

## 1. RESPONSIBILITIES AND LEGAL DUTIES

### Ownership of Land

Land ownership is complicated, and professional advice should be sought. The following information is only a generalised summary of the issues involved. Specific information and guidance can be sought from Admissions and Property who may refer you to Corporate Property or Legal Services for more specific advice. Some advice is provided through relevant Service Level Agreements (SLAs).

For all schools there are legal procedures to be followed when disposing of or acquiring land. For Community schools, the Council must agree to any land disposal. Voluntary schools should refer the matter to the Diocesan body or trustees. The consent of the Secretary of State will need to be sought for disposals. **Do not in any circumstances enter negotiations with a third party where they involve land acquisition, disposal, or leasing any part of the school site or buildings to an external body.**

### Maintained Schools

The freehold interest in the land and buildings of Community Schools is usually held by the Council. In the case of Voluntary Controlled Schools, the freehold of the buildings is usually held by the Diocesan body or school Trustees, with the freehold of the playing field/s usually being held by the Council.

The Council only retains capital resources for major building works. Much of this is reserved for strategic development and is ring-fenced for specific programmes and projects. Responsibility for site management and the maintenance and safe operation of school buildings is delegated to schools.

The recommended division of responsibilities between the Council and schools for maintenance of school premises is now embodied within the Scheme for Financing Schools. From within their annual revenue resources, Headteachers will be expected to budget for:

- servicing and testing of plant and equipment
- general building maintenance and
- minor repairs (less than £2,000)



Following the introduction of Devolved Formula Capital (DFC) for schools, Headteachers now also have responsibility for:

- repairs costing in excess of £2,000
- premises improvement and development including ICT

<https://schools.bracknell-forest.gov.uk/wp-content/uploads/scheme-for-financing-schools-2018.pdf>

## Voluntary Aided (VA) Schools

The freehold interest in the buildings at VA schools is usually held by the Diocesan Authority or school Trustees. Playing fields may still be within the Council's ownership.



Because VA schools own the freehold of their own land and buildings, and the funding arrangements for premises related works have been the subject of amendment through s35 of the Education & Inspections Act 2006.

The Headteacher together with the governing body is responsible for all buildings, both internally and externally, which includes the areas of kitchens, dining rooms etc. Responsibility for playgrounds, perimeter walls, fences and building services also rest with the school and governing body.

The Council is only required to finance works to playing fields and associated buildings where it has use of the facilities.

Further information with regard to responsibilities, grants, funding and other areas is available within the DfE publication: Capital Funding For Voluntary Aided (VA) Schools in England - [Blue Book Guidance \(issued in February 2011\)](#).

In the case of church owned property advice on Landlord & tenant and property issues will need to be taken from the appropriate Diocesan Property and Legal sections.

## Academies

Academies also own the freehold of their land and buildings or these may be held on a long lease from the Council who remains the Freeholder. Academies also have full responsibility for ongoing maintenance and operation of their sites and buildings. Funding for academies comes direct from the Government via a specific funding agreement for each school, no funding is held by the Council.

## Governing Bodies

The governing body should focus on the strategic role of overseeing the use, maintenance and development of the premises and facilities to support the priorities in the asset management plan and the school improvement plan. The governing body should also be aware of its legal responsibilities relating to control and use of the premises. All maintained school governing bodies control the occupation and use of premises during and outside school hours. This means that governing bodies have control over what happens in school buildings and grounds. They

are also responsible for deciding how school facilities are used and need to consider, and reassure themselves that pupils are adequately being cared for and protected from harm while in school. Governing bodies and academy trusts are also under a duty to make reasonable adjustments to avoid any substantial disadvantages that may be experienced by disabled pupils.

## Headteachers

Headteachers have responsibility for premises management, though other school staff will contribute, either by their defined duties or through personal responsibility for health and safety awareness in specific areas.

Headteachers are 'the legally responsible person' for the school premises. Together with the governing body, Headteachers need to:

- ensure that the site(s) and building(s) are managed in an appropriate manner
- ensure that users/staff operate the buildings and facilities in a healthy and safe environment
- identify monitor and manage future premises needs in the school development plan
- plan, budget for and manage those works and projects for which they have responsibility
- where appropriate, make the building and facilities available for community use



## Community use of sites and buildings

The community use of school buildings, such as for pre-school, or uniformed groups such as guides and scouts etc. is a well-established and important function of the site. This also provides the opportunity for income generation through lettings. It is essential that appropriate agreement for the type of use concerned be put in place to protect all parties. Such agreements do not just cover rights of occupation but can make sure insurance and indemnities and other necessary issues are covered.

There is considerable legislation dealing with issues of tenure, including the Landlord & Tenants Act. Great care and caution is required when considering any such agreements to prevent granting lessees or tenants security of tenure under the Landlord & Tenant Act 1954. The school should take advice from a suitably qualified person. Advice on Landlord & Tenant issues can be obtained via the Bracknell Forest Council Service Level Agreements from the Corporate Property and Legal teams via <http://can-do.bracknell-forest.gov.uk/>



However, it is not legal to let out school property for trading purposes unless a lease, tenancy or licence has been agreed. Each differs in legality and purpose:

- **Tenancy:** This provides rights of exclusive possession. This may be time limited or run in a periodic manner for instance from month to month. It may be terminated subject to the terms agreed in the original agreement.
- **Lease:** This is a formal document where a lessor or landlord grants a lease or tenancy to a lessee or tenant under deed. This will normally grant exclusive possession of land and or property to a third party who can exclude everyone else, even the landlord. It is almost like selling the land but for a fixed period. Due to the serious nature of such a transaction case law and statute surrounds this area, and it is essential to obtain proper professional advice from Corporate Property or Legal Services within Corporate Services.
- **Licence:** The party granting the licence is known as the licensor. The occupier is the licensee. The key difference between a licence and a lease is that the occupier does not have the benefit of exclusive possession

Governors are always party to leases and licences since as they have control of the school they are joining in to the lease and licence by consenting to allowing their control to be removed insofar as these areas are concerned.

A typical licensee might be an after school club operating in part of the school outside normal school hours in space otherwise used by the school during the day. It must be appreciated whatever the agreement is called if exclusive possession is given to the third party even due to a change of circumstances then almost invariably a lease will have been created. This may have serious consequences, as the paragraph above on leases explains. Corporate Property in conjunction with Legal Services can provide a standard form of licence and where appropriate will produce bespoke versions for more complex situations.

Charges levied to external/community groups, regardless of the type of agreement must reflect, as a minimum, all the costs the school incurs to support the activity.

### Third Party Uses of Sites

These can be for various uses. Common ones will include Council uses of school sites such as children's centres, pre-school nurseries, sports facilities, scout and guide huts, electricity substations and other public utilities' equipment as examples. Existing agreements can be in a number of formats as leases, licences, Transfer of Control Agreements (TOCAs) (see below), wayleaves or easements. The Corporate Property Section and Legal Services maintain records of such agreements and will advise and act on behalf of schools in drafting new agreements, lease renewals and other property transactions.



## Transfer of Control Agreements (TOCAs)

Governing Bodies can enter into a Transfer of Control Agreement as a way of sharing control of the school premises with another body, or transferring control to it. The other body, known as the "Controlling Body", will continue the occupation and use of premises during the times specified in the Agreement. Transfer of control of the premises to Local Community Groups, Sports Associations and Service Providers can enable school facilities to be used without requiring ongoing management or administrative time from the school staff. The Governing Body of a Community School must obtain the Local Authorities' consent before entering into a Transfer of Control Agreement that transfers control during school hours (Section 40. School Standards and Framework Act 1998, Schedule 13).

## Site Sharing Agreements

Where there are different Council functions on the same site formal leases/licenses do not apply because the Council cannot take out a lease or license with itself. In these cases joint management arrangements are formalised through Site Sharing Agreements. These are drawn up following consultation with all parties who are also signatories to the Agreement. Reference should be made to this. Property and legal advice may also be sought as above.

## Covenants, Wayleaves and Easements

There are also other property issues such as covenants, wayleaves and easements that apply to some sites that can occasionally become relevant e.g. planning an extension, a structure, change of use or works affecting access rights. The Council holds records of where these are in place on school sites.

**Covenants:** In the property context a covenant is a contractual agreement, usually occurring in a transfer or a lease in which one party, the covenantor, agrees to do or not to do something for the benefit of another, the covenantee. A common restrictive covenant would be "not to use other than for educational use".

**Wayleaves:** These may include the rights of utility companies to lay phone lines, and other telecoms equipment across land.

**Easements:** Easements are irrevocable rights which one landowner enjoys in respect of their neighbour's land. These may include rights of way, rights of support, rights of drainage and rights of light.

Mike Coles  
Corporate Property  
Tel: 01344 352476  
[Michael.Coles@bracknell-forest.gov.uk](mailto:Michael.Coles@bracknell-forest.gov.uk)

Helen Brewster  
Property Solicitor  
[Helen.brewster@bracknell-forest.gov.uk](mailto:Helen.brewster@bracknell-forest.gov.uk)

<http://can-do.bracknell-forest.gov.uk/>