



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.