

## Acquiring land

April 2001



# Contents

1. What is this guidance about?	2
2. In this guidance	2
3. Trustees' powers and duties	3
4. What are the general duties of trustees when acquiring land for their charity?	3
5. Investing in land	4
6. Surveyor's report	5
7. Must the trustees obtain an order of the commission before acquiring land?	5
8. Can trustees buy land with a mortgage?	6
9. Dealing with local opposition to a purchase	6
10. Further information	6

# 1. What is this guidance about?

This guidance gives general advice to charity trustees who are thinking of acquiring land, whether for the charity's own use or as an investment.

It is not intended to replace advice from a charity's own professional advisers. The trustees will need to consult these whenever they propose to acquire land.

While this guidance is written with the needs of trustees of charitable trusts in mind, the contents will also be generally applicable to directors of charitable companies. There are some differences of approach between these types of charity and the Charity Commission has indicated the key ones. This guidance does not apply to special cases of common investment funds (other than pooling scheme funds) or common deposit funds.

## 2. In this guidance

### 2.1 Meaning of words or expressions used

The [Charities Act](#): means the Charities Act 2011

Charitable company: means a company formed and registered under the Companies Act 2006; or to which the provisions of the 2006 Act apply as they apply to a company so formed and registered; and which is established for exclusively charitable purposes.

Land: means freehold or leasehold land in the United Kingdom, held (in the case of land in England and Wales) for a legal estate. 'Land' includes buildings, and also includes an interest over other land where that is acquired to accommodate the land being purchased.

Governing document: is any document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter or scheme of the commission.

Mortgage: includes any charge over land.

Qualified surveyor: means a fellow or professional associate of the Royal Institution of Chartered Surveyors (RICS).

Unincorporated charity: means a charitable trust (other than a CIF or a common deposit fund) or a charitable unincorporated association, and for present purposes includes any other charity whose property is held on a trust (eg a company incorporated by Royal Charter).

The word 'must' is used where there is a specific legal or regulatory requirement that you must comply with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

## 3. Trustees' powers and duties

### 3.1 Unincorporated charities

Trustees of these charities generally have a statutory power to acquire land if it is needed to carry out the purposes of the charity or for investment.

The trustees of most unincorporated charities will have had, since 1 January 1997, the wide powers of land purchase conferred by the Trusts of Land and Appointment of Trustees Act 1996. These powers are available to the trustees of any charity which 'either' already owns land 'or' has, at some time in the past, owned land. From 1 February 2001 the scope of this power has been extended from land in England and Wales to land anywhere in the UK. The power can only be exercised if needed to carry out the purposes of the charity or for investment, and it 'cannot' be excluded by the governing document of the charity (unless the governing document is an Act of Parliament).

The effect of Part III of the Trustee Act 2000 gives a corresponding power to the trustees of other unincorporated charities, though, in this case, the power is generally capable of being restricted or excluded by provision in the governing document of the charity.

### 3.2 Charitable companies

In general, a charitable company's powers to acquire land will be set out in its memorandum and articles. If the company is holding property on trust, the powers in the Trusts of Land and Appointment of Trustees Act 1996, and the Trustee Act 2000, are available to a charitable company in the same way as they are to an unincorporated charity.

## 4. What are the general duties of trustees when acquiring land for their charity?

The primary duty of trustees is to carry out their trust in accordance with its terms. Trustees also have a general duty to act reasonably and in the interests of their charity.

A trustee must exercise such care and skill as is reasonable in the circumstances, having regard in particular:

- to any special knowledge or experience that he or she has or holds himself or herself out as having
- if he or she acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession

This means that trustees need to take all reasonable steps to ensure that:

- they have the necessary power or authority to purchase the land
- the property is suitable for its intended use and, in particular, is not subject to any legal or planning restrictions or conditions which might conflict with that use, or with which it may be difficult for the trustees to comply
- any necessary planning permission is obtained
- the price or rent to be paid is a fair one compared with similar properties on the market
- the charity can afford the purchase - in particular that if a property is being bought with a mortgage, the mortgage can be financed out of the resources of the charity which are available for the purpose and that any potential rises in interest rates have been budgeted for

- when acquiring a lease, they understand the obligations to which they will be subject under the lease, and that the terms of the lease are fair and reasonable
- on specialised matters, appropriate professional advisers (a solicitor or a qualified surveyor, for instance) should be consulted; the cost of taking professional advice can be met by the charity
- if trustees are buying land with the aid of a loan, it is their duty to secure the best borrowing terms reasonably obtainable by comparing interest rates and other terms between various lenders

Determining what constitutes 'reasonable steps' will depend on:

- the complexity of the affairs the trustees have to handle in administering the charity
- the seriousness of the loss or harm that might result to the charity or its beneficiaries if the trustees mishandle those affairs
- the skills which a trustee has (or in the case of a professional trustee, ought to have)

## 5. Investing in land

Trustees may wish to acquire land, not for use in carrying out the purposes of the charity, but as an income-producing investment. This may be done provided that they have the power to do so. The commission can provide the necessary authority in a case where it is not otherwise available.

In using the statutory, or any other, power of investment, trustees must firstly have:

- taken proper advice from someone they reasonably believe to be qualified to give this advice (unless the trustees reasonably believe this to be unnecessary)
- considered the suitability to the needs of the charity of land as an investment, and the suitability as an investment of the actual land which it is intended to acquire
- considered the need to spread the charity's investments

They must also review the investments periodically.

These duties with regard to investment do not strictly speaking apply to the investment of the corporate property of charitable companies. The commission would, however, recommend that trustees of these charities observe the principles set out previously.

The needs and resources of charities differ widely, and land may be an appropriate way to invest the funds of some charities but will be totally unsuitable for many others. However, some of these charities may find a land-based common investment fund (CIF) a more suitable vehicle following appropriate professional advice.

The ownership of land carries with it obligations of varying kinds. Some of the points which will need to be considered when thinking about buying land as an investment are:

- it cannot be presumed that land will only rise in value
- land may require more active management than would be necessary with other forms of investment; the commission considers that charities without the resources to provide this should avoid acquiring land as an investment
- land cannot be turned into cash as readily as, for example, stocks and shares; neither can it always be sold piecemeal, as with stocks and shares, if the need to raise an exact sum arises - similarly the management of investment land requires different investment expertise and advice from investment in stocks and shares

- purchase of a sufficiently diversified portfolio of investment land (particularly commercial property) may be impracticable for an individual charity; investment in a land-based CIF may be a more suitable way for some charities to invest in land
- the ownership of investment land may impose financial obligations on the charity

The commission would recommend that this type of investment is normally only suitable for a charity which either:

- has traditionally held land as an investment or
- has a sufficiently wide and varied portfolio of investments into which land could reasonably be introduced

## 6. Surveyor's report

The commission strongly recommends that trustees proposing to buy land, whether for investment purposes or for use by the charity, obtain a report from a qualified surveyor who is acting solely for the trustees. It also recommends that the trustees should proceed only if the report includes the following:

- a description of the land
- details of any planning permission needed
- a valuation of the land
- advice on the price the trustees ought to offer to pay, or on the maximum bid they ought to make at auction
- a description of any repairs or alterations the trustees would need to make, and the estimated cost
- a positive recommendation (with reasons) that it is in the interests of the charity to purchase the land
- anything else the surveyor thinks relevant, including a description of any restrictive or other covenants to which the land is subject

## 7. Must the trustees obtain an order of the commission before acquiring land?

In most cases, no. However it will be necessary to apply to the commission for an order if the charity is proposing to:

- use money which represents permanent endowment to acquire land other than freehold land
- buy land from one of its trustees (or from other people or bodies closely connected with a trustee); in these cases an order will avoid the risk that the purchase might subsequently be set aside because of the conflict of interest
- buy land when it has no power to do so

## 8. Can trustees buy land with a mortgage?

Yes, but in the case of investment land the commission strongly advises the trustees to be particularly careful that the income from the land being acquired is sufficient, after deduction of all outgoings to meet the mortgage repayments and to provide an adequate return on any sum invested.

Usually the land offered as security for a mortgage loan is the land being purchased, but on occasions trustees will want to mortgage land which the charity already owns.

Trustees may, without the commission's consent, grant a mortgage over charity land as security for money they wish to borrow 'provided that' they have the power to do so and they can meet the requirements laid down in the Charities Act .

If they cannot meet these requirements they must seek the commission's consent 'before' they sign or create the mortgage.

The requirements are:

- they must obtain and consider the advice of someone whom they reasonably believe has sufficient ability in, and practical experience of, financial matters to give them sound advice; this person can be an officer or employee of the charity, but they must not have any financial interest in the loan which the trustees are taking out
- the adviser must provide the trustees with advice in writing on three matters:
  - whether the loan is necessary in order for the trustees to be able to pursue the particular course of action in connection with which the loan is sought
  - whether the terms of the loan are reasonable, given the charity's status as a borrower
  - the charity's ability to repay the loan on the terms agreed with the lender

However, the above requirements need not be followed where the authority for the mortgage is contained in an Act of Parliament, a statutory instrument, or a scheme of the court or the commission. Nor is the commission's consent needed in such cases.

Further guidance and information about mortgages is given in the guidance [Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land \(CC28\)](#).

## 9. Dealing with local opposition to a purchase

Some charity projects involving the acquisition of land arouse opposition locally, even to the extent of active hostility. Where this is likely, trustees are advised to plan carefully in advance, to consult widely and to provide full information about their proposals and the reasons for them.

## 10. Further information

Many issues raised in this guidance will require the advice of the trustees' solicitor or a qualified surveyor. GOV.UK offers a wide range of easily accessible online services, tools, information and guidance which trustees should use to help them with any questions they have.