

SALE OF LAND BY DIOCESAN BOARDS OF FINANCE AND PAROCHIAL CHURCH COUNCILS TO FURTHER THE CHURCH'S SOCIAL MISSION

A note from the Legal Office of the National Church Institutions

1. The recent report of the Archbishops' Commission on Housing, Church and Community, [*Coming Home – Tackling the Housing Crisis Together*](#), was published in February 2021. In chapter 4 of the report, the Commission states:

The view of the Legal Office of the National Church Institutions is that Church PCCs are already able to sell land at less than full value. In their view, the social aspect of a PCC's objects would, in principle, mean that it could sell or develop land at an undervalue to meet local community need, provided that the land was not held on trust for purposes which precluded it being used in this way. In addition, where diocesan property is 'corporate property' of the Diocesan Board of Finance (DBF) (i.e. property owned outright by the DBF and not subject to statutory restrictions or trusts), it can be used for any of the DBF's purposes.

The Legal Office believes that it would in principle be open to a DBF to apply this category of property towards the provision of affordable housing at less than the highest price.

2. The purpose of this note is to explain the Legal Office's view, as described in *Coming Home*, in some greater detail. It does not constitute legal advice and any DBF or PCC which is considering disposing of land should take its own legal advice on the proposed sale or other disposition.
3. It is also important to note that what is said here relates only to the corporate property of diocesan boards of finance (DBFs) and parochial church councils (PCCs); i.e. property which they hold for their general purposes and which is not held on trust or subject to specific statutory restrictions. What is said in this note does not, for example, apply to glebe land¹ or to land held by a DBF for 'diocesan purposes'²; nor does it apply to land held by a PCC on trust for a particular purpose, for example land that has been donated to the PCC for the purpose of extending the churchyard or for providing a church hall.
4. In substance, the view of the Legal Office is the same as the view of Bates Wells Braithwaite which is set out in Appendix 3 of *Coming Home*. Part 7 of the Charities Act 2011 imposes restrictions on the disposal of land by charities. A charity is not permitted to sell or otherwise dispose of land without an order from the court or from the Charity Commission unless certain conditions are met. An order is not normally needed if a sale or other

¹ Glebe land must be held, managed and dealt with for the benefit of the diocesan stipends fund: section 16(1), Church Property Measure 2018.

² See section 45(1)(d) of the Mission and Pastoral Measure 2011 which enables a pastoral scheme to provide for the transfer of a parsonage house to the DBF to be held as part of the diocesan glebe land or for use for parochial or diocesan purposes. In *Barnes v Derby Diocesan Board of Finance and another* [2003] Ch 239, the High Court held that the objects of a DBF are likely to be wider than the objects of the diocese and that 'diocesan purposes' in what is now section 45(1)(d) of the Mission and Pastoral Measure 2011 'is plainly narrower than the corporate objects of [the] DBF'. The objects of a DBF, for example, include holding real and personal property 'for purposes connected with the Church of England' but not all such purposes would be 'diocesan purposes'.

disposition of charity land is not to a 'connected person' and the following steps³ are taken by the charity trustees:

- obtaining a surveyor's report on the proposed sale or disposal;
 - advertising the proposed sale or other disposal as advised by the surveyor;
 - deciding they are satisfied, having considered the surveyor's report, that *'the terms on which the disposition is proposed to be made are the best than can reasonably be obtained for the charity'*.
5. If the intention is to raise money so that it can be spent in furthering the charity's objects, the best terms that can reasonably be obtained for the charity will almost certainly mean the highest price that can be obtained for the land.
 6. While the best terms that can reasonably be obtained on the sale of a charity's land will usually be terms which result in the charity obtaining the highest price obtainable, that will not invariably be the case. An assessment of the best terms that can reasonably be obtained for a charity should take account of other relevant factors, such as any potential negative impact on the the charity's objects or reputation. For example, if the highest bidder intended to build a casino on the land, the trustees could reasonably decide to accept a lower bid from another purchaser on the basis that a sale to the highest bidder would damage the church's mission and reputation and so would not be on the best terms reasonably obtainable for the DBF or PCC.
 7. But a charity's intention in selling land might not be – or not simply be – raising money so that it can be spent on furthering the charity's objects. A charity whose objects include what are broadly referred to as 'social purposes'⁴ may intend to further its objects in a more direct way, for example by making land available for housing those who are in need because of financial hardship or other disadvantage. If that is (or forms part of) the charity's intention in disposing of the land, the best terms that can reasonably be obtained for the charity on the sale might be less than the highest price that could reasonably be obtained in an open market sale.
 8. If a DBF or a PCC is considering the disposal of land at below the highest price that could reasonably be obtained in an open market sale in order to further the objects of their charity, the trustees should take particular care to follow a proper decision-making process⁵ **before** deciding whether to enter into any agreement for the sale.
 9. The decision-making process must include the steps listed in paragraph 4 above. But the trustees must also consider a wider range of matters. These include the basic principle that **charity trustees must always act in accordance with the trusts of their charity and apply the charity's property for its charitable purposes and not for any other**

³ These steps are not required when selling charity land to another charity otherwise than for the best price that can reasonably be obtained where it is authorised by the trusts of the disposing charity. This exception is unlikely to be available to a PCC or DBF as it applies only where the disposition is authorised by the trusts of the charity that is selling the land: Charities Act 2011, section 117(3).

⁴ 'Social purposes' as used here is intended to include charitable purposes that fall within section 3(1)(a), (b), (d), (e) and (j) of the Charities Act 2011.

⁵ See Charity Commission's Guidance CC27 [It's your decision: charity trustees and decision making \(CC27\)](https://www.gov.uk/guidance/it-s-your-decision-charity-trustees-and-decision-making-cc27) - GOV.UK (www.gov.uk)

purpose. They also include the principle that applies to all decisions of charity trustees: that the **trustees must always act prudently in the best interests of their charity.**

10. The trustees must therefore be satisfied that the purpose which they intend to further by selling at below full market value is a purpose that falls within their charity's objects. The trustees should refer to their charity's governing document as necessary when considering this. In the case of a DBF this will be the DBF company's memorandum and articles. DBFs have quite wide general objects and in most (if not all) cases their objects should be wide enough to include the social aspects of the mission of the Church of England.⁶
11. In the case of a PCC, reference should be made to the Parochial Church Councils (Powers) Measure 1956 which sets out the purposes of PCCs. These include 'promoting in the parish the whole mission of the Church, pastoral, evangelistic, social and ecumenical'.⁷ Again, these give PCCs a quite wide range of charitable objects that expressly include the social aspects of the mission of the Church of England.
12. If the trustees are satisfied that the purpose it is intended to further does fall within their charitable objects they must go on to consider whether the particular proposal under consideration is a prudent and effective way of furthering that purpose. This will include consideration of the positive (and any negative) impact that making the land available will have; whether the impact it will have represents good value for money for the charity in terms of the amount that it will forego if it sells the land for less than the highest market price obtainable; and whether there are other, more effective, ways that the charity could further the purpose the charity wishes to support.
13. The trustees must also take account of the impact the proposed sale would have on their charity more generally. So, for example, trustees who are considering a potential sale of land at less than full market value must take account of their charity's overall financial position and its ability to meet any legal obligations it has (such as debts and statutory obligations to make certain payments) and its ability to further its charitable purposes generally, especially those which are its core purposes. Against that background, they must assess what impact selling the land for less than the highest price that can be obtained would have on the charity's ability to meet its legal obligations and further its charitable purposes more generally.
14. If selling the land at less than the highest obtainable price would have a material detrimental impact on the charity's ability to meet its legal obligations and/or further its core charitable purposes, it is unlikely that the charity trustees will be able to conclude that the proposed transaction is in the best interests of their charity, in which case they will not be able to pursue it.
15. The trustees of a DBF or PCC which decides to sell land at less than the highest market price reasonably obtainable should stand ready to justify their decision in terms of the obligations imposed on them by charity law. So that they can do that, they should keep a

⁶ Section 1(2) of the Diocesan Boards of Finance Measure 1925 requires the memorandum and articles of a DBF company to empower the company to 'hold real and personal property for purposes connected with the Church of England' and 'to perform, work and to transact business in connection with the Church of England and the diocese concerned'. It also requires the memorandum and articles to confer 'such further powers on the Company as the Diocesan Synod of the diocese concerned may think necessary or expedient in view of the requirements of the diocese'.

⁷ Section 2(2)(a), Parochial Church Councils (Powers) Measure 1956.

clear record of the matters that they have considered and the views they have come to in reaching their decision. The trustees should be able to demonstrate from their records that they have:

- a. ascertained – from the surveyor’s report – the best price which could reasonably be obtained for the land on the open market;
- b. decided that accepting a specified lesser sum in the particular case would be an effective and prudent way of furthering one or more of their charity’s objects;
- c. made an assessment of the impact that obtaining only the lesser sum, rather than the full market price, would have on their charity’s work in the immediate and longer term;
- d. carefully weighed the impact that accepting the lesser sum would have against any negative impact on the charity’s ability to fulfil its objects more generally (and in particular those which it is under an obligation to fulfil or which represent core objects); and
- e. reached a reasonable conclusion that it would be in the best interests of their charity to proceed with the proposed sale.

16. Except where a case is clear cut, the trustees should seek specific legal advice on the fulfilment of their duties if they are considering a transaction of this sort⁸.

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⁸ Where the trustees are unsure whether they can be satisfied that the proposed sale is on the best terms reasonably obtainable for the charity, they might be advised to seek an order from the Charity Commission authorising them to make the proposed disposition of land.