

Disposal of School Land and Secretary of State Consent

This briefing note was first published in September 2024 and has now been re-issued as several changes have been made, including updated guidance being issued by the Department for Education (DfE) in March 2026. This note has been prepared with feedback from the DfE's land transactions team and the new updated guidance.

The main changes are as follows:

- Expectation that disposals of publicly funded school land to another public body (i.e. a local authority/school/academy trust) to be at nil value (no rent or premium charged) save as to costs. If any rent is agreed the DfE will require an explanation as to why, for example if rent is being paid as a return on any capital investment.
- Requirement for additional consents including but not limited to planning and significant change approval
- Public Sector Equality Duty, Freedom of Information and Environmental Information Regulation considerations. An equalities impact assessment/analysis or details of the impact of the land transaction on all individuals with protected characteristics is required as part of an application.
- Solar or telecom lease applications have been simplified and can now be made via the portal. A supplemental form will require completion alongside the main form.
- Nursery provisions are a current priority and form N has been created for disposal of school land for a school-based nursery.

- Consultation requirements on disposals of playing field have been simplified and the guidance mentions which cases are considered by the Panel

At the time of writing we have been advised by the Land Transactions team at the DfE they are experiencing an unusually high number of applications. As a result, they are no longer accepting incomplete applications, and all information must be provided at the outset rather than marked as to follow.

Once an application is made it can take an average of eight weeks before a caseworker is allocated to begin processing. Please factor this timescale into any transaction/proposal which requires consent.

Introduction

For certain land transactions involving school land you may be required to obtain consent from or notify the Secretary of State (SoS).

This briefing note is for academy trusts, governing bodies of foundation and voluntary schools, other foundation bodies and trustees who hold land for the purposes of a school, which is deemed 'publicly funded', and summarises the circumstances in which consent will be required.

Our note does not address any other consents/notifications that may be required from other bodies.

The Legislation and Rules

The rules around land transactions and the requirement for obtaining consent are found in

Schedule 1 of the Academies Act 2010, Section 77 and Schedule 22 of the School Standards and Framework Act 1998 (**SSFA 1998**).

Different rules apply depending on:

- Who holds the school land
- What land transaction is taking place
- What type of land is involved i.e. non-playing field land or playing field land

Playing field land is land in the open air which is provided for the purposes of physical education or recreation. It does not need to be exclusively used for curriculum purposes. Non-playing field land is school land which is not playing field land, such as roads, landscaping (which is not used by pupils for play or for social areas), bin stores and car parking.

More than one set of rules may apply to a land transaction. More than one entity can have a legal interest in the land at the same time. For example, a local authority might hold the freehold interest in the school site and an academy trust holds a leasehold interest in the same school site. If there is a land transaction at the school, both the local authority and the academy trust may need to apply and obtain consent.

What is a disposal and when is consent required?

A disposal is defined in the SSFA 1998 as being the disposal of 'any interest' in land, whether it be granting a new interest or disposing of an existing interest in land, including entering into a contract to grant or dispose of any interest or the granting an option to purchase an interest in land.

'Any interest' in land is a broad definition which includes leases, charges, rights and easements.

This will include the sale of land, the grant of a new lease, the surrender of a lease and the grant of an easement, such as a right of way.

'Disposal' in Schedule 1 to the Academies Act 2010 means the transfer or disposal of a freehold or leasehold interest in the land or the grant of a lease. This is not as wide as 'any interest' in land.

This will include selling land, grant of a new lease, surrender of a lease etc.

Governing bodies, foundation bodies or trustees of foundation, voluntary or foundation special schools are required to notify the SoS before any disposal of publicly funded non-playing field. For playing field land, consent must be obtained from the SoS.

For academies and academy trusts, consent may also be required under their funding agreement and the Academy Trust Handbook. For example, consent is required for:

- Acquiring land
- Disposing of land
- Taking a lease for a term of more than 7 years
- Granting a lease or tenancy – including Assured Periodic Tenancies (APTs)
- Granting an easement
- Entering a restriction on the title of the land at the Land Registry
- Entering into a joint use/shared use/community use agreement (even where required as a planning condition)

If the SoS gives consent, you may be required to make changes to your funding agreement and you will be notified of this when the consent is issued.

The SoS expects capital receipts from a disposal to be invested in capital projects and not spent on routine revenue type maintenance or to address budget deficits.

If you are unsure whether the land transaction being proposed at your school requires consent, please contact us and we can advise further.

How to apply and obtain consent?

The Land Transactions team at the Department for Education (DfE) handle consents/notifications for the SoS. The DfE consider applications alongside its published guidance and to ensure the proposals meet current policy

An application must be made using one of the forms provided. What form is used depends on the land transaction being proposed. Some applications can now be submitted on the DfE's online portal.

The forms are extensive and require a fair amount of information, for example:

- Up to date title documents

- Plans/photographs/aerial images of the area being disposed of
- A full description of the proposed disposal including any draft documentation. If draft documentation is not yet available, some type of heads of terms will be needed
- The school's current amount of playing field in m²
- Evidence of adequate consultation if playing field land is being disposed of
- A recent (within the last 3 months) red book valuation report undertaken by an independent registered valuer licensed by the RICS of the estimated open market value of the land or building to confirm either the sale price or the rental value.

Our advice would be to begin collating the information once a land transaction is proposed.

Once the form has been completed it must be signed by the accounting officer. The signed and completed form is to be sent to the DfE by email or through their portal with any documents/information referred to in the form.

The DfE will allocate a caseworker who will then carry out an initial review and raise further questions and may require further information or evidence.

Once all the enquiries have been answered and considered, the caseworker will present the application to a decision maker who will then make a final decision.

If consent is granted, a letter is issued confirming the SoS has consented to the land transaction, summarising the details of the transaction and setting out any conditions to the consent.

You must not enter into the land transaction (or commit to doing so by way of contract) until you have the consent letter. There is no guarantee that consent will be given, therefore, you should not make any disposal of land, commence any works or allow any third party into occupation, until the consent letter has been issued.

You may also need other consents – such as landlord's consent. planning permission or significant change, this is outside the scope of this briefing note, but we can advise further if required.

If you do not obtain consent where required, the consequences could be serious. For example, if

you are an academy trust you could be in breach of your funding agreement, triggering a financial notice to improve.

We would encourage you to consider any need for consents at the very outset of a transaction and look to submit your application as early as possible. The DfE do try to respond quickly, but if the land transaction is complex or in some way controversial, obtaining consent can be a lengthy process. We can assist with the entire process and help to submit your application as quickly as possible.

General Consent Order (GCO)

These provide a blanket consent from the SoS in certain cases. A notification form is required depending on the type of disposal.

The details of these are outside the scope of this note and we can advise further, if required on a case-by-case basis.

Playing Field Land

As mentioned above the definition of playing field land is land in the open air which is provided for the purposes of physical education or recreation.

There are five types of playing field within the definition. These are:

- (i) Soft outdoor PE area
- (ii) Hard outdoor PE area
- (iii) Soft informal and social areas
- (iv) Hard informal and social areas
- (v) Habitat areas

As part of the application to dispose of playing field land you will be asked to provide details of your school guideline area of playing field in m², the full calculation of your school's guideline area of playing field and your school's current amount of playing field land, in m².

There is guidance available on how to calculate these amounts.

After the caseworker has carried out their initial review and received replies to any follow up queries it is likely that they will refer the application to the School Playing Fields Advisory Panel. The DfE's guidance sets out when cases are referred to the Panel.

The purpose of the Panel is to provide the SoS with independent and objective advice on the extent to which each application meets current policy and legislation. The Panel makes a recommendation to the SoS, who will consider the Panel's independent advice, along with the information provided with the application.

The Panel usually meets monthly to consider any applications. Cases involving the Panel will take longer given the additional steps in the application process and the requirement to consult.

Needless to say, there is a strong policy presumption against the disposal of playing field land unless any loss is mitigated against.

A list is available of all playing field land disposals since 2010 where consent has been approved and can be found at the following link:

<https://www.gov.uk/government/publications/school-land-decisions-about-disposals/decisions-on-the-disposal-of-school-land>

Change of use of playing field land

Similar considerations apply if a change of use of publicly funded playing field land is being contemplated, for example if there is to be expansion onto the playing field but only if it has been used for the purposes of a maintained school in the last 10 years. Proposals to enhance playing field land for use by the school such as installing a multi-use games area will not need the SoS's consent but for other proposals which impact the availability of outdoor space, such as the erection of changing rooms or any temporary structures, consent will be required prior to any change of use.

Where an academy trust holds the freehold of its school site, consent for change of use of playing field land is not required. However, where a local authority holds the freehold of an academy site, then it will likely need consent for the change of use of playing field land

Where playing field land or non-playing field land is no longer to be used for the purposes of an academy, then the person holding the land must also notify the SoS.

The 2024 edition of the Academy Trust Handbook now gives academies the power to enter a finance lease (as opposed to the more usual operating

lease giving someone the right to use or occupy land or property exclusively) for very limited purposes without the need for prior consent. This includes:

- leases of gym equipment
- leases of grounds keeping equipment
- leases related to temporary classrooms and equivalent structures.

How we can help

Our specialist schools property team have experience advising on and obtaining SoS consent on a wide range of land transactions.

The team are familiar with the complexities that may arise, including trustee ownership and can advise on the implications of these.

They can assist with the entire process, by advising on the consent requirements, assisting with completion and submission of the application form, dealing with the project lead and providing replies to their enquiries, reviewing and advising on the consent letter including any conditions and carrying out any follow up actions that may be required, for example amending the academy trust's funding agreement.

Further Information

For further information, please contact:

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