

GUIDELINES ON SELLING/PURCHASING/LEASING CHURCH PROPERTY

A 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 (Power) Measure 1956 as amended by the Ecclesiastical Property Measure 2015.

The focus for this information is the sale of PCC property and land. If a PCC would like to lease, mortgage or purchase a property or land the requirements are very similar.

When a PCC wishes to sell PCC property or land, it is necessary to

- Contact the Trust Officer (Mrs Elizabeth Wallis – elizabeth.wallis@salisbury.anglican.org or 01722- 438665).
- Obtain a PCC resolution confirming the proposed transaction
- Obtain Salisbury Diocesan Board of Finance (SDBF) approval if required – this is arranged by the Trust Officer
- Obtain a Charity Compliant report and valuation for the Charities Act 2011.
- Appoint a solicitor to act for the PCC. The PCC may appoint its own solicitor. The SDBF's solicitor will need to check the documentation as SDBF will be a party to the transaction and these costs will be met by the PCC. Some PCCs use the Board's solicitors to avoid double handling and costs and also some local solicitors have no expert knowledge of ecclesiastical law which can lead to more work (and costs) in redrafting incorrect documentation.

1. PCC Resolution

PCCs as such cannot own property or land and the usual legal owner is Salisbury Diocesan Board of Finance (SDBF) in the role of custodian trustee. The PCC is the managing trustee and has the powers of management including responsibility for the upkeep of the building or land. As the managing trustee, the PCC would take the initial decision to sell the property or land and a resolution reflecting this would be recorded in the PCC minutes. A draft/model resolution form which could be used can be found at the end of this document on Page 4.

2. Salisbury Diocesan Board of Finance (SDBF) consent to sale

It is usual for SDBF consent to a sale to be required under Section 6(3) of the Parochial Church Councils (Powers) Measure 1956 with the SDBF in the role of custodian trustee.

Where SDBF consent is required, the PCC will need to provide a brief summary of the reasons for the proposed sale and send it to the Trust Officer. SDBF consent is normally granted provided that the SDBF is satisfied that the sale is in the best interest of the trust and PCC, that the sale terms are satisfactory and that there would be no breach of the trust if the sale went ahead.

Where SDBF consent is required for a property purchase or sale, SDBF in the role of custodian trustee will need to be a party to the transaction and to be a signatory to any deed and will instruct Wilsons (the SDBF's solicitors) to approve the documentation and give advice on the sale. All costs relating to custodian trustee matters are borne by the PCC as the initiating party and managing trustee.

3. Charities Act 2011

Any property or land held by SDBF as a custodian trustee is charitable property and will come under the provisions of the Charities Act 2011. This will apply whether or not SDBF consent is required for the sale. In theory, any sale of PCC property requires Charity Commission consent however providing the PCC complies with the relevant provisions of the Charities Act this consent is not required.

The consent of the Charity Commission is not required providing

- (i) The sale is made to a person who is not a 'connected person'; for example a trustee, officer or employee of the charity or a close relation of such a person.
- (ii) A satisfactory report (a Charity Compliant report and valuation otherwise known as a Section 119 Report as set out in The Charities (Qualified Surveyors' Reports) Regulations 1992) has been obtained from a qualified surveyor (a qualified member of RICS or the ISVA). It must contain details of the following:-
 - (a) A description of the land and its location
 - (b) Whether the buildings are in good repair or not
 - (c) Advice as to the manner of disposing of the charity
 - (d) Whether it is in the charity's best interests to advertise the sale and the surveyor's reasons for this advice.
 - (e) The current value of the property with respect to its current state of repair and circumstances.

This report will be need to be seen by the Trust Officer (Mrs Elizabeth Wallis – elizabeth.wallis@salisbury.anglican.org or 01722- 438665).

4. Other Factors to be considered

Before disposing of church property, the PCC and Trust Officer should investigate and check if there are any restrictions – for example, if there are trusts which apply to the property and if this is the case if these allow for the sale and on what terms. This could be relevant as to the use of the property or land as restrictions or covenants for use may apply– some examples might include, only for ecclesiastical purposes, for use by a minister of religion or a worker employed by the PCC. These conditions must be adhered to so that the Trustees of the Trust Deed are not in breach of the terms of the trust.

Before entering into any agreement for sale of property or land the PCC must:-

- (i) Obtain and consider a written report on the proposed sale (a Charity Compliant report and valuation) from a surveyor who is familiar with the Charities Act 2011, suitably qualified (as defined in Section 119(3) of the Act), and instructed by the PCC and acting exclusively for the PCC.
- (ii) Advertise the proposed sale for such time and in the way that the surveyor has advised in the report. It is occasionally possible that the surveyor has advised that it would not be in the charity's best interests to advertise the proposed sale.
- (iii) Confirm that it is satisfied, having studied the surveyor's report that the terms on which the sale is proposed to be made are the best that can be reasonably be obtained for the charity. An exception to the rule that the PCC is under a duty to obtain the best rent and terms reasonably obtained on the open market, is an 'Albermarle Scheme'. Under this scheme a

building is let to a civil Parish Council or a Village Hall Management Group for use as a Village Hall. The subsequent rent may then be a token rent provided that the lessee carries out repairs and improvements to the building and the PCC, as lessor, retains the right to use the building on a specified number of days during the year and the building is used for the benefit of the local community usually as a Village Hall. The Charity Commission would then draw up an Order authorising the Albermarle scheme providing the Commission is satisfied with the terms of the lease.

As soon as the PCC starts to consider selling, leasing or purchasing a property, a PCC member should be appointed to liaise with SDBF. The person should contact the Trust Officer (Mrs Elizabeth Wallis – elizabeth.wallis@salisbury.anglican.org or 01722- 438665) and provide details of the proposed transaction. If the PCC has any doubt about whether SDBF consent is required for a particular transaction, then early contact with the Trust Officer is strongly recommended to clarify the situation.

December 2018

DRAFT RESOLUTION

At a meeting of the Parochial Church Council of

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held at

on the day of 20

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/or
and to be responsible for payment of their charges in connection with this transaction
together with all Surveyors' fees and Estate Agents' commissions.

3. To indemnify Salisbury Diocesan Board of Finance from and against all legal costs and
other expenses or liability relating to this transaction.

4. The PCC confirms by this Resolution that independent professional valuations have
been obtained and are available for submission to Salisbury Diocesan Board of Finance as
the Custodian Trustee.

Signed by Chair.....

PCC Member (1).....

PCC Member (2).....