



FAITH IN AFFORDABLE HOUSING

A legal guide for land disposal by PCCs,
for the development of affordable housing.



FAITH IN AFFORDABLE HOUSING FOREWORD



If you're reading this because you have made the decision to use your church land for affordable housing or are seriously exploring the possibility, congratulations on setting out on this important journey. I expect you share my commitment to do everything in our power as the Church to meet housing need where we are. Unfortunately, working out what is within our power is not always straightforward – especially when it comes to using land owned by churches and other charities. This guidance should help you plot your course.

Before we come to the legal insights, I'd like to offer some spiritual and practical reflections.

Firstly, don't be daunted by these challenges - they need to be worked through. You must discharge your legal responsibilities, especially if you are a trustee or in a similar role, yet in most cases there will be a way to make things work out. Pray earnestly for wisdom, and it will be granted.

Secondly, seek your own specific legal advice, and listen to it... but don't give up if at first the obstacles look insurmountable. Don't change your mind about whether you should do something about housing need. Instead, ask how you can achieve what is right and good within the broad legal setting relevant to your circumstances.

I also want you to know that you're not on your own in seeking to express the Church's mission to provide for those in housing need. Not everyone will agree with you locally, or share your vision, but be encouraged that the senior leadership of the Church of England, a great number of our brothers and sisters in Christ, and a growing movement of people inside and outside the church, are wanting to make a difference in the same way as you.

Through your endeavour you're already a part of that movement, but we would encourage you to connect with the Church Housing Foundation so you can benefit from the ideas and resources of others – as well as share your growing experience too.

Finally, I want to thank Housing Justice for commissioning this guidance, for allowing me to contribute this foreword, and for the faith-filled, love-inspired work they do every day.

+ Guli Chelmsford

The Right Reverend Dr Guli Francis-Dehqani
Bishop of Chelmsford & Lead Bishop for Housing

FAITH IN AFFORDABLE HOUSING

INTRODUCTION

Faith in Affordable Housing

The Archbishops' report 'Coming Home – Tackling the housing crisis together' calls for the Church to respond to the housing crisis. In response, parishes may be inspired to consider making use of any surplus land for the provision of affordable and social housing.

This is a guide, commissioned by Housing Justice and written by Wrigleys Solicitors LLP, to some of the legal issues which may arise when considering a disposal of such surplus land. It is primarily aimed at parochial church councils (PCCs) and may also be relevant for other charitable bodies with surplus land.

A disposal has a wider legal meaning, but in this guide, we are referring to a sale, lease or a transfer of land.

PCCs – legal status?

A PCC is a body corporate established within the Church of England's framework of governance. They are governed by two pieces of legislation: Parochial Church Councils (Powers) Measure 1956 and the Church Representation Rules. This legislation sets out their charitable purposes or objects, which are to promote '...the whole mission of the Church, pastoral, evangelistic, social and ecumenical...'

A PCC is also a charity and is subject to charity law. Some PCCs will be registered with the Charity Commission, though PCCs with an income of £100,000 or less per year are currently exempted from the need to register. Regardless of registration and income, all PCCs are subject to charity law requirements and members of the PCC are charity trustees.

There are legal restrictions on how any charity (including PCCs) may dispose of land. Even if a PCC feels it is responding to the Church's call and mission in promoting affordable housing in its community, it must still comply with the relevant legal restrictions.

This guide aims to assist PCCs (and other charities) in ensuring they comply with the law before disposing of their land for affordable and social housing.



'Coming Home – Tackling the housing crisis together'
[Read here](#)

This guide does not constitute specific legal advice but explains the general law as at October 2022. Each PCC or charity should obtain their own independent legal advice on any proposed disposal of land, because individual circumstances may vary and this can affect what you can do legally.

FAITH IN AFFORDABLE HOUSING

TYPES OF CHURCH PROPERTY

You might identify a particular plot of land which could be used as an affordable or social housing site. However, it will be important to take legal advice and check the title of the plot carefully, as church property can be a complicated patchwork of ownership and property rights. Different procedures apply to different types of property.

PCC land

PCC land will usually be held by the Diocesan Board of Finance (DBF) as custodian trustee on behalf of the PCC. This means that legal title to the land is vested in the DBF, but the PCC manages it on a day-to-day basis. DBF consent will usually be required before the PCC can enter into any disposal of land. PCC land can either be held for general purpose or on specific trusts, with restrictions. If land is held for the general purposes of the PCC, it may be possible to dispose of it for an affordable or social housing project even if the price offered is not the highest the PCC receives. Any disposal is regulated by charity law and this guide considers this in more detail below.

Parsonages/vicarages

Such property will be vested in the incumbent (holder of the ecclesiastical living). The procedural and consent requirements for disposals are set out in the Church Property Measure 2018.

Glebe land

Glebe land is held by the DBF for the benefit of the diocesan stipends fund. The procedural and consent requirements for disposals are set out in the Church Property Measure 2018.

Church and churchyard

The building and land will usually be vested in the incumbent, and, if consecrated, disposal procedures and required consents will be regulated by the Mission and Pastoral Measure 2011 (as amended in 2018). This includes churches that have been closed for public worship. For unconsecrated land or buildings, the Church Property Measure 2018 is likely to apply.

Church property held on educational or other trusts

Some land such as a school or community facilities may be subject to special trusts. The procedure for disposals of such land will depend on the details of the trusts to which each particular site is subject. Both education law and charity law may apply, as well as ecclesiastical law.

Church Commissioners' land

The Church Commissioners have an extensive land portfolio and so the procedure for disposing of the land will vary, and is outside of the scope of this guide.

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A disposal

A disposal in this context means a sale, lease or a transfer of land.

FAITH IN AFFORDABLE HOUSING DISPOSALS OF CHARITY LAND

Disposals of charity land are restricted by provisions in the Charities Act 2011. Below we set out three main ways a charity can dispose of land:

1. Following advice from a surveyor* on the best terms reasonably obtainable

This is the most common route for charities and PCCs. Before entering into an agreement for any disposal of land, the charity trustees must:

- Obtain and consider a written report on the proposed disposal from a qualified surveyor instructed by the charity trustees and acting exclusively for the charity;
- Advertise the proposed disposal in such manner as is advised in the surveyor's report (unless it advises that it would not be in the best interests of the charity to advertise); and
- Decide that they are satisfied, having considered the surveyor's report, that the **proposed terms are the best that can reasonably be obtained for the charity.**

2. Where disposing to another charity

A PCC (or other charity) does not have to comply with the requirements in point 1 above if it is disposing of land at an undervalue to another charity where this furthers the objects of the PCC (or other charity). In practice, this means this is an available route only where the other charity has objects which are the same, or narrower, than the PCC (or other charity's) objects.

3. Obtaining Charity Commission consent

A final route is to apply to the Charity Commission for an order authorising the disposal. The trustees must be able to show why it is in the best interest of the charity (or furthers its objects) to make the disposal, where the other routes are not possible.

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Charity land

Charity land in this context includes PCC land and church property held on educational or other charitable trusts. There isn't enough space in this guide to cover the rules governing all other types of church property.

Objects

Objects describe and identify the purpose for which a charity is set up. The objects of a PCC are generally to promote '...the whole mission of the Church, pastoral, evangelistic, social and ecumenical...'

Best terms

What do the 'best terms that can reasonably be obtained' mean? Price is likely to be a big factor, but other considerations will come into play, and we explore this in greater detail in this guide.

*Amendments to Part 7 of the Charities Act 2011, passed in February 2022, introduce more flexibility as to who may provide this advice, and set out what that advice should include to ensure the disposal is made on the best terms, including but not confined to price. These changes are currently expected to come into force in Spring 2023.

FAITH IN AFFORDABLE HOUSING 'BEST TERMS' IN THE WIDER CONTEXT

Charity law requires charity trustees to obtain the best terms that can reasonably be obtained when disposing of any land, unless they have Charity Commission consent or are disposing to another charity with the same or narrower objects.

There will be some circumstances where the best price is the only reasonable option for the charity trustees to choose, for example, where the PCC or other charity needs to raise funds.

In other circumstances, price itself is only one indicator and other factors will also be important. A PCC (or other charity) may also consider any reputational risk to the PCC (or other charity) – for example a sale where the buyer intends to develop the land as a casino may be considered unacceptable even if the buyer offers the best price.

There is an emerging consensus within the Church (see formal guidance note issued by the Legal Office of the National Church Institutions, link on page 19) that charity trustees may take a wider view when considering the 'best terms', by looking at those terms in the context of the mission and objects of the charity, and how these will be furthered in perpetuity.

For faith charities, such as PCCs, whose objects include a broader 'social' object, the charity trustees may have regard to that 'social' object. They may consider that making land available for housing those in particular financial or social need in perpetuity meets the 'best terms' test, by advancing the mission of the Church of England and delivering wider community benefit in a way which furthers their charitable objects and is for the public benefit (so care needs to be taken to understand any private benefit and make sure it is necessary and no more than incidental to achieving the wider public benefit). The Legal Office of the National Church Institutions has produced guidance setting out some of the principles to consider in assessing 'best terms' (link on page 19).

Whether it is compatible with a charity's objects is case specific. There is currently no formal Charity Commission published guidance or specific case law, but some charities have been told by the regulators that it is acceptable in their individual circumstances. It is dependent on the facts and circumstances of each case, so legal advice should always be taken.

If in doubt (after legal advice), the charity trustees can seek a Charity Commission order to authorise the disposal.

Ensuring land is used for affordable and social housing in perpetuity will require you to think about how you dispose of the land and who you dispose to – we will look at this in more detail over the next few pages.

FAITH IN AFFORDABLE HOUSING

ENSURING THE LAND IS USED FOR AFFORDABLE AND SOCIAL HOUSING IN PERPETUITY

Considering how you dispose of your land

After considering best terms in the wider context, you may feel you can dispose of the land to a body who is not the highest bidder (an 'under bidder'). To do this, you need to be sure that the disposal both complies with your charitable objects, is for the public benefit and includes protections ensuring the land is used for affordable and social housing in perpetuity. Without protections, there is a danger that you could sell to a community group (or other under bidder) who then sells the land on to someone who will not use the land as intended.

Below are examples of some protections you should consider, although none of these are fail-safe. For instance, an application to discharge protective (restrictive) covenants in both a freehold and leasehold sale may be made to the Lands Tribunal and applications can be made to vary or discharge planning obligations. A mix of restrictive covenants, planning obligations and overage offers the strongest way of protecting the continued future use.

Leasehold sale with controls on use

The PCC (or other charity) could retain the land, granting a long lease (e.g. for 125 years) to the buyer. Rent could be nominal. The lease could include a restrictive covenant, requiring the land to be used for affordable or social housing both now and in relation to onward sale, to protect permanent affordability.

Freehold sale with restrictive covenants

Restrictive covenants are often suggested as a way of controlling what land is used for, but the value of these is limited. The seller must usually continue to own adjoining land for them to be enforceable.

Use the planning system

Planning obligations (e.g. through a section 106 agreement) can help to ensure that land is used for affordable housing, in perpetuity. These bind the land rather than any particular land owner.

Overage (future payment)

If you have sold to an under bidder, you should consider imposing overage. This means that if the under bidder uses or sells the land for a more valuable use than social or affordable housing, they need to pay you some or all of the uplift in value. This acts both as a discouragement to change the use and protects you in accepting a lower price than you might otherwise have done.

FAITH IN AFFORDABLE HOUSING

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Choosing who you dispose to

Part of assessing the 'best terms' will be whether the buyer can deliver affordable or social housing in perpetuity. They will often be a charity or a not-for-profit entity. You will need to understand the nature of the buyer to understand what kind of organisation they are, what they are planning to do with the land, and to ensure that you can show you are making a decision that is for the public benefit.

Here are a couple of examples:

Buyer A

An entity which is a charitable registered provider of social housing might be considered a safer buyer and partner to deliver the PCC's mission. This is because there are safeguards built into its legal structure which restrict what the organisation can do, and prevent the assets being sold on for personal gain. However, this doesn't prevent the land being sold, which is why considering how you dispose of land is so important, as outlined above.

Buyer B

A company limited by shares with no asset lock might be considered a less appropriate buyer. This is because there are no restrictions in their governing document on what they can use the land for, and there are no safeguards to stop the land being sold and the proceeds going to the shareholders. There is a strong risk that the private benefit to Buyer B might exceed what is permitted in charity law, unless you are able to put strong controls on the disposal.

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Asset lock

A provision in the governing document which means the assets of the entity can only be used to further the objects or benefit the community. Once included, it cannot be altered or removed if it is a statutory asset lock. Charitable entities have a statutory asset lock. Community Interest Companies, and Community Benefit Societies with an asset lock, do too, but there is slightly less protection.

Almshouse

Residential accommodation owned by a charity, provided to meet the charity's purpose and occupied by a beneficiary under a licence.

Registered provider of social housing (RP)

A social housing provider which is registered by The Regulator of Social Housing. An RP is either for profit or (more usually) not-for-profit.

FAITH IN AFFORDABLE HOUSING

ENSURING THE LAND IS USED FOR AFFORDABLE AND SOCIAL HOUSING IN PERPETUITY

Choosing who you dispose to: Spotting a suitable buyer

How can you tell your buyer intends to deliver social and affordable housing?

Are they not-for-profit?	If the entity is incorporated, there will be publicly available information, depending on the structure. For companies, check Companies House , for charities look at the Charity Commission and for co-operative or community benefit societies, check the Mutuals Register . A company will either be 'limited by shares' or 'limited by guarantee'. A company limited by guarantee is more likely to be not-for-profit. A company limited by shares generally exists to make a profit for their shareholders.
Are they charitable?	If they are charitable, are their objects or charitable purposes compatible with yours? If so, a transfer of land at an undervalue could be justified as a way of furthering your own objects. NB not all charities are registered at the Charity Commission, for example charitable community benefit societies. You would need to check their rules and if necessary, take legal advice.
If not charitable, do they have a different form of asset lock?	If they are not a charity, do they have a statutory asset lock? Community interest companies (CICs) are a type of company which exist to benefit the community. They have a statutory asset lock, preventing them from selling off their assets to benefit their members, but they cannot be charitable. Non-charitable guarantee companies sometimes have an asset lock in their constitutions, but this can be changed by the members of the company so is higher risk. <i>Continued...</i>

	Community benefit societies may also include statutory asset lock wording in their constitution, similar to the asset lock found in a CIC. Community benefit societies are a type of legal structure, relatively common in the social housing and community-led housing world, which exist to benefit the wider community they are set up to serve.
Are they a registered provider of social housing (RP)?	You can check the list here . The Church of England is considering setting up its own registered provider – this will be one to watch. Most (but not all) registered providers are not-for-profit and many are charities.
Are they a community land trust (CLT)?	CLTs own and manage land and other assets for the benefit of the community in the long term. They are generally expected to have some form of asset lock and must accept people who live and work in a specified area as members. There is no central register of community land trusts, but CLTs must comply with the definition set out at section 79 of the Housing and Regeneration Act 2008. This information will be found in their governing document.
Are they an almshouse?	There is no central register of almshouses, but many are charities registered with the Charity Commission.

FAITH IN AFFORDABLE HOUSING SUMMARY

In summary

There is a lot for PCC members and charity trustees to consider and it may seem overwhelming. The temptation can be to follow the well-trodden path of disposing of surplus land on the best terms reasonably obtainable, which is often taken to mean best price.

It is easy and comfortable to look only at best price but, as Christians, PCC members are called to *promote the whole mission of the Church, pastoral, evangelistic, social and ecumenical*.

This calls for creative thinking and bold steps, which may be challenging. We are all creatures of habit and selling surplus charity land for anything less than the best possible price can be disconcerting. The idea that the social value of affordable housing falls within the mission of the Church is relatively new, but has been endorsed by the Archbishops in the Coming Home Report.

If PCC members wish to use their surplus land to provide affordable housing, they should consider these issues carefully with their legal advisors. They should make decisions in accordance with charity and ecclesiastical law.

Tips for PCCs

- Engage early with the DBF and relevant archdeacon. The DBF will be a key partner as the land will be held in its name. Engaging with housing issues is relatively new for the Church and your project might be one of the first the DBF has dealt with, so be prepared to discuss your vision and how this serves your parish/community as a pioneering project.
- Consider getting a written valuation early on from a surveyor. This initial moderate financial outlay is worth it to plan the project so as to establish the 'best terms' for the disposal of the land.

Charity Commission guidance

- [The essential trustee: what you need to know, what you need to do \(CC3\)](#)
- [Charity trustee: what's involved \(CC3a\)](#)
- [It's your decision: charity trustees and decision making \(CC27\)](#)
- [Sales leases transfers or mortgages: what trustees need to know about disposing of charity land \(CC28\)](#)

Further reading

- Church of England ['Coming Home' report](#)
- Note from the [Legal Office of the National Church Institutions](#)
- [The Church Buildings Council](#) may be involved in options appraisals and closed buildings reports

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