

## **GUIDELINES ON LEASING/SELLING CHURCH PROPERTY**

The Parochial Church Council (PCC) may decide that it wishes to sell, lease, exchange or mortgage a church property which it has been using within the parish. These guidelines set out the procedure for achieving this as follows:

### 1. When does the Diocesan Board of Finance (“the Board”) need to be involved?

As a general rule, PCCs cannot in law own property in their own right; it has to be vested in the Board as Custodian Trustee on trust for the parish, with the PCC acting as Managing or Administrative Trustee. As such, the PCC administers, manages and runs the property, normally receiving the rent, and being responsible for any outgoings. This comes about by virtue of the Parochial Church Council (Powers) Measure 1956 (the 1956 Measure), under Section 6(iii) of which the PCC can only sell, lease, exchange, charge or take legal proceedings with respect to the property, with the consent of the Board. The exception to this, however, is where the PCC wishes to acquire a lease, and then the Board’s consent will only be needed if it is for more than a year – Section 6(1); i.e. for leases granted to the PCC for less than a year or from year to year, the Board need not be a party to the acquisition, nor is its consent needed.

Section 6(iv) 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 property vested in the Board as Custodian Trustee for ecclesiastical purposes will have charitable status, and as such will come under charity legislation as below. The Board will be a party to a lease of such property 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.

### 2. When will the Board consent to a letting?

The Managing Trustees will make the initial decision to sell or acquire a lease of property, and will instruct surveyors to negotiate the terms and prepare a report and valuation as below. The formal consent of the Board as Custodian Trustee can then be applied for pursuant to Section 6 of the 1956 Measure, and this will normally be given if the terms of the proposed lease/sale and the proposed use of the property are satisfactory. Charity Commissioners’ consent is not normally required provided:

- (1) A written report under Section 36 of the Charities Act 1993 (“Section 36 Report”) is obtained from a qualified surveyor, instructed by and acting exclusively for the PCC. The surveyor has to be a member of the RICS or the ISVA. A member of the Association of Estate Agents is not sufficient.
- (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. If the purchaser is a ‘connected’ person, Charity Commission consent will be needed.

The Board would also need to see a Resolution (draft Resolution attached) 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 re-drafting incorrect documentation, so ultimately increasing legal costs for the PCC.

Finally, where land is held on trust to be used for the purposes set out in the trust, Section 36(6) of the Charities Act 1993 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.

3. Can only a Qualified Surveyor give the Section 36 Report in 2(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 Section 36 of the Charities Act 1993 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 36 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 36(v)(a).

The information needed for a Section 36 Report is set out in Statutory Instrument 1992 No. 2980 attached. 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 the “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 the village hall for the benefit of the local community. If satisfied as to the terms of the lease, the Charity Commissioners will then draw up an Order authorising such an Albemarle scheme.

For further information on this please contact the office.

4. 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.

5. Any 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 trust deeds 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 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.

6. Deposit

If the PCC is taking a deposit from a tenant, you MUST place the money in a tenancy deposit protection (TDP) scheme if you are 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 three approved TDP schemes MUST be used (Deposit Protection Service (DPS); MyDeposits; or Tenancy Deposit Scheme (TDS).) If the PCC does not do this then your tenants could take the PCC to court and you 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 [www.direct.gov.uk/en/homeandcommunity/privaterenting/tenancies/dg\\_189120](http://www.direct.gov.uk/en/homeandcommunity/privaterenting/tenancies/dg_189120)

Any other questions please refer to the Diocesan Office.

NSMcV  
August 2012

## **Checklist**

1. S36 Report (now S119 Report)
2. PCC Resolution
3. Connected Person
4. Public Notice
5. Deposit - Register with a TDP scheme

## **ADDENDUM 2012**

The new Charities Act 2011 has changed section numbers, so please note that

A SECTION 36 REPORT WILL NOW BE A SECTION 119 REPORT

# DRAFT RESOLUTION

At a meeting of the Parochial Church Council of .....  
held at ..... on the ..... day of ..... 200 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 appoint Messrs. .... as Surveyors/Architects/ Quantity Surveyors, etc.
  
4. To indemnify the Rochester Diocesan Society and Board of Finance from and against all legal costs and other expenses or liability incurred in connection with the transaction.
  
5. The PCC confirms by this Resolution that independent professional valuations have been acquired and are available for submission to the Custodian Trustees – the Rochester Diocesan Society and Board of Finance.

Signed by Chairman.....  
PCC Member (1).....  
PCC Member (2).....