

Thurrock: An ambitious and collaborative community which is proud of its heritage and excited by its diverse opportunities and future

## General Services Committee

The meeting will be held at **6.30 pm** on **8 December 2021**

**Training Room, The Beehive Community Resource Centre, West Street, Grays, RM17 6XP**

### Membership:

Councillors Robert Gledhill (Chair), John Kent (Vice-Chair), Mark Coxshall, Shane Hebb, Victoria Holloway, Barry Johnson and Fraser Massey

### Substitutes:

Councillors Jack Duffin, Deborah Huelin, Andrew Jefferies, Luke Spillman and Lynn Worrall

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### Agenda

Open to Public and Press

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#### 1 Apologies for Absence

#### 2 Minutes

5 - 8

To approve as a correct record the minutes of General Services Committee meeting held on 11 October and 3 November 2021.

#### 3 Items of Urgent Business

To receive additional items that the Chair is of the opinion should be considered as a matter of urgency, in accordance with Section 100B (4) (b) of the Local Government Act 1972.

#### 4 Declarations of Interests

**Exclusion of the Public and Press**

Members are asked to consider whether the press and public should be excluded from the meeting during consideration of an agenda item on the grounds that it involves the likely disclosure of exempt information as specified in Part I of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.

In each case, Members are asked to decide whether, in all the circumstances, the public interest in maintaining the exemption (and discussing the matter in private) outweighs the public interest in disclosing the information.

**6 Employment Matter**

This report will be to follow.

**Queries regarding this Agenda or notification of apologies:**

Please contact Matthew Boulter, Democratic & Governance Services Manager and Deputy Monitoring Officer by sending an email to [Direct.Democracy@thurrock.gov.uk](mailto:Direct.Democracy@thurrock.gov.uk)

Agenda published on: **30 November 2021**

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#### **Advice Regarding Public Attendance at Meetings:**

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1. If you are feeling ill or have tested positive for Covid and are isolating you should remain at home, the meeting will be webcast and you can attend in that way.
2. You are recommended to wear a face covering (where able) when attending the meeting and moving around the council offices to reduce any chance of infection. Removal of any face covering would be advisable when speaking publically at the meeting.
3. Hand sanitiser will also be available at the entrance for your use.

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- You should connect to TBC-CIVIC
- Enter the password **Thurrock** to connect to/join the Wi-Fi network.
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In the case of an emergency, you should evacuate the building using the nearest available exit and congregate at the assembly point at Kings Walk.

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Members of the Council should ensure that their device is sufficiently charged, although a limited number of charging points will be available in Members Services.

To view any “exempt” information that may be included on the agenda for this meeting, Councillors should:

- Access the modern.gov app
- Enter your username and password

## DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF

Breaching those parts identified as a pecuniary interest is potentially a criminal offence

### Helpful Reminders for Members

- *Is your register of interests up to date?*
- *In particular have you declared to the Monitoring Officer all disclosable pecuniary interests?*
- *Have you checked the register to ensure that they have been recorded correctly?*

### When should you declare an interest *at a meeting*?

- **What matters are being discussed at the meeting?** (including Council, Cabinet, Committees, Subs, Joint Committees and Joint Subs); or
- If you are a Cabinet Member making decisions other than in Cabinet **what matter is before you for single member decision?**



**Does the business to be transacted at the meeting**

- relate to; or
- likely to affect

**any of your registered interests and in particular any of your Disclosable Pecuniary Interests?**

Disclosable Pecuniary Interests shall include your interests or those of:

- your spouse or civil partner's
- a person you are living with as husband/ wife
- a person you are living with as if you were civil partners

where you are aware that this other person has the interest.

A detailed description of a disclosable pecuniary interest is included in the Members Code of Conduct at Chapter 7 of the Constitution. **Please seek advice from the Monitoring Officer about disclosable pecuniary interests.**

**What is a Non-Pecuniary interest?** – this is an interest which is not pecuniary (as defined) but is nonetheless so significant that a member of the public with knowledge of the relevant facts, would reasonably regard to be so significant that it would materially impact upon your judgement of the public interest.

### **Pecuniary**

If the interest is not already in the register you must (unless the interest has been agreed by the Monitoring Officer to be sensitive) disclose the existence and nature of the interest to the meeting

If the Interest is not entered in the register and is not the subject of a pending notification you must within 28 days notify the Monitoring Officer of the interest for inclusion in the register

**Unless you have received dispensation upon previous application from the Monitoring Officer, you must:**

- **Not participate or participate further in any discussion of the matter at a meeting;**
- **Not participate in any vote or further vote taken at the meeting; and**
- **leave the room while the item is being considered/voted upon**

**If you are a Cabinet Member you may make arrangements for the matter to be dealt with by a third person but take no further steps**

### **Non- pecuniary**

Declare the nature and extent of your interest including enough detail to allow a member of the public to understand its nature



**You may participate and vote in the usual way but you should seek advice on Predetermination and Bias from the Monitoring Officer.**

## Our Vision and Priorities for Thurrock

An ambitious and collaborative community which is proud of its heritage and excited by its diverse opportunities and future.

1. **People** – a borough where people of all ages are proud to work and play, live and stay
  - High quality, consistent and accessible public services which are right first time
  - Build on our partnerships with statutory, community, voluntary and faith groups to work together to improve health and wellbeing
  - Communities are empowered to make choices and be safer and stronger together
2. **Place** – a heritage-rich borough which is ambitious for its future
  - Roads, houses and public spaces that connect people and places
  - Clean environments that everyone has reason to take pride in
  - Fewer public buildings with better services
3. **Prosperity** – a borough which enables everyone to achieve their aspirations
  - Attractive opportunities for businesses and investors to enhance the local economy
  - Vocational and academic education, skills and job opportunities for all
  - Commercial, entrepreneurial and connected public services

## Minutes of the Meeting of the General Services Committee held on 11 October 2021 at 6.00 pm

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<b>Present:</b>	Councillors Robert Gledhill (Chair), John Kent (Vice-Chair), Mark Coxshall, Shane Hebb (For Item 15), Victoria Holloway and Barry Johnson.  Deborah Huelin (Substituting for Cllr Hebb for Item 14).
<b>Apologies:</b>	Councillor Fraser Massey
<b>In attendance:</b>	Sean Clark, Corporate Director Resources and Place Delivery Mykela Pratt, Strategic Lead HR, Resourcing and Improvement Matthew Boulter, Democratic Services Manager

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### 11. Minutes

The minutes of the General Services Committee meeting held on 5 July 2021 were approved as a correct record.

### 12. Items of Urgent Business

There were no items of urgent business.

### 13. Declarations of Interests

There were no declarations of interest.

*At 6.02pm the Committee agreed to enter exempt session due to the consideration of individuals for the purpose of shortlisting.*

### 14. Recruitment of Assistant Director Children's Services - Shortlisting

The Committee discussed the shortlist of candidates.

**RESOLVED that two candidates be progressed to interview.**

*At 6.04pm the Committee agreed to return to public session.*

### 15. Thurrock Regeneration Limited (TRL) Progress Report

Cllr Coxshall introduced the report stating that he would have liked to have made the recruitment process for board members quicker but the process was still well underway and progressing. It was confirmed two applicants had

already applied and there was confidence more quality candidates would apply.

Cllr Kent highlighted the benefits of the Belmont Road site for housing but believed the access issues were significant and troublesome to the local community. He asked that communications with the community be sensitive and that issues were resolved effectively. It was commented that some communications would be most effective door to door than through a letter.

A discussion was had on the change of consent to the Belmont Road site and officers confirmed that Thurrock Regeneration Limited (TRL) were aware they needed to submit a new planning application and that any variations needed to be communicated to the local community.

Cllr Holloway enquired where the recruitment for board members had been undertaken. Officers highlighted trade journals and direct approaches and agreed to send the committee a list of all recruitment sources. It was confirmed that the Council could go out to recruitment again if board members were not found in the first attempt. It was important the right mix of people were found for the roles. Officers agreed to forward the results of the recruitment to the committee as soon as they were agreed and formal notification would be made at the next available meeting of the Committee.

**The meeting finished at 6.15 pm**

Approved as a true and correct record

**CHAIR**

**DATE**

**Any queries regarding these Minutes, please contact  
Democratic Services at [Direct.Democracy@thurrock.gov.uk](mailto:Direct.Democracy@thurrock.gov.uk)**



**Minutes of the Meeting of the General Services Committee of 19 October 2021 postponed and held on 3 November 2021 at 2.30pm.**

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<b>Present:</b>	Councillors Robert Gledhill (Chair), Mark Coxshall, Victoria Holloway, Barry Johnson and Deborah Huelin (substitute for Shane Hebb)
<b>Apologies:</b>	Councillors John Kent (Vice-Chair), Shane Hebb and Fraser Massey
<b>In attendance:</b>	Jackie Hinchliffe – Director of HR, OD and Transformation Sheila Murphy – Corporate Director of Children’s Services Matthew Boulter – Democratic Services Manager

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**16. Declarations of Interests**

There were no declarations of interest.

*At 2.35pm the Committee agreed to enter exempt session in order to interview the candidates.*

**17. Interviews for Assistant Director Children's Services**

The Committee interviewed two candidates for the role.

**RESOLVED That Council be recommended to appoint Ms Janet Simon to the post of Assistant Director of Children’s Services.**

**The meeting finished at 5.20 pm**

Approved as a true and correct record

**CHAIR**

**DATE**

Any queries regarding these Minutes, please contact  
Democratic Services at [Direct.Democracy@thurrock.gov.uk](mailto:Direct.Democracy@thurrock.gov.uk)

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8 December 2021		ITEM: 5
<b>General Services Committee</b>		
<b>Decision as Charity Trustees of Orsett Recreation Ground</b>		
<b>Wards and communities affected:</b> Orsett		<b>Key Decision:</b> N/A
<b>Report of:</b> Sean Clark, Corporate Director of Resources and Place Delivery		
<b>Accountable Strategic Lead:</b> David Johnson, Acting Corporate Property Manager		
<b>Accountable Director:</b> Sean Clark, Corporate Director of Resources and Place Delivery		
<b>This report is</b> Public		

## Executive Summary

This report requests the General Services Committee acting for the Council in its capacity as trustee of the Orsett Recreation Ground, School Lane, Orsett to consider and agree in principle, if it is in the best interests of Orsett Recreation Ground charitable trust to grant a lease for 30 years of the Pavilion Orsett Recreation Ground to Orsett Cricket Ground. If it is considered to be in the best interest of the charitable trust, authorisation is sought to obtain written advice from a qualified surveyor in line with charity law for the lease of the Pavilion, Orsett Recreation Ground and negotiate the terms of the lease.

### 1. Recommendations:

**1.1 Agrees to the decision in principle that, having considered the content of this report, if this is in the best interests of the charitable trust, that a grant of a lease for 30 years of the Pavilion Orsett Recreation Ground should be granted to Orsett Cricket Club where this is the case.**

**1.2 Delegates to the Assistant Director of Property authority to obtain written advice, including securing appropriate valuation and marketing advice from a qualified surveyor in line with statutory requirements of the Charities Act 2011 for the lease of the Pavilion, Orsett Recreation Ground and negotiate the terms of the lease.**

**1.3 The Director of Resources and Place Delivery, in consultation with the Chair of General Services Committee, agree final lease arrangements following consideration of the qualified surveyors report in line with statutory requirements of the Charities Act 2011.**

**1.4 that in the event that the lease arrangements are approved the committee delegates authority to:**

- (i) AD Law & Governance to prepare and complete all the necessary legal documentation in accordance with the agreed terms and Charity Commission requirements to conclude the lease;**
- (ii) AD Law & Governance to contact the Charity Commission and take such steps and enter into such documents if required by the Charity Commission in order to give its consent to the lease; and**
- (iii) AD Property to give public notice in accordance with Section 121 Charities Act 2011, in the local press to notify people within the beneficial area of the charity that the Charity Trustees intend to dispose of the leasehold interest in the Orsett Recreation Ground .**

## **2. Introduction and Background**

- 2.1 Most property and assets are owned by the Council, and all decisions related to the Council's corporate property are made by Cabinet Members or by officers under the officer delegated authorities. However the Council does hold some property and assets on trust which were given to the Council to hold on trust for a particular purpose. Where that purpose is a charitable purpose, transactions relating to property and land held on trust are subject to the requirements of the Charities Act 2011, and the Charities Commission. Guidance from the Charity Commission and Local Government Association on the council's role as charity trustee is attached at Appendix 1
- 2.2 The role of the Council as sole trustee of property and assets falls with the remit of General Services Committee. All decision making concerning matters related to property or assets held by the Council on trust need to be made by General Services Committee acting as Trustee with full regard of their trustee obligations.
- 2.3 Orsett Recreation Ground was conveyed to the Council's predecessor, Thurrock Urban District Council (UDC), nine acres in total, by separate conveyances both dated 31 December 1937 and it has been recently understood by the Council that it is held on trust by the Council for charitable purposes. The charity was created by way of a conveyance of part of the Recreation Ground dated 16 December 1899 and a later conveyance of the remainder of the Recreation Ground dated 17 January 1936. The Council

became the sole charity trustee when the Recreation Ground was transferred to the Council on 31 December 1937.

- 2.4 Under the governing documents of the trust (the 1899 and 1936 conveyances), the charitable objects are the use as an ornamental garden and place of recreation for the Inhabitants of and Visitors to the Parish of Orsett and the neighbourhood.
- 2.5 The governing document also provides that buildings may be erected and maintained by the Trustees for an Entrance Lodge or Entrance Lodges for the residence of some person or persons connected for the time being with the management of the ground and also for the purposes of exercise or recreation. The power to build one or more Entrances Lodges only applies to part of the Ground.
- 2.6 The Council needs to comply the requirements of Charities Act 2011, in relation to decisions relating to the Ground.
- 2.7 The whole site is open to the public for use as a recreation ground. A cricket club have two pitches within the ground, which members of the public can access (apart from when there is a cricket match). In addition there is a small children's play area and an outdoor gym open to all. A plan of the Ground is attached as Appendix 2.
- 2.8 There is a Pavilion situated in the north western corner of the site with a small car parking area. The Pavilion was constructed approximately 30 years ago and is used regularly by the Orsett Cricket Club and football teams who use the sports pitches within the Ground. The cricket club also have a net store. The use of the Recreation Ground for playing cricket is a use that may pre-date the 1937 conveyance to the Council.
- 2.9 The cricket club have an existing lease of 25 years of part of the Pavilion from 24 December 1998 which provides that the Pavilion may be used as a clubhouse in association with the playing and promotion of cricket by *bona fide* members, opposing teams and invited guests. In the past the rest of the pavilion was used by the grounds maintenance staff and for storage of equipment.
- 2.10 Orsett Cricket Club wish to surrender their current lease of their part of the building and seek a new lease for a term of 30 years on the whole of the

building. The Cricket Club's proposal is to invest in redeveloping the Pavilion and to apply for Sport England Grants to undertake this.

- 2.11 In order to secure grant funding they need to have a lease with 25 years plus unexpired term. A new rent of £4,000 per annum is proposed for the whole of the building. A license to use the cricket pitch and maintain the cricket square would also need to be granted in conjunction with the lease.
- 2.12 The Pavilion changing rooms are currently used during the football season by local football teams and the Cricket Clubs has accepted that any lease would require this arrangement to persist.
- 2.13 The Club would like to explore the possibility of refurbishing or redevelopment the Pavilion in return for the new lease. The Club's proposals may also include the use of part of the new pavilion as a "community café" and other associated community uses.
- 2.14 The Charity Commission has produced guidance for trustees of recreation-ground charities that addresses the issue that concerns the Council. This is attached as Appendix 3 On page 3, it states:

***Allowing other organisations to use a recreation ground***

*It is quite common for sports clubs to ask recreation ground charities for permission to use part of the ground on a regular or permanent basis. In such a case you must be satisfied that this will not interfere with the charity's object of providing a recreation ground for the local inhabitants. If such use will prevent reasonable public access to all or part of the ground then it is likely that the arrangement will not be in the best interests of the charity, that is, it will hinder the furtherance of the purposes of the charity.*

***Example 2***

*The trustees may decide that the recreation ground is large enough so that, even if you were to allow the football club permanent use of part of it, there would still be sufficient space for the public to use. The part to be occupied by the club would be surplus to the requirements of the charity. In such a situation, you may well need a formal document, perhaps taking professional advice on the terms of the use by the club.*

**3. Issues, Options and Analysis of Options**

- 3.1.1 Should The Council decide not to grant a new lease there would be little opportunity for other users to use the property with the obligations of the Charity requirements other than other similar sports or recreation users. Failure to grant a new lease to the Cricket Club may result in the current use waning and the building and recreation ground being used less until a similar sports community group could be identified to take a lease. A void period would increase The Council's costs and reduce its income while reducing the use of the recreation ground.

#### **4. Reasons for Recommendation**

- 4.1.1 To safeguard the Trust's assets overall, and for the building to be put into beneficial use and generation of income for the charity.

#### **5. Consultation (including Overview and Scrutiny, if applicable)**

- 5.1 There has been no specific consultation on this report.

#### **6. Impact on corporate policies, priorities, performance and community impact**

- 6.1 NA

#### **7. Implications**

##### **7.1 Financial**

Implications verified by: **Jonathan Wilson, Assistant Director of Finance.**

The financial implications of the proposal are set out in the paper and relate to the proposed annual lease charges associated with any agreed changes to the current lease arrangements. These changes will be considered further by the Corporate Director of Resources and Place Delivery under delegated powers as set out in recommendation 1.3

##### **7.2 Legal**

Implications verified by: **Gina Clarke, Corporate Governance Lawyer and Deputy Monitoring Officer**

The Council as Charitable Trustee of Orsett Cricket Ground must only act within the charity's objects and powers as set out in governing documents, together with any statutory provisions or case law that applies to the legal structure of the charity.

The terms of the Trust require the Ground to be held permanently as a public recreation ground. As such, the starting point is that disposal of any part of the Ground that will result in it being used for other purposes will be contrary to that trust and therefore impermissible. In those circumstances, the Council would

need an order of the Commission to authorise it, and the Commission would need to be satisfied that such a disposition was in the charity's best interests. However, there are some circumstances where a trustee may dispose of a small proportion of the charity's land that will not affect the ability to carry out the purposes of the charity, using the power in section 6 of the Trust of Land and Appointment of Trustees Act 1996. In that event, it would not then be necessary to obtain an Order from the Charity Commission.

The Council as trustees must always act in the best interests of the charity. When it comes to selling, leasing or transferring their charity's land, the law sets out clear requirements to ensure that these important transactions are properly managed in the charity's interests and that the trustees obtain the best price reasonably in the circumstances where trustees can dispose of land without an order.

Due to the complexities external legal advice from Counsel has been obtained. It is also open to the Council to seek formal advice from the Charities Commission. Counsel is of the opinion that the Council may be able to grant the new lease to the cricket club, if it is satisfied that it is in the charity's best interests and the effect of excluding the public from the that part of the Ground is sufficiently limited that the Council's ability to carry out the charity's purposes on the rest of the Ground is not affected. The Council would still need to comply with Part 7 of the Charities Act 2011, including section 119, obtaining a surveyor's report, and s.121, relating to public notice of a disposition of designated land.

Section 117(1) of the Charities Act 2011 provides that no land may be transferred, conveyed or leased without an order made by the court or by the Charity Commission unless the requirements of section 119 have been complied with.

As the proposed disposal to the Club is a lease for more than seven years an order is not required provided that the Council acting as Charity Trustee follows the procedure set out in section 119 of the Charities Act.

Under section 119, the charity trustees must:

- Obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity.
- Advertise the proposed disposition for such period and in such manner as the surveyor has advised in their report (unless the report states that it would not be in the best interests of the charity to advertise the proposed disposition).
- Decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity (section 119(1) (c), CA 2011).



These steps must be taken before the charity trustees enter into any agreement for the sale, lease or other disposition of the land (section 119(1), CA 2011).

The qualified surveyor must:

- be a fellow or professional associate of the Royal Institution of Chartered Surveyors or satisfy such other requirement(s) as may be prescribed by regulations; and
- have ability in, and experience of, valuing land that is the same kind of land and in the same area as the land being disposed of.

The report must contain the information and deal with matters that are prescribed by regulations.

If the surveyor believes that the proposed disposition is not in the best interests of the charity (because it does not make the best use of the land), the surveyor must:

- state that opinion and the reasons for it; and
- advise on alternative ways of disposing of the land.

The governing documents of the trust stipulate that the land must be used for a particular purpose (often referred to as “designated land”). Therefore before granting a lease the Council as Trustee must follow the additional procedural steps set out in section 121 of the Charities Act 2011. This section requires that a public notice must be given of the proposed disposal, inviting representations to be made to the Council as Trustee within a time specified in the notice, being not less than one month from the date of the notice. The Council as Trustee will be required to take into consideration any representations about the proposed disposal made to them within that time.

### 7.3 **Diversity and Equality**

Implications Verified by: **Natalie Smith, Strategic Lead Community Development and Equalities.**

There are no direct implications from this report.

### 7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder, or Impact on Children Looked After)

## 8. **Background papers used in preparing the report**

- Conveyance dated 16 December 1899 of six acres of the Recreation Ground
- Conveyance dated 17 January 1936 of three acres of the Recreation Ground

- Two separate Conveyances dated 31 December 1937 conveying the land to the Council subject to the charitable trusts

## **9. Appendices to the report**

- Appendix 1 – Guidance from the Charity Commission and Local Government Association on the council's role as charity trustee
- Appendix 2 – Plan of Orsett Recreation Ground
- Appendix 3 – Guidance Recreation Ground Charities disposal of land & buildings

**Report Author: Gina Clarke and David Johnson**

# Councillors' guide: to a council's role as charity trustee

## Introduction

This guide has been jointly produced by the Local Government Association and the Charity Commission. It specifically addresses the situation where a local authority is itself the sole trustee of a charity. Many local authorities hold assets that are subject to charitable trusts. Often this is because a donor has left land or property to a council on condition it is used for a public purpose - such as a museum, art gallery or recreation ground. In such a situation the local authority has the status of charity trustee.

This brief introductory guide is intended to help councils and council members fulfil this role responsibly in accordance with charity law and to avoid some of the financial and reputational pitfalls that can occur when things go wrong. This guide does not address the wider set of issues relating to council staff or members being trustees of other charities or the relationship between local authorities and external charitable bodies more generally.

## What is a charity?

A charity is an organisation or entity established **exclusively** for purposes which are capable of being **charitable** and which are for the **public benefit**. In England and Wales, charitable purposes are defined in the Charities Act 2011. Public benefit is explained in Commission guidance.

The people who serve on the governing body of a charity are called **charity trustees**. The **beneficiaries** might be the population of a local area, or a particular type of person, such as those suffering from a medical condition. Trustees have and must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the public benefit for which it has been set up. Trustees have a duty to act solely in the interests of the charity and its beneficiaries.

A corporate body such as a local authority can also be a charity trustee. Where a local authority is trustee, the property in question is often land or buildings intended for a particular purpose; but councils as trustees can also hold financial investments or other funds, often for the purpose of awarding grants to the community. In either case, it is essential to ensure that the assets are held and applied in accordance with the charity's particular purpose.

## Charity law and the Charity Commission

There are about 180,000 registered charities in England and Wales with a collective income of around £50 billion a year. All charities must comply with charity law which defines charities and how they are run.

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in order to increase charities' effectiveness and public trust and confidence in the work they do. Most charities with an income above £5,000 per year must register with the Commission.

## The council's role as charity trustee

Local authorities are empowered by Section 139 of the Local Government Act 1972 to receive and hold gifts on charitable trusts. This may include money or assets left by donors, or charitable trusts created by ancient royal charters or Acts of Parliament.

Local authorities are well suited to being charity trustees; in particular councils are:

- rooted in the local community;
- open and transparent in their dealings;
- highly accountable for their actions; and
- have the high standards of public conduct embedded in the way they work.



There are similarities between the rules and regulations that apply in discharging the functions of a local authority and those of a charity. While many of those underlying principles of prudence and transparency will apply equally to managing charitable trusts, there are also differences. An understanding of these differences is essential if local authority trustees are to perform this role effectively and with the minimum of risk. A number of councils have encountered problems in this area, most notably because:

- councils, used to exercising wide discretion in the way they manage their assets, may not have fully recognised and complied with the restrictions on the use of charitable assets;
- conflicts can arise between things that would be popular with the electorate and the obligations of the trustee, imposed by the terms of the charity;
- where assets were left to the council many years ago, the precise terms of the charity, or even the fact that it is a charity, may have been forgotten or overlooked.

### **Fictional Case Study A – Southbeach Borough Council**

Scenario: Southbeach Borough Council plans a major refurbishment of the sea-front Pavilion Rooms, to include a new art gallery, public meeting rooms and tourist information centre. The Council's solicitor has checked and the building was left to the Council in 1948 on charitable trusts to be used for "public gatherings, artistic or cultural or other activities for the benefit of the people of Southbeach."

Issues and solutions: The promotion of tourism is not a legally charitable purpose. The Council has a conflict of interests between its desire as a public authority to promote tourism and its duty to act in the charity's interests.

As trustee, the Council must ensure that the purposes of the charity are fulfilled. Depending on the terms of the trust, perhaps a proportion of the charitable use could be accommodated within council premises elsewhere to allow a Tourist Information Centre to be incorporated in the refurbished Pavilion. Alternatively, if there is genuinely spare capacity within the Pavilion, perhaps a Tourist Information Centre could be accommodated through a commercial lease from the charity to the Council. In either case, Charity Commission advice and authorisation are likely to be needed.

### **Fictional Case Study B – Touchline District Council**

Touchline District Council is trustee of a recreation ground in an out-of-town location which is little used. It was bequeathed in 1967 by a local citizen as a public recreation ground within the meaning of the Recreational Charities Act 1958. Last year the Council leased the site to the Touchline Football Club to facilitate their expansion plans and the Club has now laid out pitches, spectator areas and has built a substantial Clubhouse.

Issues and solutions: Under the Recreational Charities Act the facilities must be available to members of the public at large. Accordingly, permitting the exclusive use of the grounds by one club would not meet this requirement. In granting the lease, the Council has acted outside its powers and in breach of the charitable trusts. This situation may be complicated to resolve and local feelings are likely to run high, but open public access must be restored as soon as possible on this site or a suitable replacement provided by the Council. Charity Commission advice and authorisation may be required, particularly if the Council is considering an exchange of charity land for land it holds in a corporate capacity.

## **Managing charitable trusts safely**

Local authorities have the skills, public knowledge and professionalism to manage charitable trusts very effectively but care needs to be taken to ensure that unnecessary problems do not arise. Councils and council members should be aware of the following principles:

- For a body to be a charity, it must be independent, i.e. it must exist and operate solely for charitable purposes, not as a means of carrying out the policies or directions of the local authority.
- Where a local authority is a trustee of a charity, it is the corporate body, acting in accordance with its usual procedures, which is "the trustee." While ongoing management may be delegated to officers, responsibility for decision-making and oversight rests with the councillors.
- The terms of the charity must be clearly understood. Nearly all problems that occur stem from a lack of clarity regarding these terms, or indeed failing to recognise that a charity exists in the first place. If there is any doubt about the terms of a charity or how they should be interpreted, appropriate advice should be sought, for example from legal advisors or from the Commission.

- The management of the charity should be kept separate, as far as possible, from the business of the local authority. Depending on the size and circumstances of the charity, it may make sense for a committee of councillors to be allocated this task. It must not be forgotten, however, that responsibility continues to rest with the whole council.
- Equally the finances of the trust must be kept separate from those of the council. The assets must be accounted for separately and income and expenditure should be channelled through discrete cost centres. The local authority may top up the finances of the trust but no funds should pass from the trust into the council's own accounts – although the council may, depending on the circumstances, recover the costs of administration.
- If the original terms of the charity can no longer be realistically followed, because circumstances have changed, the local authority should approach the Commission to see if the charity's governing document can be amended or updated. The Commission can advise on the most appropriate way of doing this.
- The Commission's registration and reporting requirements must be observed. For example, all charities must produce annual statements of accounts under charity law. Depending on the financial size of the charity, it may have to register with the Commission, or be subject to higher levels of accounting scrutiny.
- If any issues arise about whether the terms of the trust have been properly followed, the local authority should contact the Commission and work with them in finding a solution.

### Fictional Case Study C – Heritage City Council

**Scenario:** Heritage City Council is trustee of a charity whose investments include a number of properties, with the income applicable for charitable purposes that benefit the inhabitants of the City. One large building has become semi-derelict and a developer has offered the Council £3 million for the site which it wishes to convert to a night club and casino. The Council feels obliged to accept the windfall but local residents are outraged.

**Issues and solutions:** As trustee the Council must act exclusively in the best interests of the charity. It must make its decision based on consideration of the charity's interests alone. The trustee must manage its conflict of interests and not take account of factors that are irrelevant to the charity (such as the Council's political interests). It must adequately inform itself before making a decision.

Taking appropriate independent professional advice, the trustee should consider whether the offer of £3 million represents the best sale price that the building is likely to achieve. The property should be marketed unless the charity's professional advisor advises otherwise. The trustee could consider whether it should take account of any risk to the charity's reputation. There may be a range of issues on which the trustee might require the Commission's advice, depending on the particular trusts on which the building is held.

In this case, however, the conflict of interest may be unmanageable because of the rules against self-dealing; the Council would have to act as both charity trustee and planning authority. The Council might need legal authority from the Charity Commission either to act notwithstanding the conflict of interest, or to bring in an independent "trustee" to act for the charity for this transaction (which might be preferable in the circumstances).

The trustee might have found it helpful to have a pro-active asset management plan in place. This might have increased the range of potential options for maximising the return on the charity's assets.

### Useful Guidance

Available from the Charity Commission website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

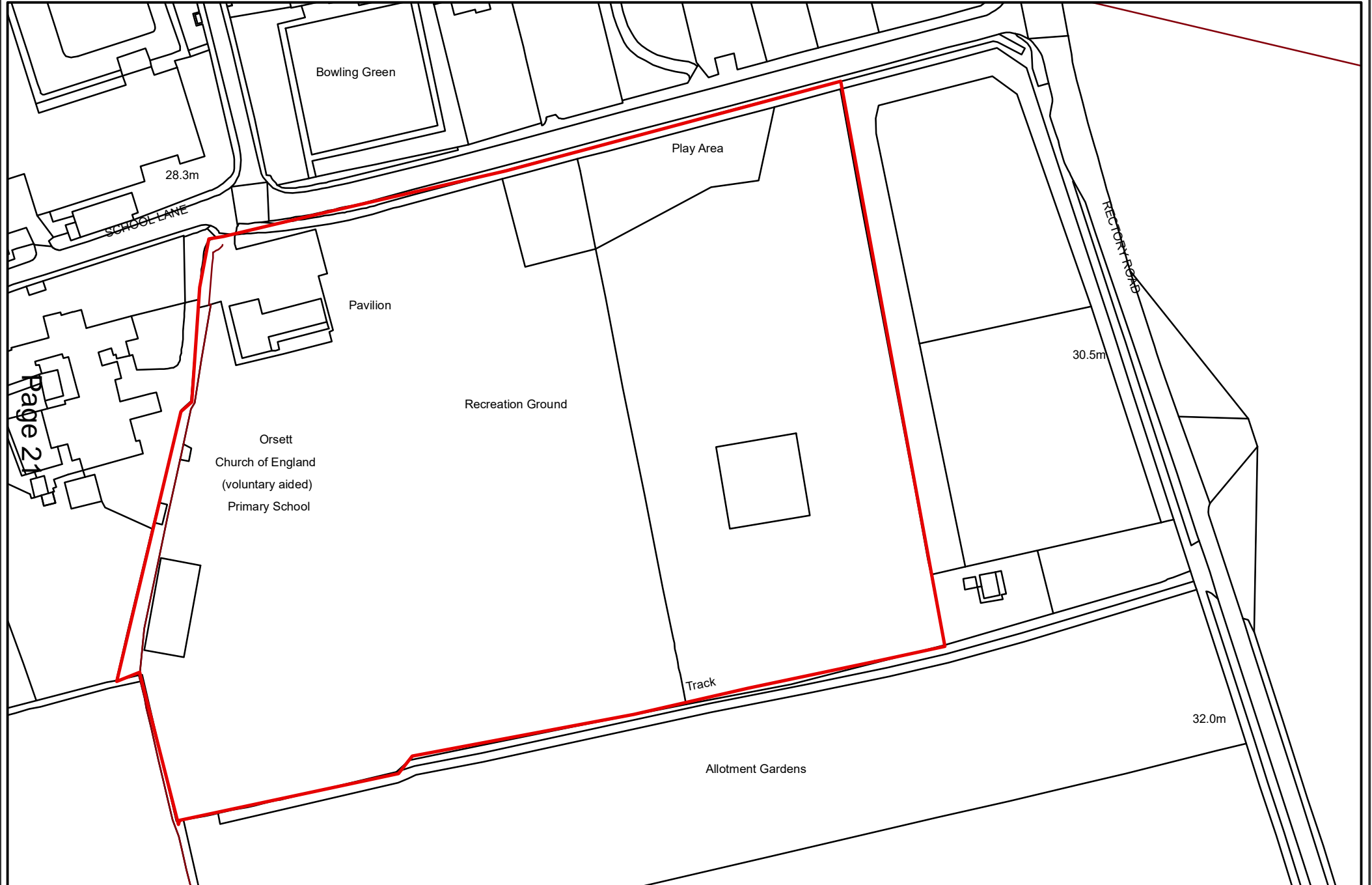
- *The Essential Trustee* (CC3)
- *Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land* (CC28)
- *Charities Act 2006: What Trustees Need to Know* - a plain English guide published jointly by the Charity Commission and the Office of the Third Sector
- *Public benefit guidance*
- *Local Government Charity Toolkit*

## Ten tips for councils in their roles as charity trustee

1. Ensure that any charitable assets, for which the local authority is the trustee, are clearly identified.
2. Make sure you are clear about the objects of the charity set out in its governing document as these dictate how any such asset may be used, in accordance with charity law.
3. Make sure that any charitable assets, for which the council is the trustee, are managed independently in accordance with their charitable purpose and any restrictions in the governing document.
4. Recognise that charity trustees have a duty to be prudent and to act solely in the best interests of the charity.
5. Ensure there is a clear line of responsibility for the management of all charities for which the local authority is the trustee.
6. Ensure that there are clear guidelines for officers and councillors about roles, responsibilities and decision making in the administration of charities.
7. Ensure you have a clear process for identifying and managing any conflicts of interest that arise where the local authority is the trustee of a charity.
8. Actively manage any charity for which the council is the trustee – keeping records up to date, submitting the necessary returns to the Charity Commission and reviewing investments, risks and opportunities on a regular basis.
9. Periodically review whether it continues to be in the best interests of the charity for the local authority to remain as trustee.
10. Follow Charity Commission guidance (and obtain appropriate advice) if you are planning to dispose of charity land, alter the charitable purpose or other terms of the governing document, or take action where trusts have become dormant.



Orsett Recreation Ground



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## Guidance

# Recreation ground charities: disposal of land and buildings

This guidance is to help trustees of recreation ground charities to decide whether or not the charity may dispose of land and buildings.

More complete explanations of what is required for land disposals in general can be found in [Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land \(CC28\)](#).

## When Charity Commission consent is needed before selling or leasing all or part of a recreation ground

In the majority of cases the land held by recreation ground charities must be used for a particular purpose or for particular purposes of the charity. The following guidance covers most situations.

### Situation A

For many recreation ground charities, the effect of selling or leasing all or part of the ground without replacing it will mean that the trustees will no longer be able to carry out the charity's purposes. It is normally possible to assess this by looking at your charity's governing document (which is likely to be in the form of a trust deed or a commission scheme).

If it is clear from that document that:

- the only purpose for which the charity is set up is the provision of a recreation ground; and
- there are no provisions enabling you to sell or lease the charity's property and use the proceeds for other purposes; and
- there is no power of amendment which would allow you to change the purposes or objects of the charity,

you will need to approach the commission in good time before any sale or lease takes place. This is because you will have no power to dispose of the property and you will need to apply to the commission for a scheme to provide the necessary power and new purposes.

The commission's guidance [Changing your charity's governing document \(CC36\)](#) explains what a scheme involves. You will also need to comply with the provisions of Part 7 of the Charities Act 2011. Because the governing document states that the land must be used for the purposes of a recreation ground, you will be required to give public notice of the disposal - s.121 of the Charities Act 2011. Details of these various requirements can be found in [Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land \(CC28\)](#).

Before approaching the commission, you should be able to explain:

- why it is better for the charity that you should dispose of the land. For example, why the land is no longer suitable to serve the purposes of the charity;
- how the disposal will be of benefit to the charity or will enable you to achieve the purposes better;
- if you are not going to replace the land, why the purposes of the charity can no longer suitably be served by providing land for use.

If you are replacing the land with other land as suitable or more suitable for the purpose(s) of the charity, the purposes of the charity are not altered as the provision of the facilities provided by the charity will continue to exist, albeit on a different ground in a different location.

### Situation B

If you already have the power to dispose of all or some of the property (or you have a power of amendment which will allow the trustees to give themselves such a power) then any disposal must proceed in accordance with the requirements of Part 7 of the Charities Act 2011. This sets out what the trustees must do. In the commission's guidance [Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land \(CC28\)](#) there is a section explaining the requirements.

The commission's consent is only needed if the disposal is to be to a connected person or if you cannot comply with the requirements of Part 7 of the Charities Act 2011 or if you are not intending to replace land designated to be used for the purposes of the charity.

The commission's guidance [Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land \(CC28\)](#) explains who a 'connected person' might be. Very broadly a connected person covers anyone or any organisation that has a link with the charity which may give rise to conflict of interest. Common examples include trustees or employees of the charity, their close relatives, and organisations over which people on these categories can exercise some influence.

When you approach the commission for consent you must show it that:

- you are securing the best terms reasonably obtainable in the circumstances and no better offer is likely to be received from a third party; and that you have advertised widely enough to ensure this is the case (for example, the commission may need to see a copy of a report for valuation purposes and possibly copies of adverts you have placed in appropriate publications); and
- any conflict of interest is properly managed and the transaction is open and transparent, thereby avoiding the risk of challenge or criticism (for example, if the connected person is a trustee they may be required by the governing document of the charity to withdraw from any meetings where the transaction is discussed. The commission may need to see copies of the minutes of any meetings to ensure this happened)

The commission will then consider whether it can make an order to give its consent for the disposal to proceed or, in the case of non-replacement of designated land, whether a scheme will be needed.

## Allowing other organisations to use a recreation ground

It is quite common for sports clubs to ask recreation ground charities for permission to use part of the ground on a regular or permanent basis. In such a case you must be satisfied that this will not interfere with the charity's object of providing a recreation ground for the local inhabitants. If such use will prevent reasonable public access to all or part of the ground then it is likely that the arrangement will not be in the best interests of the charity, that is, it will hinder the furtherance of the purposes of the charity.

### Example 1

If a local football club wishes to use as of right the ground one afternoon a week during the winter season for matches, the club may come to an arrangement allowing the club to prepare suitable holes for posts to be slotted in on match days and have reasonable time available to mark out a pitch. If this does not interfere with public access for the rest of the time then this may be acceptable if you, as trustees of the recreation ground, ensure that the club's usage is subject to a formal agreement (such as a licence or hire agreement) and that the club pays the going rate for its usage. The trustees of the recreation ground will need to take care that the arrangement does not become extended resulting in the football club taking over the ground for more and more of the time so that the public is increasingly excluded from enjoying the facility.

### Example 2

The trustees may decide that the recreation ground is large enough so that, even if you were to allow the football club permanent use of part of it, there would still be sufficient space for the public to use. The part to be occupied by the club would be surplus to the requirements of the charity. In such a situation, you may well need a formal document, perhaps taking professional advice on the terms of the use by the club. The earlier advice on selling and leasing applies.

### Example 3

If the whole ground were used only by a sports club and no other group or individuals wanted to make use of it, then the charity would not be achieving its objects by the continued retention of the ground. The ground should be sold or let as a whole so that the proceeds could be used to further the charity's objects in some other way, for example by obtaining other land to set up as a new recreation ground in a new location. Any such sale or lease would need to be considered in the light of the answer to the first question above and would have to be on market terms to the buyer who made the best offer.

## Facilities such as a sports hall or cycle track on the charity's playing field or recreation ground

When considering any proposals which would entail giving over all or part of a playing field or recreation ground to a single interest or 'specialist' activities, you must be satisfied that implementation of the proposals would not interfere with the charity's object of providing a playing field or recreation ground for the local inhabitants generally, if that is the object of the charity. If the end result would prevent use by the public generally in accordance with the object of the charity on a permanent basis, then it may be that the proposals are not in the best interests of the charity.

You must also consider whether the development of the property would fall within the objects of the charity by checking the charity's governing document and any other deeds relating to the land to see if there is any restriction on the use of the property.

For example, sometimes trustees are prohibited from erecting any buildings on the land or from using it for any purpose other than as an open space.

If you can put up a building on the land, you will then need to consider who is allowed access to the building. If the building is to be a pavilion for the sole use of a sports club using the ground and no members of the public are to be allowed to use the facility then that may be too restrictive and not fulfil the trusts of the charity. On the other hand, the pavilion or club house might be available for use by anyone using the ground in accordance with the objects of the charity.

### Leases or licences to owners of land adjoining a recreation ground to allow them access to their homes

If the recreation ground is fully used, generally you can't do this, because any proposals along these lines impinge on the use of the ground by the public. As with any other property transaction you must be satisfied that the proposals are in the best interests of the charity. If there is some reason why it is good for the future of the ground to implement proposals along these lines, you, as trustees, should consider:

- why the adjoining owners need such access and whether it and how much it increases the value of their properties;
- whether the use of the recreation ground for recreational purposes would be affected; and
- whether the value of the recreation ground would be affected.

If a case could be made for granting access then you would have to bear in mind that, given your duty to obtain the best price reasonably obtainable, you would have to charge not just a market price but as much as the adjoining owner was prepared to pay.

Even if the access is to be by way of licence only, it would probably be unwise to allow the neighbours access over the charity's land without a formal document entered into after taking and considering the appropriate professional advice since they could acquire rights which you did not intend. You should take professional advice from at least a solicitor and a surveyor.

### Considerations when the land involves Miners' Welfare property

In cases involving Miners' Welfare property or property which was formerly Miners' Welfare property, there may be some kind of 'claw back' provisions where all or a percentage of the proceeds of sale are returned to the donor organisation if the land is sold at any time or on the dissolution of the charity. In these cases you should take independent legal advice to ensure you fulfil your obligations as set out in the governing document.