount;
 - alternative options considered;
 - adequate public consultation for PF disposals.
- Consultation with other teams as appropriate (e.g. Schools Financial Support and Oversight, Regions Group, Playing Field Panel referral).
- Decisions can take weeks to several months (and in some cases longer) depending on complexity.

Tips for applications....

- Title documents - provide up-to-date copies of title register and plan for school site and land concerned.
- Playing field figures - guideline amount to be calculated in accordance with our guidance. For nursery lease disposals, provide playing field figures for the school if the lease area includes playing field land.
- Public consultation - generally required for playing field disposals, should be undertaken within the 12 months before the application.
- Valuation - needs to be recent (i.e. within last 3 months). NB: transfer of publicly funded school land to another public sector education provider should be at nil value.
- Proceeds - capital receipts should be spent on capital projects, not routine revenue type maintenance.
- Land disposal should be a last resort - all alternative options should be explored (including seeking funding for works, consider other uses of the land).
- Application form to be signed by the applicant, not solicitors.
- We recommend applying as early as possible - playing field disposals can often take 6-9 months.



Thank you

Any questions?