



## Guidance

# Dedication of local authority land as a King George's Field

### Issues covered in this guidance

This note sets out the view the Charity Commission has formed following consultation with [Fields in Trust](#) (formerly known as the National Playing Fields Association) and local authorities, of the effect of dedications as a King George's Field made by local authorities in relation to land they held as part of their corporate property.

The commission has looked at two significant issues which can affect these dedications:

- firstly, whether a declaration of this type, purporting to operate as a charitable trust **would** amount to a disposal requiring the consent of the secretary of state; and
- what the effect would be if such consent were not obtained.

### The commission's conclusions

The commission has come to the view that declaring charitable trusts over corporate property is a disposal for the purposes of legislation affecting local authorities. Accordingly only if the procedures for disposing of property at an undervalue applicable at the time were followed by a local authority, is the declaration valid. In very many cases, the procedures were not followed and so the land is not currently held on an indisputably valid charitable trust.

However, for those local authorities who are now in this position the commission has agreed a model declaration of trust which can be used to secure the charitable status of the Field. This is available from [Fields in Trust](#).

### Background to the commission's conclusions

#### Powers of a local authority

A local authority can only do what the law expressly or impliedly authorises. Any powers it has must be exercised for their proper purposes. Where statute imposes a code defining and limiting the powers of a local authority, that code (a) must be complied with and (b) is exclusive (ie there cannot simultaneously exist any power implied under the general law<sup>1</sup> or under statute<sup>2</sup> to engage in the same process because it may be deemed calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions).

---

<sup>1</sup> *AG v Smethwick Corporation* [1932] 1Ch 562, 575-577

<sup>2</sup> eg s111(1) *Local Government Act 1972*

It follows that if the creation of a charitable trust over land being part of the corporate property of a local authority:

- amounts to a disposal of land; **and**
- the statutory code relating to disposals of land by local authorities is obligatory; **and**
- the subsequent dedication as a King George's Field was not in accordance with that code,

then any purported creation of a charitable trust would have been *ultra vires* the authority and void. This means that the dedication, however else it might operate, could not operate as creating such a trust.

### Land this guidance applies to

This note applies to land acquired as corporate property of a local authority which has subsequently been subject to a dedication as a King George's Field. For example, in some cases the authority may have simply taken a conveyance without further ado. In others it may have taken the property for the purposes of an enactment such as the *Physical Training and Recreation Act, 1937*<sup>3</sup>. It will then have decided to dedicate that land as memorial to King George V as part of a national movement to commemorate that monarch. To assist in this national endeavour the King George's Fields Foundation was established.

The King George's Fields Foundation ('the foundation') was established by declaration of trust on 3 November 1936. It has objects directed to promoting the establishment of playing fields (each to be styled 'King George's Field' and physically distinguished by the placing of panels or an inscription). Its trustee is Fields in Trust (incorporated by charter in 1933).

Before dedicating land for this purpose it was common though not invariable practice for the local authority to approach the foundation for a grant. A standard form of offer letter appears to have been used by the foundation. In return for the offer of a grant and approval of a dedication as a King George's Field (and the issue of heraldic panels to that effect) conditions are required from the applicant to the effect that:

- the field's name must be 'King George's Field'
- its tenure must be sufficiently secure (to enable it to rank meaningfully as a memorial)
- the land must have been acquired for public recreation and usable for no other purpose
- satisfactory assurances are to be given as to future upkeep for public recreation
- entrance design and field lay-out are to be approved by the foundation
- the foundation is to receive annually for a period of five years from the acceptance of the offer a general account of use being made of the field

These requirements need not of themselves amount to the declaration of a charitable trust.

The dedication of the field was effected by a declaration by the authority that the land (in respect of which heraldic panels had been provided by the foundation) should be preserved in perpetuity as a memorial to King George V under the provisions of the foundation and should be known as 'King George's Field'.

---

3 With regard to statutory purpose property, statutes have provided a set of rules distinct and independent from those applicable under the law relating to charities (though much is held for purposes capable of being charitable) and have, by necessary implication, excluded such property from the jurisdiction of the court over charities and from the jurisdiction of the Charity Commissioners: *Richmond upon Thames LBC v AG* (1982) 81 LGR 156, 165 per Warner J.

## Why there is doubt about the charitable status of these fields

Where property is acquired for statutory purposes, the commission's general view is that (even though the word 'trust' may sometimes be used) the statutory corporation would ordinarily not have had power to declare charitable trusts (there being no express power in statute, and no implied power for it to restrict its powers of dealing with land in the future - this amounting to allowing money raised for a statutory purpose to be applied for a different purpose).

Further, a local authority may not generally give away its corporate property<sup>4</sup>. A declaration of charitable trust gives away the beneficial interest (and potentially the legal interest because it may be replaced as trustee) - thus voluntarily giving up statutory dominion and subjecting the property to the charity jurisdiction of the court.

## Powers of local authorities to dispose of land

Where an authority is created and is operating under statutory provisions, the nature and extent of its powers and duties is to be found by seeking the intention of Parliament as expressed or implied in the relevant Acts. If there are statutory controls restricting dealing with assets, they must be complied with. Setting up a structure which would be (if effective) independent of the authority and not bound by the statutory controls would be *ultra vires* because it would be inconsistent with the express statutory provisions. Where a statute, such as the *Local Government Act 1972*, provides the means whereby a council could accomplish its functions, it must be taken that Parliament intended that the council should discharge the statutory functions in accordance with the code which defines and limits the powers. In circumstances where Parliament has laid down a route whereby a local authority **can** undertake an activity to enable it to carry out its statutory functions, the authority cannot say that acting **otherwise** facilitates or is conducive or is incidental to the discharge of the relevant functions – implied powers do not provide an escape route from the statutory controls<sup>5</sup>.

Central government has retained control over local government in many ways including requiring ministerial approval to a number of transactions in land. Such a condition (being a procedural safeguard) is mandatory and non-observance of it would result in an unapproved action being held *ultra vires* the authority and void.

There have been restrictions in place relating to disposals by local authorities since before the establishment of the foundation. The restrictions were originally contained in ss 163 - 170 of the *Local Government Act 1933* and are now to be found in the 1972 Act. With regard to property already held for corporate purposes by local authorities in England and Wales, both principal councils<sup>6</sup> and parish and community councils or parish trustees<sup>7</sup> were generally required under that statutory regime to obtain the specific consent of the secretary of state before they could dispose of land (save in circumstances which do not apply here) for a consideration less than the best that can reasonably be obtained<sup>8</sup>.

---

4 *AG v Manchester Corporation* [1931] Ch 254; *Blake v Hendon Corporation* [1962] 1 QB 283

5 *Hazell v Hammersmith LBC* [1992] 2 AC 1; *Crédit Suisse v Allerdale Borough Council* [1997] QB 306.

6 s123 *Local Government Act 1972*

7 s127 *Local Government Act 1972*

8 Under section 4 of the *Physical Training and Recreation Act 1937*, there was no express power to declare charitable trusts or to convey a freehold interest, but an authority could let land at a nominal rent to any organisation for certain recreational purposes.

It may be accepted that declaring charitable recreational trusts may, in limited circumstances, be conducive to the discharge of the statutory functions of a local authority, but if statute expressly provides for the method whereby such an activity of the authority is to be accomplished (which does not include the grant without any procedural restrictions of a freehold interest, or the declaration of a charitable trust over corporate land), then other methods must be excluded.

It does not seem that such a subsequent declaration of charitable trust following beneficial acquisition of property by the authority for its corporate purposes would come within any available express statutory power.

### Declaration of a charitable trust over corporate property: disposal at an undervalue

The commission has considered whether a declaration of a charitable trust over land already held as part of the corporate property of a local authority amounts to a conveyance of land at an undervalue thus falling within the ambit of ss123 or 127 of the 1972 Act (and effectively of their predecessor provisions in ss 164 - 6 of the *Local Government Act 1933*).

‘Land’ for this purpose includes any interest in land and any easement or right in, to, or over land<sup>9</sup>. It is therefore plainly apt to cover the creation of a charitable trust and of interests under it. A disposal need not be of the freehold or leasehold estate; it can be of an interest in land<sup>10</sup>. Moreover, the concept of an interest in land is on the face of it wide enough to embrace both a legal and equitable interest. A declaration of charitable trust for recreational purposes if valid would alienate the beneficial interest and render the property and its proceeds no longer applicable in accordance with statutory powers and would subject the property to charity jurisdiction<sup>11</sup>.

It therefore seems, in relation to a declaration by a local authority over its corporate land, that this would amount to a disposal for a consideration less than the best that can reasonably be obtained and should comply with any relevant statutory regime regulating such disposals.

This remains true for so long as the regime exists. Specifically, a local authority is not enabled by general provisions to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment<sup>12</sup>.

### The commission’s view

In those cases, therefore, where a local authority has entered into arrangements in relation to its corporate property for a consideration less than the best that can reasonably be obtained, which were not sanctioned by the consent of the secretary of state, it is the commission’s considered view that it is **not** possible to construe those arrangements as creating a charitable trust.

<sup>9</sup> Section 270(2) *LGA 1972*

<sup>10</sup> *R (on the application of Structadene Ltd) v Hackney London Borough Council* [2001] 2 All ER 225 (Elias J)

<sup>11</sup> In relation to s128 (2) *LGA 1972* (which protects third parties relying on a disposal at an undervalue not supported by the consent of the secretary of state), the disposal is not protected from invalidity as against every alleged legal defect. The effect of s128(2) was explained by Lightman J in *R v Pembrokeshire CC, ex p Coker* [1999] 4 All ER 1007. It would not protect against the contention that a decision to dispose of property was unlawful on grounds of breach of fiduciary duty or was unreasonable (see page 234). and of course s 128 would not operate to the benefit of the disposing authority itself.

<sup>12</sup> cf s3 *Local Government Act 2000*

## Effect on King George's Fields

This means that where a local authority has acquired land for a statutory purpose as part of their corporate property, any dedication as a King George's Field that may have been executed does not have the effect of creating a charity **unless** the formal consent of the Secretary of State was obtained prior to the execution of the dedication, or such consent has been rendered unnecessary for the future by the General Disposal Consents Order 2003.

As part of this review of the status of these fields it has become apparent that many local authorities had acted in good faith and believed that the land was held on a valid charitable trust and have no wish to alter that position. Accordingly the commission has prepared standard documentation which local authorities can use to declare appropriate trusts over that land in accordance with powers they now enjoy under the local Government Act 2000 and the General Disposal Consents Order 2003. This is available from Fields in Trust.

## How this affects the foundation

Where a local authority has entered into contracts or covenants with the foundation or its trustee, Fields in Trust, those legal obligations remain in force. They are not affected by the charitable status of the land in question.