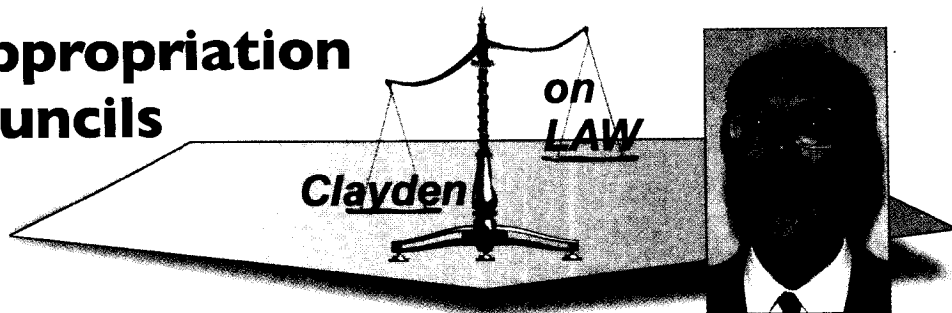


LEGAL MATTERS

Acquisition and appropriation of land by local councils

Paul Clayden is Chief Executive of the Local Councils Advisory Service



Acquisition by agreement or gift

The powers of local councils to acquire land by agreement or gift are largely contained in section 124 of the Local Government Act 1972. The wording of section 124 is as follows:

- (1) For the purposes of
 - (a) any of their functions under this or any other public general Act, or
 - (b) the benefit, improvement or development of their area,
 a parish or community council may acquire by agreement any land, whether situated inside or outside their area.
- (2) Where under this section a parish or community council are authorised to acquire land by agreement, the provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable) other than section 31 shall apply, and in the said Part I as so applied the word "land" shall have the meaning assigned to it by this Act.
- (3) References in the foregoing provisions of this section to acquisition by agreement are references to acquisition for money or money's worth, as purchaser or lessee.

Sub-section (3) effectively provides that section 124 does not apply to an acquisition by gift. Section 139 of the LGA 1972 authorises a local council to accept a gift of real or personal property for the purpose of discharging a statutory function or for the benefit of the inhabitants of their area or part of it. However, there is no power to accept a gift of property for the purposes of an ecclesiastical charity or a charity for the relief of poverty.

Part I of the Compulsory Purchase Act 1965 sets out the general procedure for acquiring land compulsorily and is not usually relevant to acquisition by agreement.

Acquisition of land compulsorily on behalf of local councils

Section 125 of the LGA 1972 authorises the appropriate principal council to acquire land compulsorily on behalf of local councils. The procedure is somewhat complicated, as the wording of section 125 shows:

- (1) If a parish or community council are unable to acquire by agreement under section 124 above and on reasonable terms suitable land for any purpose for which they are authorised to acquire land other than
 - (a) the purpose specified in section 124 (1) (b) above, or
 - (b) any purpose in relation to which the power of acquisition is by any enactment expressly limited to acquisition by agreement,
 they may represent the case to the council of the district in which the parish or community is situated.
- (2) If the district council is satisfied that suitable land for the purpose cannot be acquired on reasonable terms by agreement, they may be authorised by the Secretary of State to purchase compulsorily the land or part of it; and the Acquisition of Land Act 1981 shall apply in relation to the purchase.
- (3) The district council in making and the Secretary of State in confirming an order for the purposes of this section shall have regard to the extent of land held in the neighbourhood by an owner and to the convenience of other property belonging to the same owner and shall, as far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner.
- (4) The order shall be carried into effect by the district council but the land when acquired shall be conveyed to the parish or community council; and accordingly in construing for the purposes of this section and of the order any enactment applying in relation to the compulsory acquisition, the parish or community council or the district council, or the two councils jointly, shall, as case may require, be treated as the acquiring authority.
- (5) The district council may recover from the parish or community council the expenses incurred by them in connection with the acquisition of land under this section.
- (6) If a parish or community council make representations to a district council with a view to the making of an order under this section and the district council
 - (a) refuse to make an order, or
 - (b) do not make an order within eight weeks from the making of the representations or such longer period as may be agreed between the two councils,
 the parish or community council may petition the Secretary of State who may make the order, and this section and the provisions of the Acquisition of Land Act 1981 shall apply as if the order had been made by the district council and confirmed by the Secretary of State.
- (7) In the application of this section to a parish or community council for a group of parishes or communities:
 - (a) references to the parish or community shall be construed as references to the area of the group, and
 - (b) if different parts of the area of the group lie in different districts, references to the council of the district in which the parish or community is situated shall be construed as references to the councils of each of the districts acting jointly.
- (8) In relation to Wales:
 - (a) references in this section to a district council are to be read as references to a principal council; and
 - (b) references to a district are to be read as references to a principal area.

The powers given to the Secretary of State are exercisable in Wales by the National Assembly.

Government guidance on compulsory purchase can be found in *Guidance on compulsory purchase procedures and the Criche Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion* (dated October 2015). The circular can be viewed on the Department for Communities and Local Government website at www.gov.uk.

LOCAL COUNCILS UPDATE

An exclusive, by subscription, monthly update of legal, parliamentary, consultation papers, finance, accounts, powers & remit, health & safety, expenses, salaries, liabilities, planning, borrowing and other matters within the remit of the Town, Parish & Community Councils in England & Wales.

Written by a journalist experienced in local council law, this monthly legal information service is also available in

fully searchable form on the web through
www.ClerksandCouncilsDirect.co.uk

Just register for a FREE ONE MONTH TRIAL

Subscriptions are:-

£100 per annum for the web service, plus 12 print editions;
£75 per annum for the 12 print editions only.

Contact the Subscription Department for further information and application forms:

**Local Councils Update, CommuniCorp,
2 Micklefields, Stanton, Bury St Edmunds IP31 2XF.
Telephone: 01359 254149
Email: ClerksCouncils@btinternet.com**

The Welsh Government has issued two circulars on compulsory purchase, NAFWC 14(1)/2004 and NAFWC 14(2)/2004. These can be viewed on the Welsh Government website www.gov.wales under the planning topic.

Transfer of ownership

The transfer of ownership of land should normally be carried out by the council's solicitor or licensed conveyancer. If the title to the land is unregistered, application must be made to the Land Registry to register the title.

Appropriation of land by local councils

Section 126 of the LGA 1972 enables a local council to appropriate land from one purpose to another. In a parish where there is no council, the parish meeting may appropriate land with the consent of the Secretary of State. A community meeting in Wales has no power of appropriation. The relevant parts of the section are as follows:

- (1) Any land belonging to a parish or community council which is not required for the purposes for which it was acquired or has since been appropriated may, subject to the following provisions of this section, be appropriated by the council for any other purpose for which the council are authorised by this or any other public general Act to acquire land by agreement.
- (2) In the case of a parish which does not have a separate parish council, any land belonging to the parish meeting which is not required for the purposes for which it was acquired or has since been appropriated may, subject to the following provisions of this section, be appropriated by the parish meeting for any other purpose approved by the Secretary of State.
- (3) The appropriation of land by virtue of this section by a parish or community council or by a parish meeting shall be subject to the rights of other persons in, over or in respect of the land concerned.
- (4A) Neither a parish or community council nor a parish meeting may appropriate by virtue of this section any land which they may

be authorised to appropriate under section 229 of the Town and Country Planning Act [TCPA] 1990 (land forming part of a common, etc.) unless:

- (a) the total of the land appropriated in any particular common, or fuel or field garden allotment (giving those expressions the same meanings as in the said section 229) does not in the aggregate exceed 250 square yards, and
- (b) before appropriating the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them.

"Common" and "open space" are defined in section 336 of the TCPA 1990 thus:

"Common" includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882 and any town or village green.

"Open space" means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground.

Section 19 of the Acquisition of Land Act 1981 applies to an order made under section 229 of the TCPA 1990 where the area of land involved exceeds 250 square yards, and the relevant parts are as follows:

- (1) In so far as a compulsory purchase order authorises the purchase of any land forming part of a common, open space or fuel or field garden allotment, the order shall be subject to special parliamentary procedure unless the Secretary of State is satisfied:
 - (a) that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased, or

to page 12 ►

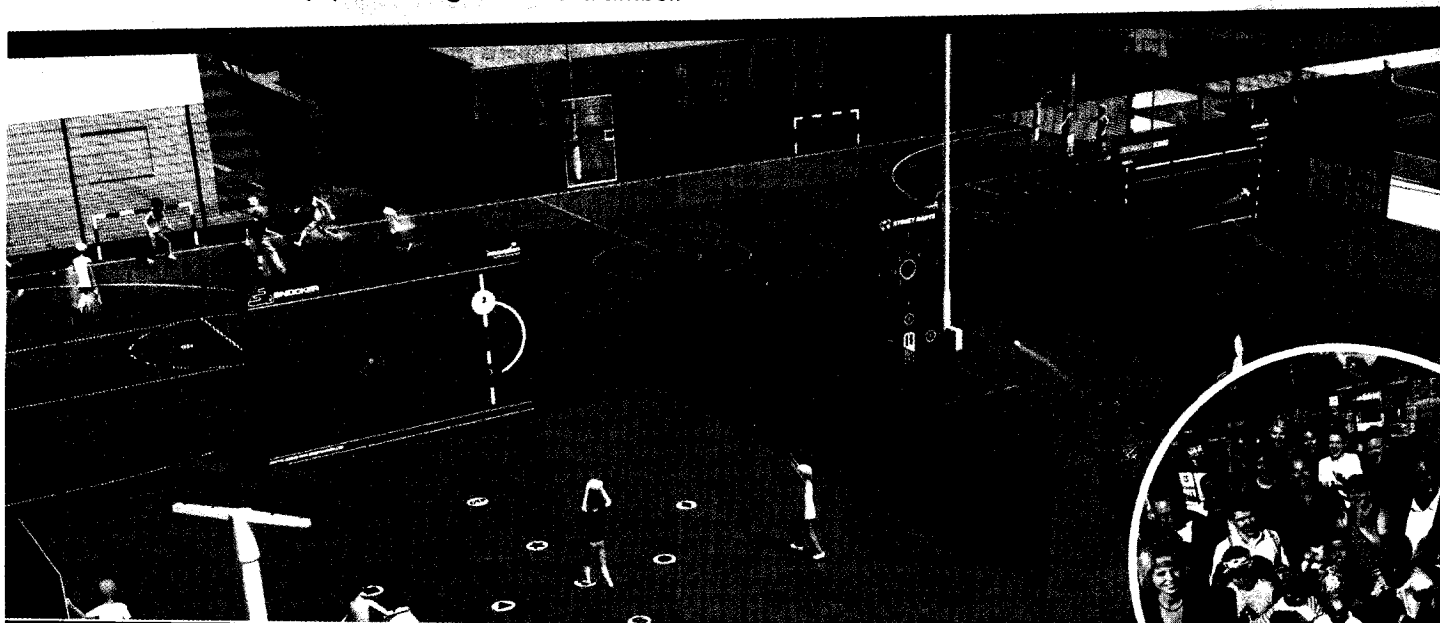
Family Inclusive Sport & Play Areas for YOUR School, Community & Leisure Centre

Our key services include:

- Tennis court & MUGA: Refurbish your facility to create an innovative multi-generational and educational sport & play area.
- Playground Design: Expert design & installation of high quality surfacing and durable equipment ranges in steel & timber.

Playinnovation™
big ideas for growing minds

Email us at sales@playinnovation.co.uk
playinnovation.co.uk

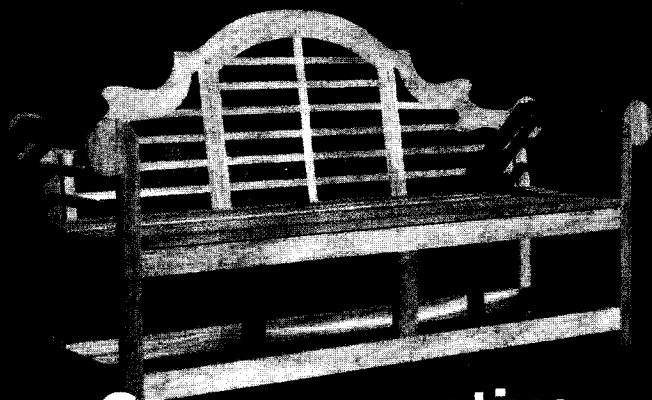


Successfully delivering unprecedented positive outcomes including: Maths - Personal Goal Setting - Team building and much more!



JOHN ROBERTSON

Outdoor furniture built to last



Commemorative & Memorial Seating

REQUEST A BROCHURE:

Call: 01284 830100 | Email: info@johnrobertson.ltd.uk

www.johnrobertson.ltd.uk

Product Featured: Lutyens Bench

LEGAL MATTERS/NEWS

from page 11 >

- (aa) the land is being purchased in order to secure its preservation or improve its management, or
- (b) that the land does not exceed 250 square yards in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and that the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public, and certifies accordingly.
- (2) Where it is proposed to give a certificate under this section the Secretary of State shall direct the acquiring authority to give public notice of his intention to do so, and:
- (a) after affording opportunity to all persons interested to make representations and objections in relation thereto, and
- (b) after causing a public local inquiry to be held in any case where it appears to him to be expedient so to do, having regard to any representations or objections made,
- the Secretary of State may, after considering any representations and objections made and, if an inquiry has been held, the report of the person who held the inquiry, give the certificate.
- (2A) Notice under sub-section (2) above shall be given in such form and manner as the Secretary of State may direct.
- (3) A compulsory purchase order may provide for:
- (a) vesting land given in exchange as mentioned in sub-section (1) above in the persons, and subject to the rights, trusts and incidents, therein mentioned, and
- (b) discharging the land purchased from all rights, trusts and incidents to which it was previously subject, except where the Secretary of State has given a certificate under sub-section (1)(aa) above.
- (4) In this section:
- "common" includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green,
- "fuel or field garden allotment" means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act,
- "open space" means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground.

Where it is proposed to acquire land held inalienably by the National Trust, the compulsory purchase order is subject to special parliamentary procedure (SPP) if the Trust objects to the order. SPP means that the order is subject to confirmation by Parliament and not by a Minister.

It is very rare for a local council to seek to acquire land compulsorily. The costs are high. As well as having to pay market value for the land, the council would have to pay the costs of the principal authority.

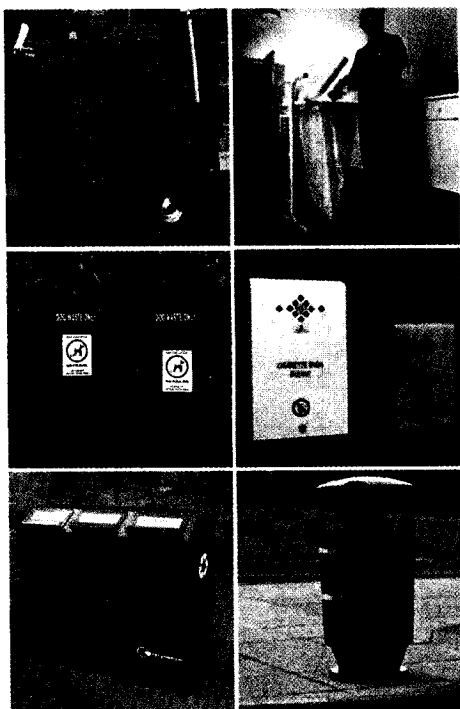
Community assets – right to bid

Part 5 of the Localism Act 2011 (applying only to England) enables lists of community assets of value to be compiled. Such assets comprise buildings and land which further the social well-being or social interests of the local community (e.g. a sports ground, a village hall, a pub). If a community asset comes up for disposal, the parish council and community organisations have a right to put in a bid within six months of the property coming on to the market. If the council acquires the land, section 124 of the LGA 1972 (see above) will apply. The DCLG has issued an advice note to local authorities called *Community Right to Bid: Non-statutory advice for local authorities*, which is published on its website at www.gov.uk.



WASTE SYSTEMS

Valley Mills, Valley Road, Bradford, BD1 4RU



Tel: 01274 728837

Fax: 01274 734351

www.ileswastesystems.co.uk

Continental flavour

RINGWOOD Town Council hosted the first of two Continental Markets planned for this year on 8-9 April, following the success of similar events last year. A two-day French Market was held on the Hampshire town's Market Place, where the weekly Wednesday Market is usually held. The deputy mayor, Cllr



Christine Ford, said: "We are delighted to be hosting the French Market and we hope that the sun will shine and draw in the crowds again."