



Department
for Education

Advice on The Protection of School Playing Fields and Public Land

For local authorities, governing bodies,
foundation bodies, trustees, diocesan
authorities, voluntary bodies, Academies
and sports organisations

November 2012

Contents

Summary	4
About this departmental advice	4
Expiry or review date	4
Who is this advice for?	4
Overview	4
Contacts	5
The Legal Framework	6
Section 77	6
Changes of Use	6
Schedule 1 to the Academies Act 2010: Changes to the requirements for disposing of school land	7
Matters for which consent is not required	7
Applications Criteria	8
Overview	8
Closing and closed school sites	8
Section 77 criteria	9
Other Information	11
Applying for consent	12
Making an application under Section 77	12
Section 77 application – Disposal of School Playing Fields	12
Section 77 application – Change of use of school playing field	12
Making an application under Schedule 1	12
Telecommunications masts	13
Annex A: Area Guidelines - Information on recommended playing field area for schools (m ²)	15

Annex B : Class Consents: Section 77 School Standards and Framework Act 1998	16
Annex C : Class Consents: Schedule 1 Academies Act 2010	20
Annex E	24
Definitions	24
Playing Fields	24
Land	25
Sports pitch	25
Annex F : Disposals under Schedule 22 to the SSFA 1998	26

Summary

About this departmental advice

This is advice from the Department for Education. This advice is non-statutory and sets out the Secretary of State's policy to protect school playing fields, and the Secretary of State's powers to protect land for Academies. This advice does not influence or affect the procedures for applying for planning permission. Education Ministers do not have any statutory powers to influence any future development of land; this is strictly a matter for the local planning authority. This has been produced to help recipients understand their obligations and duties in relation to:

- The School Premises (England) Regulations 2012;
- Section 77 of the School Standards and Framework Act 1998;
- Schedule 1 to the Academies Act 2010 (as inserted by Schedule 14 to the Education Act 2011);
- Section 36 and Schedule 4 to the Education and Inspections Act 2006;
- General consent for the disposal of playing fields by restriction 2011.

Expiry or review date

This advice will next be reviewed within a year from date of publication.

Who is this advice for?

This advice is for:

- Local authorities
- Governing bodies of maintained, voluntary and foundation schools
- Trustees
- Diocesan authorities
- Voluntary bodies
- Academies
- Sports organisations

Overview

This advice describes the main circumstances in which local authorities, governing bodies, foundation bodies and trustees need to seek the consent of the Secretary of State for Education to dispose, or change the use, of land used by schools, including playing field land. It also describes how the Secretary of State will assess applications for consent to dispose, or change the use, of such land.

Contacts

Enquiries and application forms should be addressed to:

Schools Assets Team
Education Funding Agency
Area D, Ground Floor
Mowden Hall
Staindrop Road
Darlington
Co Durham DL3 9BG

Tel (01325) 735791

E-Mail: schoolsassets.EFAcapital@education.gsi.gov.uk

The Legal Framework

Section 77

1. Section 77(1) of the SSFA applies to the disposal of playing fields by:

- a local authority (including a parish council);
- the governing body of a maintained school;
- a foundation body; or
- Trustees of a foundation, voluntary or foundation special school;

and section 77(3) applies to certain changes of use of playing fields by:

- a local authority, body or trustees to whom subsection (1) applies

where, in the case of both disposals and changes of use, the playing fields:

- are used by a maintained school (including a maintained nursery school) for the purposes of the school; or
- have been used by a maintained school for the purposes of a school at any time during the preceding 10 years.

Subsections (1) and (3) apply in relation to the trustees of a foundation, voluntary or foundation special school only if the playing field land in question has been acquired or enhanced at public expense;

- where a local authority makes playing field land available to an Academy via a leasehold agreement, subsections (1) and (3) continue to apply to that land for a period of 10 years since the land was last used by a maintained school (usually the date on which the school converted to Academy status). Beyond 10 years, the protections on public land contained in Schedule 1 to the Academies Act 2010 continue to apply.
- where a Foundation/Trust 'owns' land, and the land is wholly publicly funded, or is publicly enhanced, or a determination of public enhancement has been made, protections on public land contained in Schedule 1 to the Academies Act 2010 continue to apply. Ministers will use the same criteria in considering playing fields disposal applications as for those disposals where section 77 SSFA applies.

2. The disposal of non-playing field land or property by foundation, foundation special and voluntary schools is covered by Schedule 22 to the SSFA as amended by the 2006 Act (and may be subject to Schedule 1 to the Academies Act 2010).

Changes of Use

3. Section 77(3), as amended, provides that, without the prior consent of the Secretary of State, a local authority, governing body, foundation body, or trustees of a foundation, voluntary or foundation special school may not:

- 'take any action ... which is intended or likely to result in a change of use of any playing fields .. whereby the playing fields will be used for purposes which do not consist of or include their use as playing fields by a maintained school for the purposes of that school.'
4. So a local authority may not erect new school or other buildings on or change the use of playing fields, for example to a local authority residential home, without prior consent under section 77.

Schedule 1 to the Academies Act 2010: Changes to the requirements for disposing of school land

5. On 1 February 2012, Schedule 35A to the Education Act 1996 was repealed by section 63 (Schedule 14) of the Education Act 2011. The Act makes changes to incorporate a new Schedule 1 to the Academies Act 2010 which extends the requirement to obtain Secretary of State consent to dispose of community school land to include all land in which a freehold or leasehold interest is held by the local authority and which has been used for any school (including any Academy) in the last 8 years. It also removes the disapplication of the requirement for Secretary of State consent in the case of a transfer to an Academy for nil consideration. It is under the new Schedule 1 to the Academies Act 2010 that applications for consent to dispose of local authority land must now be made, although disposal of playing field land continues also to be protected under s77.
6. The Secretary of State will now consider the suitability of all such land for use by an existing or potential Academy (the legal term which includes Free Schools, University Technical Colleges and most Studio Schools). It is important that local authorities and others are fully aware that there should be no expectation that applications for consent will be approved.
7. Local authorities, governing bodies and Dioceses should not commence any works on the site or anticipate any future proceeds of sale in anticipation of Secretary of State consent.

Matters for which consent is not required

8. The prior consent of the Secretary of State under section 77 is not required where:
- consent is required under legislation relating to the compulsory purchase of land;
 - the land in question is land in respect of which the Secretary of State has given a class consent (see Annex B 'Section 77 Class consents');
 - the disposal is in pursuance of a transfer order under paragraph A23 of Schedule 22, as amended;
 - the disposal is one to which paragraph 5 or 6 of Schedule 22 (disposals on discontinuance) applies.

Applications Criteria

Overview

9. The Secretary of State has a general presumption against the need to change the current pattern of school playing field provision by disposal or change of use. Authorities and schools should not view the sale of playing fields as a mainstream or routine method to fund improvements to facilities. The Secretary of State expects authorities and schools to first investigate and exhaust all other means of funding before considering the sale of school playing fields. Decisions to dispose of playing fields are hard. In each and every case we have one question in mind - what is best for pupils' education and their wider school life? The Secretary of State will take his decision on the application having regard to all relevant matters including all information provided by the applicant, objectors, the advisory panel and department officials.
10. As a precondition of applying for his consent, the Secretary of State expects applicants to demonstrate that they have explored all reasonable options prior to making an application to dispose of playing fields, particularly at schools that remain open. In the case of applications from governing bodies, trustees and foundation bodies, the applicant will need to provide evidence that its local authority has no objection to the disposal of the playing field land.

Closing and closed school sites

11. When a school site becomes surplus to requirements, normally as a result of closure, amalgamation or consolidation, consideration may be given to the disposal, or change of use, of the playing fields provided for it. Where there is community use of playing fields, the applicant will need to demonstrate to the Secretary of State that their proposals have taken that use into account and that reasonable alternative arrangements have been offered.

Section 77 criteria

12. The Secretary of State has undertaken to publish criteria against which applications to dispose, or to change the use of, school playing fields will be considered.
13. **Schools' needs** - The legal requirement is that suitable outdoor space must be provided in order to enable physical education to be provided to pupils in accordance with the school curriculum and in order to enable pupils to play outside. The Secretary of State has, however, set out non-statutory guidelines on the recommended size of playing fields (see table at Annex A). As a guide, grassed sports pitches should also be capable of sustaining the playing of team games by pupils at each school that use those pitches for 7 hours per week per school during term time. All-weather surface playing fields can be counted double their actual area, or more where a case can be made demonstrating better utilisation - this reflects its extended availability. In relation to the school that is the subject of the application, the applicant should calculate the playing field provision using the area guidelines (Annex A). Prospective applicants should use a notional number of pupils (numbers on roll) to allow for growth. In simple terms, this should be 105% of the school's current capacity.
14. **Other schools' needs** - Where a local maintained school (within a radius of ½ mile in respect of primary schools and a radius of 1 mile in respect of secondary schools) does not have available to it playing fields that meet the area guidelines, it is for the applicant to demonstrate that the local school has been offered the option to consider whether use could be practically made of the area for disposal.
15. **The curriculum** - Applications for consent to dispose of school playing fields should give a detailed assessment of the impact of the proposal on the provision of the curriculum, and demonstrate clearly how the curriculum will be met should consent be given, in respect of all schools using the facilities. For example, where alternative off-site provision is proposed, the effect of additional travel-time will have to be taken into account.
16. **Community use** - The Secretary of State will take into account formal community use of school playing fields and expects applicants to take into account after school activities and out-of-hours clubs. Applicants should also be able to demonstrate that, where proposals include a permanent loss of playing fields, any existing after school activities will not be adversely affected. Only authorised users of schools' facilities should be taken into account, whether or not such authorised use is covered by formal or informal agreements.
17. Where current formal community users would be displaced if the proposal were implemented, the Secretary of State expects the application to include a full account of the effect on those users: in particular, whether their activities can realistically be relocated to an alternative site on reasonable terms. Applicants should be prepared to present a reasoned argument why consent should be granted where realistic alternative venues cannot be provided. Where fencing off of playing fields has already displaced authorised community users, the Secretary of State will take into account the reasons for the closure of the playing fields to those users and the suitability of any alternative arrangements that were made.
18. **Finance** - Applications must set out the proposed financial implications, including the

intended destination of any expected proceeds, or benefits. The Secretary of State will expect that the first priority for re-investment should be sports facilities, where these are needed by the school, then specific capital projects to improve, or enhance, facilities at or for schools. Applications should provide an assurance that proceeds will be ring-fenced for specific purposes. All applications should include a valuation report prepared by the district valuer, or by a professional qualified valuer.

19. **Equal opportunities** - Proposals to dispose of school playing fields should take into account the needs of pupils with disabilities. Such proposals should ensure that access by special education needs pupils to sports, recreation, and social areas is not adversely affected.
20. **Consultation** - The Secretary of State expects prospective applicants to consult fully on their proposals prior to applying for consent under section 77, and to be open about their proposals. The Secretary of State would expect a consultation period of no less than six weeks, at least four of which must be in term-time.
21. The Secretary of State expects that prospective applicants will consult, in particular:
 - a. the Head teacher, governing body and parents of pupils attending the school;
 - b. any group or organisation with permission to use the playing field;
 - c. the local community generally;
 - d. any minor authority in whose area the playing field is situated;
 - e. the local authority, where the proposal is being made by a governing body or foundation body or trustees;
 - f. the local authority in whose area the playing field is situated, if that is different from the local authority intending to dispose, or to change the use, of the playing field.
22. Applicants will be required to provide, with their application, evidence that relevant groups have been consulted, together with their comments and responses.

Other Information

23. It will be helpful to the Advisory Panel and to the Secretary of State to understand, in some circumstances, the future use to which the area subject to the application to dispose will be put if an application is rejected. The local authority is invited to explain the prospective future of the site if the application is rejected.

Applying for consent

Making an application under Section 77

24. Applications for consent should be made using the appropriate up to date Departmental form, obtainable from the Schools Assets Team or from the Department's website [here](#). Class consent is granted, where applicable, subject to the condition that the local authority disposing of or appropriating the land provides the Secretary of State with details as set out in Annexes B, C and D as appropriate.

Section 77 application – Disposal of School Playing Fields

25. The Schools Assets Team will process applications. Officials will liaise with applicants to ensure that all necessary information is present to allow the Secretary of State to make a decision.

26. All applications will be referred to the independent School Playing Fields Advisory Panel. The Panel is purely advisory and has no decision making or executive function. It comprises representatives of:

- Fields in Trust;
- Learning through Landscapes;
- Local Government Association;
- National Association of Head Teachers;
- Sport & Recreation Alliance.

27. The Chair of the Panel is appointed by the Secretary of State to act as an impartial, independent Chairman. The purpose of the Panel is to provide the Secretary of State with independent objective advice on the merits of each application to dispose of school playing fields, and the Panel will make a recommendation to the Secretary of State. Ministers consider the Panel's advice alongside a range of other issues. The existence of the Panel renders it unnecessary for applicants to consult any of these organisations prior to application.

Section 77 application – Change of use of school playing field

28. The Academies Act made changes to section 77 from 1st February 2012. Up until then, local authorities could change the use of school playing field land for educational purposes. That is no longer the case and where a local authority wishes to change the use of school playing fields the Secretary of State's consent will be required. As this will be a change of use, and not a sale or a disposal, and the land will remain within the education estate, the application will not be considered by the Advisory Panel. The application should be set out in line with paragraph 31 below.

Making an application under Schedule 1

29. When a request for consent under Schedule 1 has been received, the Secretary of State will consider the suitability of the land for use by an existing or potential Academy (the legal term which includes Free Schools, University Technical Colleges

and most Studio Schools). The Secretary of State will in particular need to be satisfied that the site is not needed for an existing Free School proposal and that no group has expressed an interest in retaining the site for a Free School. Applications for consent may be subject to extended consideration at certain times of the year, for example when applications for Free Schools are being considered. Decisions on a request for consent may not be made until it is clear that a site is not so required.

30. It is therefore very important that local authorities and others are fully aware that there should be no expectation that applications for consent will be approved, irrespective of previous decisions. It is also important that local authorities bear in mind the extra time that it may take the Department to consider requests for consent. If there are particular circumstances, for example relating to the state of the land in question or to commercial decisions that mean the local authority needs a decision from the Secretary of State more urgently, then the local authority should set out the urgency of the request and details of those circumstances in full alongside its application and the Secretary of State will consider whether the application can be processed more speedily. Local authorities are encouraged not to apply for consent sooner than 12 months prior to disposal, to enable the Secretary of State to consider that the site is needed for Academy use. For clarity, the Department would be unable to assess properly applications made more than 12 months prior to planned disposal, as local Academy need is less likely to be defined so far in advance. Local Authorities are also reminded of the Secretary of State's powers to apply conditions to his consent including time limits.

31. When applying for consent under the new Schedule 1 to the Academies Act 2010, the following details must be provided:

- a) school number;
- b) address including postcode of the disposal site;
- c) the size of the area for disposal;
- d) the nature of the site i.e. land, buildings, combination, caretaker's house;
- e) the gross internal floor area of buildings on the site;
- f) the reason for disposal;
- g) site plan with the disposal area clearly marked;
- h) basic need information both current and forecast, in the locality of the site(s) for disposal (rather than LA-wide). Please explain, in the context of forecast basic need, why the Council believes the sites can be disposed of;
- i) confirmation that the site is not needed for an existing or potential Free School proposal and that no group has expressed an interest in retaining the site for a Free School.

32. All applications for Schedule 1 consent (including the details specified in paragraph 31) should be sent by email to: schoolsassets.EFAcapital@education.gsi.gov.uk

Telecommunications masts

33. The siting of telephone masts and their base stations on school playing fields are disposals that are covered by section 77. The Department has established a policy that the installation of telecommunications masts and other equipment will not

normally be permitted on school playing fields unless:

- the prior approval of planning consent has been obtained, thus demonstrating that the proposals comply with International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines;
- it is clearly demonstrated that the proposals enjoy the support of a significant majority of parents of pupils at the school affected; and
- consultation under the planning process requires only that proposals have the support of the school's governing body.

Annex A: Area Guidelines - Information on recommended playing field area for schools (m²)

The total recommended area of playing fields, as defined in section 77, for existing schools can be calculated for any school from the table below.

It should include grassed and hard-surfaced PE and sport area, including pitches and games courts, as well as informal, social and habitat areas.

Recommended minimum site areas for existing schools	Base area for any:		Area per pupil place for:	
	primary or special school	secondary or middle school	N, R and KS1	KS2-4 & Post-16
net site area, or 'playing field' area	2000	9000	11	50

An all-weather team game playing field may be treated as if it were two times its actual area or more if a case can be made for better utilisation. This reflects its extended availability.


Early Years Foundation Stage	Ages 3-5	Nursery and Reception
Key Stage 1	Ages 5-7	Years 1 and 2
Key Stage 2	Ages 7-11	Years 3, 4, 5 and 6
Key Stage 3	Ages 11-14	Years 7, 8 and 9
Key Stage 4	Ages 14-16	Years 10 and 11
Post-16	Ages 16-18	Years 12 and 13

Annex B : Class Consents: Section 77 School Standards and Framework Act 1998

The School Playing Fields General Disposal and Change of Use Consent (No 4) 2012

- 1) The Secretary of State for Education, in exercise of the powers conferred on him by section 77 (5) of the School Standards and Framework Act 1998, hereby grants the following consent.
- 2) This consent comes into force on 31 October 2012 and may be cited as “The School Playing Fields General Disposal and Change of Use Consent (No 4) 2012”.
- 3) In this consent:

‘the 1998 Act’ means the School Standards and Framework Act 1998;
‘change of use’ means a change of use falling within section 77(3) of the 1998 Act;
‘playing fields’ has the same meaning as in section 77(7) of the 1998 Act.
- 4) Consent is hereby granted to the disposal or change of use of playing fields to which section 77(1) or (3) of the 1998 Act applies, where the disposal or change of use is of a description specified in the Schedule.
- 5) This consent is granted subject to the condition that body disposing or changing the use of the playing field provides the Secretary of State with:
 - (a) details of the location and area (in square metres) of the playing fields to be disposed of or have their use changed; and
 - (b) the area (in square metres); of the remaining playing field land; and
 - (c) detail of the total site area of the school (in square metres); and
 - (d) details of the number of pupils on the school’s roll; and
 - (e) the date or proposed date of the disposal or change of use; and
 - (f) an explanation as to why the body thinks that the disposal or the change of use is covered by a class consent; and
 - (g) a plan clearly showing the area in question in relation to the whole of the school site; and
 - (h) where the disposal or change of use is at an operating school, the views of the headteacher and governing body.
- 6) The School Playing Fields General Disposal and Change of Use Consent (No.3) 2004 (as amended) is hereby revoked.

.....Department for Education

Dated .....

SCHEDULE

1. The disposal of hard play areas and enclosed social areas and other ancillary social and recreation or habitat areas that surround the buildings at closed or closing school sites provided that either;
 - a) No other schools share or border the site; or
 - b) The body seeking to dispose of the land can satisfy the Secretary of State that the areas in question are not needed by any other schools which share or border the site

‘Hard play area’ means incidental recreation area with tarmac, concrete or paved surface. It does not include areas provided mainly for any type of sport.

‘Enclosed social area’ means social areas, not used for any type of sport, which are enclosed on at least three sides by school buildings.

2. The grant of an easement and/or a way leave over playing fields where such land is required for the purpose of constructing, maintaining or servicing a highway, or for health and safety requirements or enabling provision of gas, water or electricity.
3. Temporary disposal or change of use of a school playing field provided that:
 - a) the lease or temporary change of use is for no longer than three school terms; and
 - b) the Secretary of State is satisfied that the school is still able to carry out the curriculum to at least the same extent; and
 - c) the land is returned to at least the same condition that it was beforehand.
4. The disposal of an area of land less than 50m², where such land is required for purposes of constructing, maintaining or servicing a highway, or for health and safety requirements or enabling provision of gas, water or electricity.
5. The disposal of playing fields to an organisation which does not have the principal purpose of making a profit from commercial sports schemes when the following conditions are met:
 - a) the terms of the disposal agreement provide that any school or community user group using the playing fields in the six months immediately before the transfer may continue to do so for at least 10 years following the date of the disposal, during which time they will have access to the playing fields for at least the same periods and on the same, or more favourable, terms as they did before the disposal; and either
 - b) the constitution of the receiving organisation obliges that organisation to maintain them as playing fields; or
 - c) the terms of the disposal agreement require that organisation to maintain them as playing fields for at least 10 years from the date of disposal; or

- d) the disposal is to a local authority and the receiving authority has given an undertaking that the playing fields will continue to be used as school/community playing fields for at least 10 years from the date of disposal.
6. A disposal which involves the granting of a leasehold interest in the whole school site, including the playing fields to facilitate an agreement under a Private Finance Initiative, provided there is no net loss of school playing fields.
 7. The disposal or change of use of playing fields (“the original playing fields”) where, upon that disposal or change of use, any school which used the original playing fields in the six months immediately before the disposal will have made available to it newly created, alternative playing fields, provided that all of the following requirements are met:
 - a) the replacement playing fields are of at least the same area as the original playing fields;
 - b) the replacement playing fields are capable of sustaining 7 hours use a week per school that will have use of those playing fields;
 - c) the replacement playing fields are immediately available to any schools which used the original playing fields on the same, or more favourable terms as the original fields had been;
 - d) the replacement playing fields have the same or better standards of facilities as the original playing fields;
 - e) the location of the replacement playing fields is such that the schools using them are able to carry out the curriculum to at least the same extent as they were on the original playing fields;
 - f) there is no reduction in the amount or type of sports provision currently available to the schools who used the original playing fields.
 8. The disposal of playing fields where they are not a school’s own provision of playing fields but fall within section 77 only by reason of a school’s temporary or occasional use of them.

‘school’s temporary use’ means use as a school’s main playing fields for a maximum of three school terms in the last ten years or use only whilst the school’s own playing fields could not be used by the school for reasons outside the school’s or local authority’s control.

‘school’s occasional use’ means either an infrequent and informal use without prior agreement, or a formal use but only by specific pupils or for a set purpose on an infrequent basis.

9. Disposal of playing fields by a local authority in order to fulfil its duty under paragraphs 8 and 9 and of Schedule 3 and paragraphs 16 and 20 of Schedule 6 to the 1998 Act to transfer to a voluntary or foundation school (as the case may be) any premises which it is providing for that school to use by way of assistance.

10. The disposal of an interest in land in favour of a person for the purposes of an Academy for no [or nominal] consideration where an Academy Order has effect in respect of a maintained school which uses the land and the school is to be an Academy.

Annex C : Class Consents: Schedule 1 Academies Act 2010

The Academies General Disposal and Appropriation Consent (No 2) 2012

- 1) The Secretary of State for Education, in exercise of the powers conferred on him by Schedule 1 to the Academies Act 2010, hereby grants the following consent.
- 2) This consent comes into force on 31 October 2012 and may be cited as “The Academies General Disposal and Appropriation Consent (No 2) 2012”.
- 3) In this consent:
 - ‘the 2010 Act’ means the Academies Act 2010 ;
 - ‘appropriation’ means an appropriation of land under section 122 of the Local Government Act 1972 ;
 - ‘a disposal’ includes entering into a contract to make a disposal or granting an option to make an acquisition.
- 4) Consent is hereby granted to the disposal or the appropriation of a freehold or leasehold interest in land to which sub-paragraph 4(2) or 6(2) of Schedule 1 of the 2010 Act applies, where the disposal or appropriation is of a description specified in the Schedule.
- 5) This consent is granted subject to the condition that the local authority disposing of or appropriating the land provides the Secretary of State with:
 - (a) details of the location and area (in square metres) of the land to be disposed of or appropriated; and
 - (b) details of the total site area (in square metres) of the school or former school; and
 - (c) the date (or the proposed date) of the disposal or appropriation; and
 - (d) an explanation as to why the local authority thinks that the disposal or the appropriation is covered by a general consent.

Signed.....



on behalf of the Secretary of State

Dated1.11.12

SCHEDULE

- 1) The disposal of an interest in land in favour of a person for the purposes of an Academy for no [or nominal] consideration where an Academy Order has effect in respect of a maintained school which uses the land and the school is to be an Academy (including Free Schools, Studio Schools and University Technical Colleges) .
- 2) The disposal in respect of land consists of a grant of a lease to facilitate an agreement under the Private Finance Initiative or a Public Private Partnership.
- 3) The disposal or appropriation of an area of land [which is part of a single school estate or land title] less than 250 square metres provided that the following qualifications are met:
 - a) the disposal or appropriation is not part of a disposal or appropriation of a larger area of land;
 - b) the land to be disposed of or appropriated does not, taken together with any areas of land in which the local authority holds a leasehold or freehold interest which have been disposed of in the last 5 years, form a combined area of 250 square metres or more; and
 - c) the land to be disposed of or appropriated does not constitute an access to an area of land in which the local authority have a leasehold or freehold interest and which consists of an area of 250 square metres or more.
- 4) For the avoidance of doubt, any disposal of an interest in land by a local authority in order to fulfil its statutory duty; for example, under paragraph 9 of Schedule 3 to the School Standards and Framework 1998 Act to transfer to an existing voluntary aided school any premises which it is providing for that school to use by way of assistance.
- 5) The disposal of an area of land less than 50 square metres where such land is required for purposes of constructing, maintaining, or servicing a highway, or for health and safety requirements or enabling provision of gas, water or electricity.

Annex D : General Consent For Disposal Of School Playing Fields By Restriction

In the exercise of his powers under section 77(5) of the School Standards and Framework Act 1998, the Secretary of State for Education gives the following consent.

This consent may be cited as the General Consent of Disposal of Playing Fields by Restriction 2011 and comes into force on 22nd August 2011.

In this consent-

“the Act” means the School Standards and Framework Act 1998;

“person” includes a body of person corporate or unincorporated;

“restriction” means Restriction in the Register of Title kept by the Chief Land Registrar in accordance with the Land Registration Act 2002.

Consent is given in relation to the disposal of any playing fields to which section 77(1) of the Act applies, where the disposal consists only of a person entering a Restriction in relation to the playing fields (to apply to any subsequent disposal of them), in circumstances where that person has awarded a grant for purpose of upgrading the playing fields (or facilities thereon).

This consent is given subject to the following conditions.

1. Prior to the disposal, the body (or trustees) disposing of the playing fields provides the Secretary of State with:
 - (a) the name and address of the school and the address of the playing fields to be disposed of (if different);
 - (b) a plan of the site on which the playing fields are situated;
 - (c) the proposed date of the disposal;
 - (d) the reason for the disposal;
 - (e) the wording of the proposed Restriction;
 - (f) a copy of the undertaking referred to below.
2. Prior to the disposal, the person entering the Restriction provides the body (or trustees) disposing of the playing fields with a written undertaking that they will not withhold consent to a subsequent disposal of the playing fields to another maintained school or an Academy, where the governing body (or trustees) of that maintained school or the proprietor of that Academy agree in writing-
 - (a) that the playing fields will continue to be used by that maintained school or Academy as playing fields in accordance with the conditions of the grant, failing which they will repay the grant; and
 - (b) to the entering of a Restriction, in the same terms as the original Restriction, to apply to any subsequent disposal of the playing fields.

Signed:  JANE CUNLIFFE

Deputy Director, Central Capital Unit

Department for Education

Date: 22nd August 2011

Annex E

Definitions

1. Section 77 and Schedule 1 use a number of terms that legislation does not define. The final interpretation of these terms is a matter exclusively for the courts, but advice is offered below. Where legislation does provide a definition for the terms used in section 77 and Schedule 1 we have, for ease of reference, reproduced those definitions here. We also give the Department's view of certain terms used for the purposes of this advice.

Playing Fields

2. Section 77(7) of the SSFA defines playing fields as
'land in the open air which is provided for the purposes of physical education or recreation, other than any prescribed description of land'
3. The Department takes the view that, for the purposes of section 77, school playing fields include:
 - **grass pitches and artificial surface pitches** set out for the playing of sports
 - **hard surface games courts** including multi-games courts, tennis courts, netball courts and hard paving marked out for games;
 - **informal and social areas**, including grassed areas, paved areas (including playgrounds), outdoor seating and teaching areas including rest and quiet areas;
 - **marginal areas**, around the edges of playing fields for run-off and to allow for the cyclical realignment of pitches;
 - **habitat areas**, set aside for the formal teaching of nature or informal curriculum purposes, including meadowland, wildlife habitats (including ponds), gardens, nature trails and outdoor science areas.
 - **local authority parkland** or other open space that is used, or has been used in the last ten years, for the purposes of a maintained school.
4. The Department's view is that land which falls under the following descriptions is not considered to be school playing fields under section 77:
 - land on which stands a building or other structure including indoor and outdoor swimming pools, and incidental land that is functionally linked to such buildings or structures;
 - soft landscaped or grassed areas not suitable for use for physical education or recreation purposes, such as marginal waste land outside of a school's physical boundary fencing and ornamental or other flower beds which directly

surround a building_ or which are connected to a caretaker's house, and

- roads, car parks, paths and, for example, hard standing areas for the storage of waste containers.

Land

5. Land is defined in section 579(1) of the Education Act 1996 as 'buildings and other structures, land covered with water and any interest in land.'

Sports pitch

6. The Department's view is that a sports pitch means an area of;

- Open grassed land that is capable of forming at least a small pitch which is equal to or larger than the Football Association's recommended area for games played by under-10's, that is 2,000m². It should also have a configuration and topography making it suitable for a sports pitch, whether it is laid out or not, or
- Synthetic or artificial playing surface, or dedicated hard games court of more than that is set out for team games.

A sports pitch will naturally form part of a school's playing fields.

Annex F : Disposals under Schedule 22 to the SSFA 1998

7. Schedule 22 has been significantly amended by Schedule 4 to the Education and Inspections Act 2006 and relates solely to the disposal of non-playing field land by the governing body of a foundation, voluntary or foundation special school, by a foundation body or by the trustees of a foundation, voluntary or foundation special school.



Department
for Education

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