

Church Property Measure 2018

Disposal of sites acquired by the Commissioners or DBFs in more recent years for Church, Churchyard or Burial Ground purposes, but no longer required

(1) **Background**

- (i) Part 3 of the CPM 2018 incorporates provisions previously contained in the New Parishes Measure 1943. These notes apply only to unconsecrated land which is not subject to faculty jurisdiction (see (ii) below for unconsecrated land attached to a consecrated church). Parishes considering disposing of consecrated ground, or using it for another purpose, should contact the Secretary to their Diocesan Mission and Pastoral Committee at an early date, as other considerations apply in such cases and the DMPC has a statutory role under the Mission and Pastoral Measure 2011 in relation to any such proposals.
- (ii) Under section 57 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 "where unconsecrated land forms or is part of the curtilage of a church within the jurisdiction of the consistory court, that court has the same jurisdiction over that land as over the church. ". The disposal of such property by the incumbent should be dealt with simply under the authority of a faculty; Part 3 of the Church Property Measure will have no application. In all cases the parish should consult the Diocesan Registrar at an early date so that a decision can be taken as to which method of disposal (faculty or CPM) is to be adopted.
- (iii) Over the years many pieces of land have been acquired, either by gift or purchase, by the Church Commissioners, their predecessors or, more recently, DBFs to form or extend the site of a church, churchyard or burial ground. Most of these sites have been consecrated and put into use but there are a number of sites which, wholly or partly, have not been consecrated and which are no longer required for their original purpose. The most common instance is where an unconsecrated area is situated around a (consecrated) church. Sometimes, however, whole sites that have been acquired are no longer needed, either because an intended church was never built, or because it proved unnecessary to extend a parish churchyard or burial ground in the way once envisaged.
- (iv) Any land acquired by the Church Commissioners or DBFs for church, churchyard or burial ground purposes now vests in the incumbent of the benefice concerned.

(2) **Powers of dealing with this land**

Subject to the possibility of proceeding by way of faculty instead, as mentioned above, and to the provisions referred to below, section 33 of the Church Property Measure provides that unconsecrated church, churchyard or burial ground land acquired by the Church Commissioners, their predecessors or, more recently, DBFs no longer required may be:

- (a) *sold;*
- (b) *exchanged for another piece of land which is more suitable for the original purpose;*

- (c) *appropriated or transferred to another ecclesiastical, educational, charitable or public purpose relating to the parish;*
- (cc) *transferred to the Diocesan Board of Finance to be held as glebe; or*
- (d) *reconveyed to the original donor or his/her successors without consideration.*

The diocesan bishop, the incumbent and the DBF concerned would all need to agree that the land was not required and to consent to the proposed transaction. **The procedures regarding consents and other requirements are set out in the annex on page 3.**

(3) **Solicitors**

In all cases the incumbent will be the vendor/donor (the bishop will act in a vacancy) and will need to appoint a solicitor to act for him/her.

(4) **Other legislation**

Historically, not all acquisitions of unconsecrated church sites were effected through the Church Commissioners or their predecessors (or DBF in more recent times). Where land was acquired by an incumbent under the provisions of the Gifts for Churches Act 1803, the Gifts for Churches Act 1811 or the Consecration of Churchyards Act 1867, powers of disposal similar to those described above are incorporated in section 7 of the Church Property (Miscellaneous Provisions) Measure 1960. Where land has been acquired under one of the above Acts by way of gift less than 20 years ago it must first be offered back to the donor by way of gift, whether the proposed disposal is by way of gift, appropriation or sale. Although under the 1960 Measure the bishop would need to consent to any disposal by the incumbent, the Commissioners are not a consenting party and they would not be involved.

(5) **General**

- (i) In the case of a vacant benefice, the powers of disposal vested in the incumbent under the Measures are exercisable by the bishop.
- (ii) In the context of this note, "land" includes any building or buildings erected upon that land.
- (iii) This memorandum covering the topic in general terms does not cover all the circumstances that may prevail in individual parishes. PCCs and others concerned with the disposal of unrequired unconsecrated church property are most welcome to seek any procedural advice that they may require from the diocesan registrar concerned in the first instance, or the Commissioners' Pastoral Division.

ANNEX

Procedures regarding consents and other legal requirements in respect of disposals where the Commissioners' consent is required (i.e. when the proposed transaction is with a connected person and/or the 'report' requirements have not been met) under Part 3 of the Church Property Measure

Checklist

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| 1 | <p>Under section 33 of the Measure, before the DBF concerned can consider any proposal from a parish to dispose of unconsecrated property not subject to faculty jurisdiction, they need to be assured that both the incumbent and the bishop are satisfied that the land concerned is not required for its original purpose and that they have consented to the disposal. This can most conveniently be dealt with by the completion of a statement, accompanied by a location plan of the property concerned (prepared in accordance with land registry guidelines), along the following lines:</p> <p><i>"We being the Bishop of the diocese and incumbent of the benefice in which the parish of is situated are satisfied that the land shown by the colour on the attached plan is no longer required for the purpose for which it was originally acquired. We therefore consent to its [sale, and would ask the Church Commissioners to apply the sale proceeds towards][appropriation as][reconveyance to the original donor]"</i>.</p> |
| 2 | <p>The Commissioners will also require:</p> <p>(1) confirmation that the Diocesan Registrar/Chancellor does not claim faculty jurisdiction;</p> <p>(2) the name, address, DX number (if relevant), telephone number and reference of the solicitors acting for the incumbent;</p> <p>(3) <u>in the case of an appropriation to another parochial or church purpose:</u></p> <p style="padding-left: 20px;">(i) full details of the proposed use and confirmation that any other relevant consents have been obtained (e.g. those required under Part 1 of the Church Property Measure in the case of land being acquired under that Measure for a parsonage site, or the DBF and PCC in the case of land required for the site of a church hall); and</p> <p style="padding-left: 20px;">(ii) if the land had been acquired by way of <u>gift</u> or for a <u>nominal consideration</u> and is to be appropriated without payment, the consent of the original donor or his successors (where practicable). (This is a statutory requirement of s33(1)(e) of Part 3 of the Church Property Measure.)</p> |
| <p>NOTES</p> <p>1. <i>The incumbent's solicitor will be responsible for preparing the transfer (a pro-forma is available on our Legal Office's website).</i></p> <p>2. <i>Parishes are reminded that they should ensure that it is clearly understood by all concerned that arrangements made locally to dispose of unrequired property can be provisional only until all the statutory consents are obtained.</i></p> | |

Plan

Inc't's consent

Bp's consent

Agreement to application of sale proceeds

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