

Director of Legal Services :
David Tatlow

BRIEFING

THE DISPOSAL AND CHANGE OF USE OF PLAYING FIELDS USED BY SCHOOLS

1 What is a “Playing Field?”

A “playing field” is defined at Section 77 (7) of the Schools Standards and Frameworks Act 1998 (“the Act”) as “land in the open air which is provided for the purposes of physical education or recreation...” The DfES take the view that this would include not only grass and artificial sports pitches but also local authority parkland that has been used by schools and habitat areas. Broadly speaking the Act protects any land in the open air used by a school that is not a car park, road, footpath or hard standing area

2. What is Central Government’s policy on the disposal/change of use of playing fields?

Central Government has a general presumption against the need to change the current pattern of playing field provision by disposal or change of use and that local authorities and schools should first investigate and exhaust other means of funding before considering the sale of playing fields. The Act provides that in general the prior consent of the Secretary of State is required where a local authority intends to dispose or change the use of any playing fields

3. What is meant by a “disposal”?

A “disposal” is the granting or disposing of any interest in land and includes

entering into a contract to grant or dispose or granting an option to purchase. “Disposal” does not include the granting of a licence or the entering into of a Transfer of Control Agreement.

4. Does Birmingham City Council have a policy on the disposal/change of use of playing fields?

The Birmingham Unitary Development Plan provides a playing field policy which broadly provides a target provision of both public and private playing fields of 1.2 hectares per 1000 population. This figure does not, however include school playing fields. Development would not normally be allowed and alternative playing field or open space use should be considered first. Where development is considered to be appropriate this would only be acceptable subject to a community benefit secured through a Section 106 agreement. Further advice should be obtained from the Planning Department

5. What if the playing fields are not currently being used as playing fields?

The Act affects not only playing fields currently in use but also playing fields which though not used as playing fields at the time of the disposal or change of use “have been so used at any time within the (preceding) period of 10 years” It is therefore important to check the history of any open land.

6. Is the prior consent of the Secretary of State needed under all circumstances?

The School Playing Fields General Disposal and Change of Use Consent (No.2) 2001 ("the General Consent") provides a general consent in relation to disposals or changes of use of a particular description. This General Consent covers the situations broadly summarised as follows:

- (i) the change or disposal is to provide a childcare or similar centre;
- (ii) the change or disposal is, subject to provisos, a hard play area;
- (iii) the grant of an easement;
- (iv) the disposal is of an area of less than 50 square metres and is required for necessary services;
- (v) the disposal is, subject to provisos, to a non-profit making sports organisation;
- (vi) replacement playing fields of a specified type are to be provided;
- (vii) to comply with certain statutory requirements;
- (viii) the playing fields are not owned by the school and the school only has occasional or temporary use; and
- (ix) the playing fields are transferred to a voluntary aided schools.

Whilst this means that if the description falls within the above specific prior consent of the Secretary of State is not required, it is for the Secretary of State to determine whether the general consent applies to the circumstances and an application therefore still needs to be made to the DfES for approval. The DfES aims to give a decision within

2 days if specified information is provided.

If however the land in question will, on a change of use become used in connection with the provision of educational facilities or recreational facilities, eg. if additional classrooms or an indoor gymnasium is to be erected on a playing field, then consent is not needed provided the statutory minimum area of playing fields (see below) is complied with, (Section 77 (4) of the Act).

7. What is the statutory minimum area of playing fields to be provided by a school?

The Education (School Premises) Regulations 1999 set out a formula to determine the minimum area of playing fields to be provided by a school depending upon the ages of the pupils. For instance, a school with 100 or fewer pupils requires a minimum area of 2500 square metres of playing fields if the pupils are under 11 years of age and 5000 square metres where there are no under 11s.

8. In considering whether to grant consent to dispose/change use of playing fields what criteria does the Secretary of State use?

Guidance 0580/2001: The Protection of School Playing Fields and Land for Academies sets out the criteria which is based upon the following headings:

- (i) **School Needs:** that any disposal would not affect the requirements of the application school or other local schools, this based upon existing and potential rolls;
- (ii) **Community Needs:** that the needs of the wider local community are fully considered and protected;

- (iii) **Finance:** it is expected that any net sale proceeds arising from the disposal will be ring-fenced and used towards specific projects to improve or enhance sports or education facilities at schools.

It is also a requirement that prospective applicants carry out a full consultation, in accordance with the Guidance, prior to the submission for consent.

9. How is an application (other than an application under the General Consent) made to the Secretary of State and how long does an application take to consider?

An application is made to the Secretary of State using the appropriate application form. The application forms are lengthy and require detailed and comprehensive information.

Applications are assessed by the School Playing Fields Advisory Panel who advise the Secretary of State and who aims to give a decision within 15 weeks of receipt of the application.

10. Are any other consents required?

Consent is also required under Schedule 8 of the Learning and Skills Act 2000 to dispose of any land used by a school including playing fields. Consent is only withheld under Schedule 8 if the Secretary of State reasonably believes that the land could be used to site an Academy.

11. Is there any other statutory criteria?

- (i) **The Town and Country Planning (General Development Procedure):** requires that statutory consultees, including Sports England, are consulted on planning applications involving the development of playing fields

- (ii) **The Town and Country Planning (Playing Fields) (England) Direction 1998/ The Town and Country Planning (Development Plans and Consultation) (Departures) Direction 1999:** requires that certain planning applications relating to playing fields are referred to the Secretary of State

- (iii) **Planning Policy Guidance (PPG) 17: Planning for Sport, Open Space and Recreation - July 2002:** requires that local authorities undertake an assessment of existing and future needs for open space, sport and recreation facilities and how this would lead to the identification of needs and surpluses.

For advice on this paper, please contact either John Wynn on:-

Tel: 0121 303 2036

Fax: 0121 303 1321

E-mail: john_wynn@birmingham.gov.uk