

Trespass and encroachment

These issues arise where a third party is using part of a school's site without permission. Where the trespass is obvious, for example a gypsy or traveller encampment, immediate and swift legal intervention is usually necessary to ensure that the trespassers are moved on. Unless the encampment raises a public order problem or the trespassers have between them six or more vehicles on the land, the police have no power to remove trespassers from private land and schools and will need to get an order for possession from the County Court or in certain circumstances an order from magistrates directing that the land be vacated.

More insidious is the situation where neighbouring householders encroach onto school land, usually by extending gardens onto school fields or installing gates into fences and then crossing over school land for access purposes. It is important that land, particularly land which is in less intensive use, is monitored from time to time to identify when this occurs so that schools can take the appropriate steps to ensure that the trespasser does not gain any legal rights over the land.

In the event of an encroachment, the first thing to do to is to check the area in question is actually school land and that there is no express or implied permission in place. This may be difficult if there are no written records but even a previous oral permission may be capable of revocation.

You will usually want to put the person in question on notice that there is a problem and seek to resolve it without formal court action so a dialogue will often be appropriate. Whether this dialogue is in writing or in person will be a judgment call for you but you will need to keep a careful note of your interactions, because if matters need to go to court for resolution, evidence will need to demonstrate the control of the land by the school and the nature and timing of the trespass or encroachment. If you are able to come to an agreement for removal of the encroachment, you should ensure that this is captured in writing so both the school and any occupier are clear about their respective rights and responsibilities. Above all, do not be complacent and allow the situation to linger; it might not be as disruptive as a gypsy/ traveller encampment but bear in mind that where an encroachment is longstanding the Court may award money compensation instead of the return of the land. If you are in any doubt you should seek specialist legal advice to protect your position and ownership of the land.



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Ownership of land

The nature of land ownership or control differs depending on the type of school.

1. A community school is owned by the local education authority and consequently, so are its land and buildings.
2. Voluntary aided schools' land ownership is often complex. The school buildings may be owned by either the Diocese directly or through a Trust arrangement. The local education authority will own the playing fields.
3. Voluntary controlled schools will often but not always own their own buildings or be in the ownership of a trust arrangement. The local education authority will own the playing fields.
4. Foundation schools will have a governing body or a trust which owns the land including the playing fields.
5. Trust schools have a board of trustees which holds land on trust for the school including the playing fields.
6. Academies' land ownership depends on the category of school before the academy conversion. The land and buildings will either be held freehold by the academy trust or by a 125 year lease from the local education authority, or a combination of both.

Where land was acquired subject to restrictions these restrictions may affect how the land can be used for other purposes. Others may have rights to use the land such as where leases or licences have been granted for others to use part of the site. In addition, the Government has brought in various restrictions on selling land which has been used for education purposes. The consent of the Secretary of State will be needed if the land or buildings have been used for school purposes in the last ten years. The position is summarised in the guidance 'Advice on the protection of school playing fields and public land', see [Advice on the protection of school playing fields and public land.pdf](#). Academies will need consent from the Education Funding Agency to dispose of any of their freehold land. The process of obtaining consent usually takes several months, unfortunately.



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Development of land and buildings without planning permission

School land will usually have 'permitted development rights' for a wide range of education activities under Part 32 of the current General Permitted Development Order which relates to schools, colleges, universities and hospitals. Permitted development rights enable certain alteration and extension of school buildings and the provision of hard surface areas within the curtilage of the school.

All development must meet the limitations and conditions attached to permitted development rights. Such limitations include restrictions on the gross floor space created; proximity to the curtilage of the school boundary or a listed building; impact on playing fields; height of the new building and the main use of the new building.

Permitted development is subject to the following conditions:

- The development is within the curtilage of an existing school, is used as part of, or incidental to, the use of the school;
- if development is within a protected area (a National Park, an area of outstanding natural beauty, a conservation area, the Broads or a World Heritage Site) the materials used for the erection, extension or alteration must of a similar appearance to those used for the original school or building.

For all other development, schools will need to consider the planning policies of their local planning authority (usually the local borough or district council) and may need to apply for planning permission in line with its guidance. The local planning authority may remove permitted development rights by issuing Article 4 Directions. In some instances schools may wish to apply to the local planning authority for what is known as a Lawful Development Certificate. This provides formal confirmation that the proposed development is lawful.

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 (SI 2013/1101), allow schools to erect fences alongside highways up to 2 metres high, whereas previously before all such fences were limited to a height of 1 metre.



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