

Acquiring Land

Contents	Page
What is this guidance about?	1
Meaning of words or expressions used	2
Trustees' powers and duties	3
Unincorporated charities	3
Charitable companies	4
What are the general duties of trustees when acquiring land for their charity?	4
Investing in land	6
Surveyor's report	8
Must the trustees obtain an Order of the Charity Commission before acquiring land?	9
Can trustees buy land with a mortgage?	9
Dealing with local opposition to a purchase	11
Further information	11

What is this guidance about?

1. 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.
2. 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.
3. 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 we have indicated the key

Meaning of words or expressions used

ones. This guidance does not apply to special cases of common investment funds (other than pooling scheme funds) or common deposit funds.

4. In this guidance:

Charitable company means a company formed and registered under the Companies Act 1985; or to which the provisions of the 1985 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).

Trustees' powers and duties

Must or **need** are used to refer to actions that trustees, or their agents or employees, have to take by law.

Where we use terms such as the trustees **should** or we **suggest, recommend** or **advise** we are referring to actions which the trustees, their agents or employees could take and which we consider to be good practice, but which are not legal requirements.

Unincorporated charities

5. 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.

6. 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 charity¹.

7. 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.

¹ Unless the governing document is an Act of Parliament.

Charitable companies

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

8. 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.

9. 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; and
- 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.

10. 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.

11. 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; and

Investing in land

- the skills which a trustee has (or in the case of a professional trustee, ought to have).

12. 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.

13. 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; and
- considered the need to spread the charity's investments.

They must also review the investments periodically.

14. These duties with regard to investment do not strictly speaking apply to the investment of the corporate property of charitable companies. We would, however, recommend that trustees of these charities observe the principles at paragraph 13.

15. 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.

16. 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. We consider 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.

17. We would recommend that this type of investment is normally only suitable for a charity which either:

Surveyor's report

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

18. We strongly recommend 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. We also recommend 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; and
- anything else the surveyor thinks relevant, including a description of any restrictive or other covenants to which the land is subject.

Must the trustees obtain an Order of the Charity Commission before acquiring land?

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

- Use money which represents permanent endowment to acquire land other than freehold land. Further details are given in our guidance **Expenditure and Replacement of Permanent Endowment (CC38)**.
- 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.

Can trustees buy land with a mortgage?

20. Yes, but in the case of investment land we strongly advise 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.

21. 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.

22. Trustees may, without our 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 section 38 of the Charities Act 1993 (as amended by the Charities Act 2006).

23. If they cannot meet these requirements they must seek our consent **before** they sign or create the mortgage.

24. 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; and
 - the charity's ability to repay the loan on the terms agreed with the lender.

25. 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 our consent needed in such cases.

26. Further guidance and information about mortgages is given in our guidance **Disposing of Charity Land (CC28)**.

*Dealing with local
opposition to a purchase*

Further information

27. 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.

28. Many issues raised in this guidance will require the advice of the trustees' solicitor or a qualified surveyor. If, however, you wish to obtain further information about our procedures, please write to us at Charity Commission Direct. The address is shown on the inside front cover of this guidance.

We aim to make our publications as useful and easy to read as possible. If you have any suggestions about how this booklet may be improved, please write to the Head of Publications at our Taunton office.

© Crown copyright 2007. This publication (excluding the Royal Arms and departmental logos) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified. This publication can also be accessed at the department's website at: www.charitycommission.gov.uk

Further Reference

For further information you may find it useful to refer to the following Charity Commission publications:

- CC3 The Essential Trustee: What you need to know
- CC8 Internal Financial Controls for Charities
- CC13 The Official Custodian for Charities' Land Holding Service
- CC28 Disposing of Charity Land
- CC38 Expenditure and Replacement of Permanent Endowment
- CC60 The Hallmarks of an Effective Charity

Mae'r rhan fwyaf o'n cyhoeddiadau ar gael yn Gymraeg. Am wybodaeth ar y cyhoeddiadau sydd ar gael ffoniwch y Comisiwn Elusennau Uniongyrchol ar 0845 300 0218.

For a complete list of all our publications, audio-cassettes and CD, please ask for:

- CC1 Charity Commission Publications

To obtain copies of any of the above publications you can either:

- view and print from our website:
www.charitycommission.gov.uk;
- order during opening hours - Monday to Friday 08:00 - 20:00 and 09:00 - 13:00 Saturdays by telephoning us on **0845 300 0218**; or
- write to **Charity Commission Direct, PO Box 1227, Liverpool, L69 3UG**.