

RESPONSIBILITIES OF COUNCILS AS LANDOWNERS

Introduction

1. The law imposes duties on landowners by virtue of their ownership (and occupation) of land, commonly referred to as duties of care, which are owed towards other people. The nature of the duties imposed upon councils is no different from that imposed upon private landowners.
2. Duties and liabilities can arise from ownership of land including in the following ways:
 - I. Nuisance – see LTN 66 (Public and Statutory Nuisance) and LTN 67 (Private Nuisance).
 - II. Occupiers' liability – see LTN 42. In summary, council landowners must not allow any land which they occupy to be in a condition which might cause injury or damage to anyone who could be expected to enter on land which they own or occupy.
 - III. Negligence – see LTN 68. Council landowners must not allow any activity which might cause injury or damage to anyone who could reasonably be expected to be at risk.
 - IV. Breach of covenants affecting land – see below.
 - V. Loss of ownership to squatters – see LTN 55. Councils must not allow others to occupy their land and acquire a possessory title against the council.
 - VI. A failure to make the best use of a council's assets – see below.
3. The purpose of this Note is to provide a broad appreciation of the law only. Councils with detailed questions can request advice from NALC's legal advisory service.

Breach of covenants

4. Land is often subject to covenants. These can be positive – requiring the owner to do something - or restrictive – forbidding the owner to do something.

5. Restrictive covenants attach to the land, however much it is split up or sold. Positive covenants are less likely to be enforceable once the original parties have sold off the land but this cannot be assumed to be always the case.
6. Covenants can be found within contracts and, as such, are contractual obligations. Anyone breaching a contract is liable to pay damages or may be forced to fulfil the contract and carry out the obligations.
7. Councils should be aware of all covenants affecting their land and take advice if there is any risk of breach. Covenants must not be ignored.

Use of Council's assets

8. Councils have a duty to make the best use of their assets in the interests of the local residents/ tax payers. This is known as a fiduciary duty.
9. Councils are recommended to review unused and underused land. They should ensure that all land in their ownership is either in effective use for a public purpose or considered for disposal so that the proceeds can be used more effectively for the public benefit.
10. Local councils, parish meetings in a parish without a separate parish council and community meetings without a separate community council are also required to keep a register of assets in their ownership, which includes land. The publication "Governance and Accountability for Smaller Authorities in England", available on the NALC website, contains information about registering assets. The equivalent publication for Wales, the Governance and Accountability for Local Councils in Wales – A Practitioners' Guide, is available from One Voice Wales.

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

LTN	Title	Relevance
23	Health and Safety	Sets out local councils' duties to employees and others.
40	Local Councils' documents and records	Sets out local councils' duties relating to keeping records of land ownership.
42	Occupiers Liability	Sets out local councils' responsibilities as occupiers of land.
55	Claiming Ownerless Land	Explains how local councils can claim ownerless land.

66	Nuisance (Public and Statutory)	Sets out the relevant considerations.
67	Nuisance (Private)	Sets out the relevant considerations.
68	Negligence	Sets out council's duties of care.