

CHANGES TO A GREEN SPACE PROTECTED WITH FIELDS IN TRUST



Guidance Notes

Fields in Trust champions and supports our parks and green spaces by protecting them for people to enjoy in perpetuity.

Fields in Trust works in partnership with landowners including local authorities, voluntary organisations and private landowners to protect publicly accessible green spaces for people to enjoy in perpetuity. Fields in Trust currently protects over 2,700 parks and green spaces through a variety of legal means including charitable status, site ownership and contractual arrangements such as Deeds of Dedication, Deeds of Covenant and Minutes of Agreements.

All these sites are locally managed, but we have a responsibility to ensure any changes regarding land ownership, land transactions, erection of buildings and structures continue to fit with the stated purpose of the site and benefit the recreational use of the site. Our in-house solicitor will carry out a full assessment.

When consent from Fields in Trust is required

Consent requirements vary according to the legal agreements in place and further guidance is provided below. Please note that Field's in Trust's consent, when required, is necessary irrespective of any other legal requirements. To establish whether Fields in Trust's consent is required for a specific change you should first check the governing instruments relating to the space. These may include governing instruments, conveyances, transfer documents, deeds and Land Registry office copy entries. These documents will provide the basis and justification for seeking any consents from Fields in Trust. You should also consider whether you wish to seek independent legal advice.

The majority of matters requiring our consent fall into the categories below:

- > Granting of a lease, for example to a local sports clubs
- > A release or transfer of land
- > Granting of an interest such as a wayleave, easement or servitude or certain rights of entry
- > Some revisions to existing buildings, new building or structures, including car parks

If you are unsure whether you need to obtain our consent, please email: info@fieldsintrust.org

The process for obtaining consent from Fields in Trust

At the outset of the process we require our Heads of Terms document to be completed and signed by an authorised person in your Organisation. You must then submit full details about your proposal using our Field Change Request Application Form (available to download from our website). Please ensure you provide all the supplementary documents where requested to enable us to make a full assessment.

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It should be appreciated that when considering whether to approve Change Requests, Fields in Trust has its own criteria that it must apply, especially on charitable sites, and it is not likely that Fields in Trust will simply be able to rubber-stamp arrangements already concluded between the applicant and other parties. To avoid disappointment applicants are therefore encouraged to engage with Fields in Trust at an early opportunity and before discussions have progressed too far with other interested stakeholders.

Any request concerning disposals, which includes leases, land transactions, wayleaves and easements, will be assessed against our guidance notes.

How a decision is made by Fields in Trust

To enable us to respond to requests efficiently, decisions are delegated to our Land and Planning Committee which is a representative group of Trustees with the greatest relevant experience. For matters relating to sites in Scotland and Wales decisions are taken by the Fields in Trust Scottish Committee or Fields in Trust Cymru Committee. The Executive also have authority to decide certain types of requests. Decisions on applications will be made on a monthly basis, and subsequently communicated to the applying organisation by either the Development Manager for the area or our Legal Officer. We reserve the right to refer any application to our full Council who meet on a quarterly basis. Decisions are normally granted in principle subject to a number of conditions being met. Examples of such conditions have been given in the relevant sections below.

Completing the application form

For the vast majority of applications, we will require various supporting documents so please ensure you provide them with your application otherwise it could delay the process. Here is some further guidance to help you complete the form:

Sections A and B: General information about the site and the proposal

We would normally expect to see an application made by the Landowner but if you are the leaseholder or Managing Trustee of the site you can still submit a request but you will need to involve the Landowner at the outset and we will need to see evidence to that effect. Please use this section to give an outline of your proposal, including why it is needed and how it will benefit the site and its users.

If the land is held charitably then the Charity regulator may need to be consulted about the need for their consent to your proposal. If the site is not held charitably there may be other legislation relating to a disposal that needs to be adhered to. It is your responsibility to check.

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Section C: Plans and Diagrams

To enable us to assess your application thoroughly we require plans of the site delineating the locations of the following, where relevant:

- Boundaries of the protected site;
- Existing or proposed buildings;
- Proposed leased or licensed areas;
- Proposed easement area;
- Proposed replacement land

It would also be helpful if you are able to illustrate the proposal on an aerial/satellite map.

Sections D and E: Planning Permission and consultations

Any consent granted by Fields in Trust is conditional upon you obtaining the necessary planning permission through the Local Planning Authority. It is possible to apply for planning permission before contacting Fields in Trust, or after obtaining our consent, or for both applications to run concurrently. In certain cases, we may ask you to obtain planning permission before we assess your proposal. We would also like to know about the outcomes of any consultation you have undertaken about your proposal. Even if there have been objections it will not necessarily mean we will withhold our consent.

Section F – Specific details about your request

Please use this section to give specific details about your request and answer all the relevant questions, for example in some cases your request might involve a lease and a building.

If you intend to grant a lease

In order to assess your proposal, we require a copy of the Heads of Terms of the proposed lease or a draft lease which should include information on who is responsible for costs, management, insurance, maintenance and access. When considering granting a lease, we advise due consideration is also given to alternative solutions which may be more cost effective, such as a license, management agreement or letting. Broadly we would expect to see the following provisions in the proposed lease:

- Permitted use is within the user clause of the Deed of Dedication, or is ancillary to that use or complements the permitted use
- A lease to a sports club should provide some access to the general public when not in use by the club. In addition, the sport club must have an open membership and the membership fees should not be prohibitive. A copy of the Club's constitution and evidence of reasonable membership fees are required

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- The landlord must be willing to reinvest any financial gain in improvements to or maintenance of the remainder of the site
- The security of tenure provisions of the Landlord and Tenant Act 1954 must be excluded from the lease
- Absolute prohibition on alienation or alienation requires the Landlord's consent
- Term not exceeding 25-30 years; A request for a longer lease term must be supported by evidence that it is required (for example where an external funder has specifically asked for this as a condition of funding)
- Alterations to the premises is either prohibited or requires the Landlord's consent
- If the site is held on charitable trust, evidence is required of compliance with the Charities Act 2011 (if available at the time of the request)

In England and Wales, the security of tenure provisions in the Landlord and Tenant Act 1954 means the leaseholder has the right to seek a new tenancy when the current one ends. However, where land is for community-use it is not always appropriate for the method of management to stay the same, we therefore recommend that all leases have no provision for automatic renewal and the lease is contracted out of the security of tenure provisions. Please note that the equivalent legislation does not exist in Scotland.

Many organisations requesting a lease are non-corporate bodies. A corporate body is one that has perpetual succession and a legal identity distinct from that of its members; this includes local authorities of all types, companies limited by guarantee, companies with limited or unlimited liability, bodies created by statute and more recently charitable incorporated organisations. Where the proposed leaseholder is not a corporate body, the individuals who sign the lease acquire the obligations within the lease both collectively, and individually. In these cases, you will need to give further consideration in assessing the viability of the proposed leaseholder.

As the landowner you may charge a nominal rent, even if the proposed lease is on a charitable site. If nominal rent is to be charged on a charitable site in England and Wales, then we ask to see a copy of the report undertaken under the Charities (Qualified Surveyors' Reports) Regulations 1992. If your application is approved it would likely be subject to a number of conditions being met including an undertaking that rent payments will be reinvested in the site and inclusion of certain provisions in the lease, such as any of the considerations listed above. We usually require a Fields in Trust third party clause to be inserted in the lease and in some cases a Deed of Dedication with the leaseholder will be required. A copy of the agreed lease complying with the conditional consent will need to be provided in order for us to issue a Land Registry certificate to enable the applicant to register the lease at the Land Registry.

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If your request is regarding a land transfer

This includes a transfer of land for nil consideration, sale, exchange or release of land. In these cases Fields in Trust's concerns are with the impact of the proposal upon existing recreational activities and any strategic plans in terms of facility development. Normally consent to a transfer of land would be conditional on the proposed transferee entering into a Deed of Dedication with Fields in Trust. In cases where the protection is not intended to continue following the transfer, the request for approval will be considered against the Fields in Trust Disposal Policy. The applicant is required to address how the proposed replacement land meets with the requirements of this policy.

If your request is regarding a Building or Structure (replacement, new, extension or temporary)

It is not always necessary to seek the consent of Fields in Trust for buildings and structures; you need to check the governing document in the first instance. Fields in Trust always encourage the minimum number of buildings on a site in order to maximise recreational space and reduce running costs. Fields in Trust's main concern is with the footprint and location rather than the design. Multi-storey buildings can be advantageous in providing ancillary facilities without adversely affecting the quantity of outdoor recreational area. In regard to structures, including car parks, the primary concern is again footprint and location. A request for a building or structure often involves granting of a lease so please ensure all the relevant sections in the application form relating to these are also completed.

The building or structure must fit with the purpose of the site and benefit the recreational use and users of the site. In the first instance please check the legal documents relating to the site. Please include in the application form as much details as possible in respect of the use of the proposed new building, including an explanation how it is compatible with the recreational use of the site and how will the building benefit the recreational use of the site. Please contact us if you require advice regarding the orientation and access of any buildings or structures. Are there other community or commercial benefits arising out of the building/car park proposals – if so, what financial or other considerations will be made available towards the upkeep or further recreational development of the site?

If the proposed building/car park is temporary then is the location, timescale and reinstatement arrangements the most appropriate that can be negotiated for the site.

We would also seek assurances that throughout the construction work, until completion, all reasonable precautions are taken to avoid obstruction to or interference with site users; and once completed the building/car park are kept in proper repair and condition.

If the proposed use is not compatible with the agreed use of the site, this will be considered in accordance with the Fields in Trust Disposal Policy which means that replacement land would be expected to be put forward.

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If your request is regarding the installation of telecommunications apparatus and structures

Each application will be considered on its own merits with particular regard to the physical characteristics of the site and its surroundings. We require confirmation that the proposed development would comply with the ICNIRP (“International Commission on Non-ionising Radiation Protection”) guidelines and the proposed development must not compromise the effective use of the site for outdoor sport, recreation or play. The proposed location of the structure must not interfere with the optimum layout and orientation of sports pitches or other play or recreational facilities on the site and the route of access for service vehicles to the apparatus must not cross the area of any sports pitch or any other play or recreational facility. The operator must indemnify Fields in Trust and the site managers/occupiers against all claims that may arise from the presence of telecommunications apparatus on the site. The operator must observe the terms of the “Code of Best Practice on Mobile Phone Network Development” (2013), or such equivalent guidance as may vary or replace it. The apparatus and/or structures must be removed, as soon as reasonably practicable, after they are no longer required for telecommunication purposes. The operator will be required to provide a bond, of not less than £10,000, to ensure that such works can be undertaken in the event of non-compliance or if it ceases to remain in business.

If your request is regarding a wayleave, easement or servitude

A wayleave is a contractual agreement between a landowner and another party granting and reserving various rights over the land in question, usually on a temporary basis. Easements, like wayleaves, grant or reserve rights over land and both forms of agreement customarily result in a payment, or payments, to the land owner. Unlike wayleaves, easements are typically permanent arrangements and attach to the land. Easements are created by deeds. Both forms of agreements are characteristically used to formalise a relationship with a utility company or other service provider to run facilities under, or over, land.

A standard condition attached to granting consent for such a proposal is that the landowner must reinvest any financial gain in improvements to or maintenance of the site. In relation to charitable sites, another condition would be compliance with Charities Act 2011.

If your request is regarding a car park (new or extension)

Please ensure that details of the size of the proposed car park and the number of the proposed car parking spaces are included in the application form. If the request is approved, it would likely be on condition that the car park is solely used by the users of the site. We would expect you to implement measures to ensure this use is complied with if necessary.

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If your request is regarding occasional use (e.g. festival, temporary site closure, temporary car park)

Relevant considerations are the duration and the impact this would have on the site and its use.

If your request is regarding a change of use (either relating to a building or not)

Any change of use must be consistent with Fields in Trust's charitable objectives and it is likely that any other use will not be acceptable and therefore the applicant may wish to put forward a replacement land in accordance with the Fields in Trust Disposal Policy.

If your request is regarding a Legal Charge (pursuant to funding agreements) or a mortgage

Usually such a request is linked to other developments on the site that may require Fields in Trust approval so please make sure that you complete all the relevant sections in the application form concerning the proposed development. If the proposed legal charge relates to Sport England funding, please make Sport England aware that the site is Fields in Trust protected as they will replace their requirement with a Deed of Dedication.

For further guidance and advice please refer to our website www.fieldsintrust.org or contact us at email: info@fieldsintrust.org

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