

Sales and leases of church land and buildings

1. This note outlines the procedures likely to be relevant when churches are considering the sale or lease of any property, whether in church or residential use, of which URC Thames North Trust (“TNT” or “the Trust”) is trustee.

Charity law procedures

2. The Charities Act 1993 contains a procedure whereby charities can dispose of an interest in land (ie by sale or lease or grant of any right over land, such as option, right of way or easement) without consent from the Charity Commission for individual transactions. The procedure as it applies to churches is described in this Note. Churches should bear in mind that charity trustees have a duty to obtain the best terms reasonably obtainable. Acceptance of any other terms requires Charity Commission approval. This is likely to be difficult to obtain, not least because the standard URC property trusts do not provide any relief from the general duty.

URC approvals

3. The formal starting point for a disposal, whether by sale or lease, of any church land or buildings is a resolution of the church meeting. This may include a brief indication of the reasons for the disposal eg purchasing a replacement property, or refurbishing a building. It is often advisable for the church meeting to appoint a small group authorised to make decisions on the church’s behalf regarding the final negotiated terms as sometimes decisions have to be made very quickly.

4. Under the URC property trusts (summarised in Annex to Guidance Note 3 “Title deeds, trust deeds and other documents”), the approval of Thames North Synod, given through its Grants, Loans and Property (GLP) Committee, is required for any significant disposal of property held on the URC property trusts. The Committee also requires the views of the Area Committee on the proposal in relation to the church’s mission. GLP Committee’s approval may also authorise the use of the proceeds or may defer this for later consideration. If a property is not held under the URC trusts, eg from a legacy, Synod approval is not needed.

Residential property - lettings

5. An assured shorthold tenancy agreement is the most common form of lease used for letting the manse, whether during a pastoral vacancy or because the minister serving the pastorate lives elsewhere. Other types of leasing arrangements can be appropriate and these and the details of the procedure are described in Guidance Note 6 on “Letting of manses and other residential properties”. Synod approval is required (see paragraph 4 above) when the property is first let after a minister leaves.

Residential property - Employee accommodation

6. Some churches provide residential accommodation for use by an employee, eg a caretaker. The documentation required is explained in Guidance Note 13. Use of this kind is not a disposal to which the Charities Act procedure applies.

Residential property – Sales

7. Synod approval is usually required for the sale of residential property (see paragraph 4 above). Alongside this process, the local church should ask three local estate agents for their appraisal of the sale value (recommended asking price and likely eventual selling price) and their terms of business. The reports should be sent or copied to the Trust. The impressions of the church on the effectiveness of the agents is relevant to the choice of selling agent as well as the initial asking price and fees. The Trust will discuss the asking price with the church before appointing the selling agent. The price may be below the highest amount suggested because, although the property is to be sold on the best terms reasonably obtainable which usually means the highest price, an over-ambitious asking price may delay the sale in some market conditions and contribute to a deterioration in the state of the property.

8. Selling a residential property requires a report from a qualified member of the Royal Institution of Chartered Surveyors (RICS) or the Incorporated Society of Valuers and Auctioneers (ISVA) who has “ability and experience of, the valuation of land of the particular kind, and in the particular area in question”. When making inquiries of local agents, the church should establish whether the agent is able to recommend a qualified valuer to provide the report. It is sometimes possible to arrange for the surveyor's fee to be offset against the agent's own commission.

9. The report must give the information and deal with the matters specified in the Charities (Qualified Surveyors' Report) Regulations 1992 (see Annex). A copy of the regulations should be provided if it becomes apparent that the surveyor is not familiar with the Regulations. As the report in large part contains information which an experienced surveyor would be providing in any valuation report, unfamiliarity with the Regulations is not of special significance in appointing the surveyor.

10. The legislation requires the proposed sale to be advertised in accordance with the surveyor's advice; it is open to the surveyor to advise that advertising would not be in the best interest of the charity. In practice the Trust expects residential properties to be marketed by estate agents in their usual manner: in the local press, on the internet and by mailings.

11. Before entering formally into the transaction by the exchange of contracts the Trust must be satisfied that the proposed terms are the best reasonably obtainable, and the qualified surveyor's advice on this will be required. The approval of the church for the final terms of the transaction will usually be required if there have been any changes during the legal process from the terms agreed when the purchaser's offer was first accepted..

12. Home Information Pack

A Home Information Pack ("HIP") is required under general housing legislation before the marketing of any residential property can begin. The estate agent will be able to arrange for the pack to be prepared.

13. Special publicity

If it is intended that the property being disposed will not be replaced within two years the Charities Act requires the trustees to give public notice of the sale, inviting representations to be made within one month of the date of the notice. The underlying purpose of the procedure is to allow an opportunity for objections to the principle of the disposal of an asset of the church. It is not aimed at the particular terms of the transaction and is not part of the estate agent's advertising.

The Trust will provide the church with the notice and instructions on its publication – often in the legal notices section of the local paper and by display outside the local church. Any representations received must be given proper consideration by the trustees and the sale confirmed before the Trust becomes formally committed to the sale, ie before contracts for the sale are exchanged.

Non-residential property

14. Hiring and letting

A church may be willing to allow part of its premises to be used full-time or part-time by third parties. Such uses require some form of documentation. This may be a hiring agreement for limited part time use administered by the local church or a lease in which the Trust acts for the church in establishing the formal documentation. Guidance Note 5 on “Use of church premises by third parties” provides some pointers to the circumstances in which a more formal arrangement than the church's hiring agreement is required, ie a lease. Only part of the premises of an active church can be let and the lease is restricted to a maximum of 28 years. Paragraphs 16-20 describe the procedures applying when a lease is required, or a church is considering selling all or part (however small) of their premises. Sales may be small eg for road widening or to facilitate access to a neighbouring development; a church's own project may involve disposal of a large part of the church site.

15. Energy performance certificate

An energy performance certificate ("EPC") has to be obtained for all property to be leased or sold unless it is a place of worship. It is not apparent whether this exemption applies to church premises which include meeting rooms as well as the sanctuary. For premises for which the certificate is required, a full set of floor plans will be needed, with floor to ceiling heights plus details of the construction and heating/hot water provision. The EPC is issued by an accredited energy surveyor. It will show the theoretical energy consumption/carbon rating using a standard assessment model to enable comparison between buildings. The certificate lasts for ten years regardless of any change of owners or occupiers. If an EPC is obtained, it should be sent to the Trust for safe-keeping.

16. Special publicity - all sales and leases for more than two years

A special procedure is required by the Charities Act if a disposal is by sale or by lease for more than two years, the land or property being disposed of is held for “the purposes, or any particular purpose, of the charity” (eg the URC property trusts) and a replacement property is not intended to be acquired within two years. The underlying purpose of the procedure is to allow an opportunity for objections to the principle of the disposal of an asset of the church. It is not aimed at the particular terms of the transaction and is not part of the selling agent's advertising.

The trustees have to give public notice of the intended disposal. The notice must invite representations about the intended disposal to be made within one month of the date of the notice. The Trust will provide this notice and instructions on its publication – often a notice in the legal section of the local paper and display outside the local church. Any representations received must be given proper consideration by the trustees and the transaction confirmed before the Trust becomes formally committed to it by exchange of contracts for a sale or option or by completion of a lease.

General procedure - Leases up to seven years

17. All leases up to seven years require a report from a person who has the “requisite ability and practical experience to provide competent advice on the proposed disposition”. Thus a qualified surveyor (see paragraph 18) is not essential, but in practice is often the source of such advice. The content of the report is at its author's discretion. The report

should assist the Trust to be satisfied that the terms offered are the best reasonably obtainable. As the letting of non-residential property is a more specialised business, the church should consult the Synod Property Development Officer and seek the Trust's advice in appointing a surveyor to advise regarding the lease.

General procedure - Sales and leases for more than seven years

18. Trustees proposing to sell any land or building (however small the area of land involved, eg for road widening), or to enter into any lease for more than seven years, must obtain a report from a qualified member of the Royal Institution of Chartered Surveyors (RICS) or the Incorporated Society of Valuers and Auctioneers (ISVA) who has "ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question".

19. The report must give the information and deal with the matters specified in the Charities (Qualified Surveyors' Report) Regulations 1992 (see Annex). A copy of the regulations should be provided when instructing if it becomes apparent that a surveyor is not familiar with the regulations. The report will contain advice on how the property should be advertised; it is open to the surveyor to advise that advertising would not be in the best interests of the charity.

20. Proposals for sales or leases of substantial parts of the church site are intended to release capital for refurbishment or redevelopment of the church premises and are likely to have been prepared by a surveyor as part of an appraisal of the church's property. The surveyor may provide an initial report as the basis for obtaining Synod approval for a scheme, and this will include proposals for the way the property should be marketed. TNT should be informed of the project by the church at this stage even if it has not been consulted earlier. The outcome of the marketing will be reported by the surveyor with the terms of a recommended transaction. If this is acceptable to the church, the Trust will then instruct solicitors. The legal processes may lead to some fine tuning of the terms of the transaction, and the surveyor's recommendation of these terms is required by the Trust in order to be satisfied that the transaction is on the best terms reasonably obtainable. The local church's endorsement of these terms is also required before the Trust enters formally into the transaction.

General procedure – other kinds of disposal

21. Although different from the transactions considered above, the grant of an option, easement or right of way is a disposal of an interest in land, and the procedures described in paragraphs 16 and 18 apply. Churches should therefore always bring proposals of these kinds to the attention of the Trust, and obtain professional advice.

Proceeds from sales and leases

22. The net proceeds of a sale or of a lease with a lump sum payment are held by the Trust to be used in accordance with the trusts applying to the property and described in Guidance Note 3 on "Title deeds, trust deeds and other documents". In the unlikely event of any mortgage or other financial charge having been registered against the property, it would have to be settled from the proceeds.

23. Guidance Note 10 on "Release of funds to churches" deals with the use of disposal proceeds and rents.

Fees and charges

24. The fees of the selling agent, valuation surveyor (if separate), solicitor and the Trust are payable by the local church, together with incidental costs such as publication of any statutory notice and the HIP for residential sales. The basis of charge or specific fee proposal of surveyor and solicitor can usually be obtained in advance for individual transactions. The Trust's charge is determined in accordance with its current list of charges (see Guidance Note 11) and can also be indicated at the outset. Some fees may be incurred even if the transaction is not carried through.

25. The incidental costs often have to be paid early in the disposal process. They are to be paid by the church from local funds, which can seek reimbursement by the Trust from the proceeds on completion of a sale or lease for a premium.

STATUTORY INSTRUMENTS

1992 No. 2980**CHARITIES**

The Charities (Qualified Surveyors' Reports) Regulations 1992

Made 29th November 1992*Laid before Parliament* 8th December 1992*Coming into force* 1st January 1993

In exercise of the powers conferred upon me by sections 32(4) and 77(3) of the Charities Act 1992^[1], I hereby make the following Regulations:

1.—(1) These Regulations may be cited as the Charities (Qualified Surveyors' Reports) Regulations 1992 and shall come into force on 1st January 1993.

(2) In these Regulations—

"relevant land" means the land in respect of which a report is being obtained for the purposes of section 32(3) of the Charities Act 1992; and

"the surveyor" means the qualified surveyor from whom such a report is being obtained.

2. A report prepared for the purposes of section 32(3) of the Charities Act 1992 (requirements to be complied with in respect of the disposition of land held by or in trust for a charity otherwise than with an order of the court or of the Charity Commissioners or where section 32(5) of that Act applies) shall contain such information and deal with such matters as are prescribed by the Schedule to these Regulations (together with such other information and such other matters as the surveyor believes should be drawn to the attention of the charity trustees).

Kenneth Clarke

One of Her Majesty's Principal Secretaries of State
Home Office

29th November 1992

Notes: [1] 1992 c. 41

SCHEDULE

INFORMATION TO BE CONTAINED IN, AND MATTERS TO BE DEALT WITH BY,
QUALIFIED SURVEYORS' REPORTS

- 1.—(1) A description of the relevant land and its location, to include—
 - (a) the measurements of the relevant land;
 - (b) its current use;
 - (c) the number of buildings (if any) included in the relevant land;
 - (d) the measurements of any such buildings; and
 - (e) the number of rooms in any such buildings and the measurements of those rooms.(2) Where any information required by sub-paragraph (1) above may be clearly given by means of a plan, it may be so given and any such plan need not be drawn to scale.
2. Whether the relevant land, or any part of it, is leased by or from the charity trustees and, if it is, details of—
 - (a) the length of the lease and the period of it which is outstanding;
 - (b) the rent payable under the lease;
 - (c) any service charge which is so payable;
 - (d) the provisions in the lease for any review of the rent payable under it or any service charge so payable;
 - (e) the liability under the lease for repairs and dilapidations; and
 - (f) any other provision in the lease which, in the opinion of the surveyor, affects the value of the relevant land.
3. Whether the relevant land is subject to the burden of, or enjoys the benefit of, any easement or restrictive covenant or is subject to any annual or other periodic sum charged on or issuing out of the land except rent reserved by a lease or tenancy.
4. Whether any buildings included in the relevant land are in good repair and, if not, the surveyor's advice—
 - (a) as to whether or not it would be in the best interests of the charity for repairs to be carried out prior to the proposed disposition;
 - (b) as to what those repairs, if any, should be; and
 - (c) as to the estimated cost of any repairs he advises.
5. Where, in the opinion of the surveyor, it would be in the best interests of the charity to alter any buildings included in the relevant land prior to disposition (because, for example, adaptations to the buildings for their current use are not such as to command the best market price on the proposed disposition), that opinion and an estimate of the outlay required for any alterations which he suggests.
6. Advice as to the manner of disposing of the relevant land so that the terms on which it is disposed of are the best that can reasonably be obtained for the charity, including—
 - (a) where appropriate, a recommendation that the land should be divided for the purposes of the disposition;
 - (b) unless the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, the period for which and the

manner in which the proposed disposition should be advertised;

(c) where the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, his reasons for that advice (for example, that the proposed disposition is the renewal of a lease to someone who enjoys statutory protection or that he believes someone with a special interest in acquiring the relevant land will pay considerably more than the market price for it); and

(d) any view the surveyor may have on the desirability or otherwise of delaying the proposed disposition and, if he believes such delay is desirable, what the period of that delay should be.

7.—(1) Where the surveyor feels able to give such advice and where such advice is relevant, advice as to the chargeability or otherwise of value added tax on the proposed disposition and the effect of such advice on the valuations given under paragraph 8 below.

(2) Where either the surveyor does not feel able to give such advice or such advice is not in his opinion relevant, a statement to that effect.

8. The surveyor's opinion as to—

(a) the current value of the relevant land having regard to its current state of repair and current circumstances (such as the presence of a tenant who enjoys statutory protection) or, where the proposed disposition is a lease, the rent which could be obtained under it having regard to such matters;

(b) what the value of the relevant land or what the rent under the proposed disposition would be—

(i) where he has given advice under paragraph 4 above, if that advice is followed; or

(ii) where he has expressed an opinion under paragraph 5 above, if that opinion is acted upon; or

(iii) if both that advice is followed and that opinion is acted upon;

(c) where he has made a recommendation under paragraph 6(a) above, the increase in the value of the relevant land or rent in respect of it if the recommendation were followed;

(d) where his advice is that it would not be in the best interests of the charity to advertise the proposed disposition because he believes a higher price can be obtained by not doing so, the amount by which that price exceeds the price that could be obtained if the proposed disposition were advertised; and

(e) where he has advised a delay in the proposed disposition under paragraph 6(d) above, the amount by which he believes the price which could be obtained consequent on such a delay exceeds the price that could be obtained without it.

9. Where the surveyor is of the opinion that the proposed disposition is not in the best interests of the charity because it is not a disposition that makes the best use of the relevant land, that opinion and the reasons for it, together with his advice as to the type of disposition which would constitute the best use of the land (including such advice as may be relevant as to the prospects of buying out any sitting tenant or of succeeding in an application for change of use of the land under the laws relating to town and country planning etc.).

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 32(2) of the Charities Act 1992 disappplies the requirement in section 32(1) of that Act that no land held by or in trust for a charity is to be sold, leased or otherwise disposed of without an order of the court (as defined by section 46 of the Charities Act 1960 (c. 58)) or of the Charity Commissioners. Section 32 comes into force on 1st January 1993 by virtue of article 4 of, and Schedule 3 to, the Charities Act 1992 (Commencement No. 1 and Transitional Provisions) Order 1992 (S.I. 1992/1900 (C.64)). One of the conditions for the disapplication of the requirements in section 32(1) is that the requirements in section 32(3) are satisfied.

The first requirement in section 32(3) is that, before the charity trustees enter into an agreement for the sale or (as the case may be) for a lease or other disposition, of the land, they must obtain and consider a report on the proposed disposition from a surveyor who satisfies the requirements of section 32(4) and who is instructed by them and acts exclusively for the charity. The report prepared for these purposes must contain such information, and deal with such matters, as may be prescribed by regulations (section 32(4)). These Regulations (which extend to England and Wales only) exercise that power and the Schedule to these Regulations sets out the matters to be covered in the report.

Those matters include 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 value added tax (paragraph 7), the surveyor's opinion about the value of the land (paragraph 8) and, where appropriate, his suggested alternative ways of disposing of the land (paragraph 9).

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Soon after parts of the Charities Act 1992 were brought into operation they were incorporated into the Charities Act 1993. Section 32 of 1992 became section 36 of 1993. These Regulations remain in force and are to be read as referring to section 36 of the Charities Act 1993. Numbering of subsections was unchanged.