LEGAL CHARGE, RESTRICTION OR CAUTION PROCESS - PLAYZONES

BACKGROUND

The Football Foundation as part of its PlayZones terms and conditions, requests that for all grants of over £250,000 that a legal first charge is taken over the freehold or leasehold in order to secure its grant funding. The terms and conditions do also allow for security to be taken on grants of less than £250,000, where deemed necessary.

If you are a public authority, local authority or parish council, and are unable to charge your premises to us, we will place a restriction on the title to the premises at the Land Registry, which prevents you selling or letting the premises without our knowledge or consent.

Should the applicant's paperwork not be in order or in the correct format at the time of application, this can be a time-consuming process to make any necessary amendments that can take months or even years to resolve. The result of this can either be a) rejection of the application, b) a significant delay to the start of the works, or c) delays in the release of the final payment.

To aid matters, this information pack should assist applicants in speeding up the process by ensuring that as much of the legal information required is provided ahead of the grant application being made. By providing the key legal documentation during the pre-application stage, the quicker the project will be able to start on site, and enable you to receive payment.

For further guidance on this matter, please contact your relevant Technical Project Manager or Technical Project Executive.

QUESTIONNAIRE FOR APPLICANTS FOR COMPLETION PRIOR TO GRANT APPLICATIONS BEING SUBMITTED TO THE FOOTBALL FOUNDATION

Please complete the questionnaire below regarding your property and provide the information requested with your application ticking the relevant boxes and/or delete Yes / No as appropriate.

1.		Name of applicant(s):		
2.		Type of entity:		
		Ltd Company number (if applicable):		
		Charity registration number (if applicable):		
3.		Full address and postcode of the property to be charged:		
4.		Does the applicant requesting the grant own the land on which the facility is to be developed? (tick as appropriate)	Freehold	Leasehold
5.	a)	If freehold please attach a copy of the freehold registered title from the Land Registry, with a copy of the plan from the Land Registry.	Yes	No
	b)	If leasehold please attach a copy of the lease and a copy of the registered leasehold title, with a copy of the plan from the Land Registry.	Yes	No
	c)	• Please confirm that the name of the applicant is the same as the name of the owner of the property. • If the applicant is not the proprietor of the property, please provide further details.	Confirmed or details provided	
	d)	• Please confirm if the lease requires consent for the tenant to charge it or not. • Please note that if the lease does not conform to the requirements of the attached guidance note and a charge is required to secure any grant funding, then amendments may be needed to the lease. Please note that in most instances, any grant of £250,000 or more will require security to be taken.	Yes	No

	e)	If a lease of the property is currently being negotiated (and a charge over the lease is required) then please attach a copy of the latest draft as we would prefer to confirm its format is satisfactory for security before it is completed in case any amendments are required.	Draft attached / draft not attached	
	f)	Please confirm the relationship between the applicant and the owner of the freehold or leasehold interest in the property if the applicant does not own the property:		
6.		Does the Applicant only hold an Agreement for Lease with the lease not due to be completed until works are complete at the property? If yes, please provide a copy of the completed Agreement for Lease and the agreed form lease and plans attached.	Yes	No
7.		Please provide a plan showing the facilities for which the grant is requested and showing access from the facilities to the nearest adopted highway. This can be shown on the Land Registry plan referred to at 5A above.		
8.		Please confirm if there are any current charges on the property. The Foundation will require a first charge on the property. If there are current charges please provide details of the existing charge holder: 1. 2. 3. 4. Please confirm the amount outstanding on the charge: 1. 2. 3. 4.	Yes	No
9.		Please confirm if the works to the facilities on the property require other partnership funding and if so, from whom, and how much additional funding is required. Please confirm if they require a legal charge to be taken: 1. 2. 3.	Yes	No

10.	Please note that the legal costs of the Foundation will be the responsibility of the applicant. For a legal charge these will be £3,000 plus VAT and out of pocket disbursements For a restriction on the title or a caution against first registration these will be £2,000 plus VAT and disbursements. Please note that these amounts are not fixed, and particularly complex matters may require an additional undertaking.	
11.	Please provide details of your solicitors including their telephone number and email address:	Details of solicitors

GUIDANCE NOTES FOR APPLICANTS – LEASE REQUIREMENTS

Where new leases are being drafted, or existing leases are being amended, the following matters **MUST** be incorporated:

1. **TERM** - The term of the lease, or the remaining unexpired term at the date of acceptance of the offer must be at least 21 years.
2. **ALIENATION** – The lease must be assignable (albeit with Landlord consent).
3. **CHARGING** – If necessary, landlord's consent must be obtained for the proposed charge to the Football Foundation. The clause should allow charging with the Landlord's consent not to be unreasonably withheld.
4. **USE**- the use clause must not limit the use of the premises to be only by the tenant named on the lease.
5. **RIGHTS OF RE-ENTRY**

5.1 The lease must not contain any right for the landlord to end the lease in the event of the tenant's insolvency (but the right to do so for non-payment of rent or breach of covenant is acceptable).

5.2 The lease should include a mortgagee protection clause in the following terms:

"PROVIDED THAT before exercising any right of re-entry under this clause the landlord shall give 60 days written notice to The Football Foundation or any other mortgagee of this lease for which notice has been given to the landlord (together "the Mortgagee") and if within 60 days of the expiry of such notice the Mortgagee indicates in writing to the landlord that it wishes to remedy such breach the landlord shall allow the Mortgagee a period of three months or such longer time as may be reasonable (in view of the nature and extent of the breach) to remedy such breach or to procure that it is remedied."

6. **BREAK OPTIONS** - The lease must not contain a right for the Landlord to break the lease before the end of the term. It is also preferable if the Tenant cannot do so.
7. **INSURANCE** – If there is any damage to the property which the landlord decided it could not reinstate, instead of the lease providing for all monies received from the insurers being given to the landlord, the lease should state that the insurance monies should be paid out according to the shares of the parties in the property taking into account any grant or third party lending.
8. **CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999** – the lease should include the following wording in respect of the Contracts (Rights of Third Parties) Act 1999–

   "Except as expressly provided for in clause [being the mortgage protection clause referred to above at point 5.2] a person who is not a party to the lease shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the lease. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act".

GUIDANCE NOTES FOR APPLICANT'S SOLICITORS

1. The Football Foundation's solicitors will need the information and documents set out below:

1.1. Where the Football Foundation will be taking a charge over the Applicant's property:

1.1.1 Details of any existing charges over the property.

1.1.2 Details of other funders requiring a charge in connection with the project.

1.1.3 The Applicant's solicitors will need to provide a certificate of title in the Football Foundation's standard form, a copy of which is attached and to do this will need to have obtained such search results as they consider appropriate to enable them to complete the Certificate

1.2 In the case of land owned by a public authority (e.g. Parish Council or Local Authority), where a charge cannot be taken, a restriction must be entered on the title to the Applicant's property. The Applicant will need to provide the full address and postcode and the Land Registry title number of the property.

1.3 Where, in the case of land owned by a public authority, a restriction cannot be entered because the land is unregistered, a caution against first registration must be lodged at the Land Registry and the Applicant may be required to enter into a deed of dedication in the Football Foundation's standard required form. The Applicant will need to provide the full address and postcode and the title deeds or an epitome of title for the property.

2. The solicitors acting for the Football Foundation are:

Bates Wells
10 Queen Street Place

London

EC4R 1BE
DX 42609 (Cheapside 1)
Reference: Jane Lougher

Tel: 0207 551 7683
Email: j.lougher@bateswells.co.uk

3. Under the general terms and conditions of grant, the Applicant is responsible for its own legal fees and will also be required to pay the Football Foundation's legal fees as follows:

3.1 For a legal charge – £3,000 plus VAT and disbursements.

3.2 For a restriction, or in the case of unregistered land, a caution against first registration and deed of dedication – £2,000 plus VAT and disbursements.

The Applicant's solicitors will need to provide an undertaking to be responsible for fees up to the limits set out above before legal work is commenced by The Football Foundation's solicitors. The Football Foundation's solicitors will require further undertakings for payment of fees should the fees exceed the amount for which the initial undertaking was given. Up to £3,000 is allowed out of the grant for the payment of legal fees.

3.3 If the legal fees exceed £3,000 the Applicant will be responsible for paying the fees and cannot reclaim any additional amount for fees from the Football Foundation.

4. Work cannot start on the project site until the charge, restriction or caution is in place. It is therefore important to progress matters quickly to avoid delays in the project timetable.