

GUIDELINES ON SELLING/PURCHASING/LEASING CHURCH PROPERTY

The Parochial Church Council (PCC) may decide that it wishes to sell, lease, exchange or mortgage a property which it has been using within the parish or to purchase a property for parish use. This guidance summarises the position as set out in the Parochial Church Councils (Powers) Measure 1956, as amended by the Ecclesiastical Property Measure 2015. It does not attempt to deal in detail with other legislation which may affect parochial church councils (PCCs) in their dealings with their assets.

Any interest held by a PCC in land or buildings (other than a lease of no more than seven years) or any interest in personal property (e.g. shares, investment holdings) to be held on permanent trusts (often referred to as permanent endowment) must be vested in the Diocesan Board of Finance (“the Board”)¹. This is the case whether or not the approval of the consent of the Board for any transaction is required as set out below.

1. When does the Board need to be involved?

Under the Parochial Church Councils (Powers) Measure 1956, the PCC shall neither acquire² nor “sell, lease, let, exchange or charge the property without the consent of the [diocesan] authority”³ unless “the consideration on the transaction in question is less than such amount as may be specified in, or determined in accordance with, an order made by the Archbishops’ Council.”⁴ The current Order governing whether transactions require the approval of the diocesan authority can be found here <http://www.legislation.gov.uk/cy/uksi/2015/1545/made?view=plain>⁵.

In summary if a PCC wishes to buy, sell, lease, let, exchange or charge property, including assets other than land held as permanent endowment that are vested in the diocesan authority, the consent of the diocesan authority will not be required if:

The value of the transaction is less than the lower of (i) the PCCs annual unrestricted income in its most recent annual accounts made up to 31 December and (ii) £250,000 (provided that its most recent annual accounts are not more than 22 months old); and

The transaction does not relate to or include (i) a church or a building licenced for public worship (in full or in part) (ii) a churchyard or part of a churchyard or (iii) land which is adjacent to property as defined in (i) or (ii).

Section 6(4) of the 1956 Measure provides that the PCC must indemnify the Board against all liabilities, insurance premiums, rates and other outgoings and costs relating to property vested in the Board, including solicitors’ and surveyors’ fees.

The Measure can be found at <http://www.legislation.gov.uk/ukcm/Eliz2/4-5/3/contents>.

¹ Under section 6(2) of the PCC Powers Measure 1956 as amended by the Ecclesiastical Property Measure 2015

² PCC Powers Measure 1956, section 6(1)

³ PCC Powers Measure 1956, Section 6(3) as amended

⁴ PCC Powers Measure 1956, Section 6(4A)

⁵ The Ecclesiastical Property (Exceptions from Requirement for Consent to Dealings) Order 2015

2. What is needed for the Board to consent to a purchase?

The PCC, as managing trustees will make the initial decision to purchase a property. The Board will need to see a resolution (draft below) and a copy of any surveyor's report and valuation. The formal consent of the Board as Custodian Trustee can then be applied for if required, and this will normally be given if the terms of the proposed purchase and the proposed use of the property are satisfactory. Whether its consent is required or not, the Board will need to be party to the transaction and the Board's solicitor will need to check the documentation and their costs will fall to be met by the PCC.

If the PCC wishes to acquire a lease of no more than seven years the Board's consent will not be required and the Board need not be a party to the lease.

3. When will the Board consent to a sale or letting?

The PCC, as managing trustees will make the initial decision to sell or let property, and will instruct surveyors to negotiate the terms and prepare a report and valuation (see para. 5 below). The formal consent of the Board as Custodian Trustee can then be applied for if required, and this will normally be given if the terms of the proposed lease/sale and the proposed use of the property are satisfactory. If property is to be let, the Board will be a party to the lease alongside the PCC. The rent is income and can therefore normally be paid direct to the PCC as Managing Trustees to be used either in accordance with the trusts in any trust deed, or if none, for the benefit of the parish.

The Board would also need to see a resolution (draft below) passed by the PCC authorising the proposed disposal and indemnifying the Board against all costs in connection with the disposal, as set out in Section 6 of the 1956 Measure. The PCC is perfectly at liberty to appoint its own surveyor and solicitor but the Board's solicitor will need to check the documentation, as the Board will be a party to the transaction, and their costs will fall to be met by the PCC. In order to save double handling and costs, therefore, PCCs often use the Board's solicitor. This is especially so as local solicitors, whilst sometimes appearing cheaper, often have no knowledge of ecclesiastical law, and this can lead to more work in redrafting incorrect documentation, so ultimately increasing legal costs for the PCC.

4. Will the consent of the Charity Commission be required?

In all transactions relating to assets the PCC will be subject to the general requirements of trust law to act in the best interests of the charity. This includes following the specific guidance on the disposal and acquisition of property which is available from the Charity Commission guidance CC28⁶ and CC33⁷. This includes, but is not limited to, taking appropriate professional advice, transacting at the best price reasonably obtainable and following required processes for any proposed transactions with connected persons (defined for example in section 5.4 of CC28).

Charity Commission consent is not normally required provided:

(1) A written report under Section 119 of the Charities Act 2011 ("Section 119 Report") is obtained from a qualified surveyor, instructed by and acting exclusively for the PCC. The surveyor has to be a qualified member of the RICS or the ISVA. A member of the Association of Estate Agents is not sufficient.

⁶ <https://www.gov.uk/government/publications/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land-cc28>

⁷ <https://www.gov.uk/government/publications/acquiring-land-cc33>

(2) The Board as Custodian Trustee must be satisfied that the proposed terms are the best that can be obtained.

(3) The purchaser or tenant is not a “connected” person. A “connected” person includes a trustee, employee or officer of the charity, or a relative of any such person, or a company controlled by a member of the PCC or Board (note that a PCC member would normally be a trustee). If the purchaser is a ‘connected’ person, Charity Commission consent will be needed.

5. Can only a Qualified Surveyor give the Section 119 Report in 3(1) above, what information is needed, and are there any exceptions to the rule that Trustees must obtain the best rent?

The restrictions on disposing of charity land in Sections 119-120 of the Charities Act 2011 make a distinction between leases for over and under seven years.

Where a lease is to be granted for not more than seven years, the Section 119 Report, stating that the terms are the best that can reasonably be obtained, may be given by “a person who is reasonably believed by the Trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition” – Section 120(2)(a).

The information needed for a Section 119 Report is set out in The Charities (Qualified Surveyors’ Reports) Regulations 1992 <http://www.legislation.gov.uk/ukxi/1992/2980/contents/made>. This includes a description of the land (paragraph 1 of the Schedule), whether it is leased by or from the charity trustees (paragraph 2), the easements or covenants to which the land is subject or the benefit of which it enjoys (paragraph 3), whether or not any buildings in it are in good repair (paragraph 4), whether alterations to any such buildings are desirable (paragraph 5), advice as to the way the proposed disposition of the land is to be conducted (paragraph 6), advice about VAT (paragraph 7), the surveyor’s opinion about the value of the land (paragraph 8) and, where appropriate, his/her suggested alternative ways of disposing of the land (paragraph 9).

An exception to the rule that trustees are under a duty to obtain the best rent and terms reasonably obtainable on the open market is an “Albemarle” scheme. Under this scheme premises are let, for example, to a civil parish council for use as a village hall. The rent may then be nominal provided the lessee carries out repairs and improvements to the property, and the lessor reserves the right to use the property on a certain number of occasions during the year and the property is used as a village hall or similar for the benefit of the local community. If satisfied as to the terms of the lease, the Charity Commission will then draw up an Order authorising such an Albemarle scheme.

6. Is Stamp Duty payable on the sale/lease of church property?

Sales and leases to a charity attract the charities’ exemption under Section 129 of the Finance Act 1982, although sales by a charity will not be exempt.

7. Other factors to be taken into consideration

Before disposing of church property, it should be checked whether there are any restrictions; for example, whether there are trusts which apply to the property, and if so, whether these allow a disposal and on what terms. This might also be relevant to the use of the property, as restrictions may apply for use only, for example, for ecclesiastical purposes, for use for a minister of religion or a worker employed by the PCC. It is important that these stipulations are adhered to so that the trustees of the Trust Deed are not in breach of the trust. We suggest that parishes contact the

diocesan office in the first instance to check ownership of the property and to see whether there are any such restrictions in respect of a proposed disposal.

Where land is held on trust to be used for the purposes set out in the trust, Section 121(2) of the Charities Act 2011 stipulates that it can only be disposed of after public notice has been given for at least a month, and any representations made have been taken into consideration. In this event it is advised that the parish request their agent to place a notice in the press for this purpose.

A guide to other landlords' obligations, such as gas safety and Energy Performance Certificates, can be found at <https://www.gov.uk/renting-out-a-property>

8. Deposits

If the PCC is taking a deposit from a residential tenant, it MUST place the money in a tenancy deposit protection (TDP) scheme if it is letting the property on an assured shorthold tenancy (AST) which starts after 6 April 2007. The TDP scheme guarantees that tenants will get their deposits back at the end of the tenancy if they meet the terms of the tenancy agreement and do not damage the property. One of four approved TDP schemes MUST be used (Deposit Protection Service (DPS); MyDeposits; Tenancy Deposit Scheme (TDS) or Capita Tenancy Deposit protection.) If the PCC does not do this then its tenants could take the PCC to court and it may have to repay them their deposit plus between 1 and 3 times the amount of their deposit. The PCC can register online – please see <https://www.gov.uk/tenancy-deposit-protection/overview>.

9. Who should the PCC contact at the diocesan office?

As soon as the PCC starts to consider purchasing, selling or letting property a representative of the PCC should be appointed to liaise with the Board. That person should then contact Wendy Harris (email wendy.harris@cofequildford.org.uk) and provide as much detail as possible about the proposed transaction. If the PCC is in any doubt whether a transaction requires the consent of the Board it is encouraged to contact the diocesan office at an early stage to obtain clarity on the matter. In any case regardless of whether or not the consent of the Board is required for a transaction, if a PCC is contemplating a transaction relating to an asset which is vested in the Board, early contact with the diocesan office is encouraged. This should help improve the timeliness of the transaction.

April 2021

DRAFT RESOLUTION

At a meeting of the Parochial Church Council of.....

held at on the day of20

it was resolved:-

1. That the PCC wish to (details of project)

2. To appoint Messrs as Solicitors to act in connection with the sale/purchase/letting and to be responsible for payment of their charges in connection therewith together with all Surveyors' fees and estate agents' commission.

3. To indemnify the Guildford Diocesan Board of Finance from and against all legal costs and other expenses or liability incurred in connection with the transaction.

4. The PCC confirms by this Resolution that independent professional valuations have been acquired and are available for submission to the Custodian Trustees – the Guildford Diocesan Board of Finance.

Signed by Chairman.....

PCC Member (1).....

PCC Member (2)