

December 2016

DISPOSAL OF CHARITY LAND BY LOCAL COUNCILS ACTING AS SOLE OR MANAGING TRUSTEE

- 1 This note will explain the rules and procedures around the disposal of charitable land by a local council which is the sole or managing trustee of a charity. As sole or managing trustee the local council is responsible for compliance with the charity's founding document and general charity law. See LTN 28 Basic Charity Law for more information on the duties and responsibilities of a charity trustee.

- 2 Where land is subject to a charitable or similar trust restrictions apply under sections 117 to 121 of the Charities Act 2011 (2011 Act). But a disposition of land does not require the consent of the Charity Commission if:
 - a. the disposition is not to a 'connected person' (as defined by sections 118 and 350 to 352 of the 2011 Act) e.g., a trustee of the charity; a donor of land to the charity; a child, parent, grandchild, grandparent, brother or sister of such trustee or donor; an officer, agent or employee of the charity; a spouse or civil partner of any of the foregoing persons; a person carrying on business in partnership with any person falling within any of paragraphs an institution controlled by any such person or two or more of any such persons; a body corporate in which such persons have a substantial interest (in excess of one fifth of the share capital or of the voting power);

 - b. the trustees, before entering into an agreement for sale, or for a lease (except a 'short tenancy' which is the grant of a tenancy for a term not exceeding seven years or the assignment of a term which, at the date of assignment, has less than seven years to run) or other disposition (e.g. the grant of an easement), of land must:
 - i obtain and consider a written report from a qualified surveyor (a fellow or professional associate of the Royal Institution of Chartered Surveyors or a person who satisfies other requirements prescribed by the Secretary of State) who is reasonably believed by the charity trustees to have ability and experience to value the land in question (the information which a surveyor's

report must contain is set out in the Charities (Qualified Surveyors' Reports) Regulations 1992/2980);

- ii advertise the proposed disposition as the surveyor advises in his report (if he so advises); and
- iii decide that they are satisfied, in the light of the surveyor's report, that the terms of the disposition are the best which can reasonably be obtained for the charity.

3 Where the disposal consists in the granting of a short tenancy (unless granted for a one off payment (premium)), the trustees must:

- i first obtain advice from a person reasonably believed to have the ability and practical experience to provide competent advice (such a person does not have to be a qualified surveyor); and
- ii having considered that advice, be satisfied that the terms of the disposition are the best which can reasonably be obtained for the charity.

4 Where land is held on charitable trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity, the land must not be disposed of unless one month's public notice of the proposed disposition is given and any representations made within that period are considered by the trustees of the charity. However, this does not apply if the disposition is being made with a view to replacing the property with other property to be held on the same trusts, or the disposition is the grant of a lease for not more than two years (unless granted for a premium). The Charity Commission may direct that this shall not apply if, on application by the trustees, the Charity Commission is satisfied that the interests of the charity would be best served by removing this restriction.

5 These restrictions override any provisions in the charity's governing instrument except where:

- a. the disposition is authorised expressly or generally by or under any Act of Parliament or Scheme made by the Charity Commissioners (provided that the authority is not made expressly subject to the making of a court order);
- b. a charity disposes of land to another charity at a price less than the market value and is authorised to do so by the trusts of the selling charity; and
- c. the trusts of a charity allow the grant of a lease to a beneficiary at less than the best rent to enable the premises to be occupied for the purpose(s) of the charity.

- 6 Sections 122 and 123 of the 2011 Act mean that all contracts for the disposal of charitable land must state that the land is held by or in trust for a charity and the trustees must certify that either the consent of the court or the Charity Commission has been obtained or that they have power under the trusts of the charity to make the disposal and they have complied with paragraphs 2 to 4 above as far as they are applicable. Where the trustees certify this, then a person who acquires an interest in the land for money or money's worth (whether from the charity or afterwards), can rely on the facts stated in the certificate.

- 7 Sections 124 to 126 of the 2011 Act have broadly similar rules in relation to the mortgaging of charity land as section 117 provides for the sale etc. of such land.

- 8 Sections 127 and 128 of the 2011 Act deal with the release of rent charges, with which few, if any, of the charities with which local councils are connected will be concerned.

- 9 All the above restrictions are cumulative with any restrictions related to local government law so that, for example, the disposal of open space land subject to a charitable trust must comply with both the 2011 Act and open space rules (for further information on non-charity disposals see LTN 45 Disposal and Appropriation of Land by Local Councils).

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
28	Basic Charity Law	Deals with obligations of charity trustees and potential conflicts of interests in decisions related to land held on charitable trusts.
45	Disposal and Appropriation of Land by Local Councils	Describes the restrictions and procedures relevant to a local council's dealings in non-charity land.
47	Easements	Describes the nature and different types of easements.
48	The Difference between Leases and Licences	Explains why the legal differences between leases and licences are important.

49	Business tenancies	In respect of a disposal of land by grant of lease (or assignment), considers the protections conferred by the Landlord and Tenant Act 1954.
57	Easements over Common Land and Village Greens	Sets out the powers of local councils to grant easements over common land and village greens.
68	Negligence	Explains the need for tenants and occupiers of premises to have sufficient insurance cover (e.g. public liability) in place.
75	Lease Negotiations	In respect of a disposal of land by grant of lease (or assignment), explains the process of negotiating them. Also defines and gives guidance on important lease terms.

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This is a new LTN.