

### **Building projects**

1. This note draws attention to some of the details to be considered by churches intending to undertake building work. Guidance Note 4 “Sales and leases of church land and buildings” deals with schemes involving the disposal of any part of a site.

#### **Approvals**

2. The starting point is the process required by the relevant property trusts. As explained in Guidance Note 3 “Title deeds, trust deeds and other documents”, most local church properties are held on the trusts declared in the URC Act 1972. These trusts provide that “the trustees” (in this context URC Thames North Trust (“TNT” or “the Trust”) as the legal owner of the property) may allow work to be done to the building subject to

- a resolution of the church meeting
- the approval of Thames North Synod if the work would substantially alter the appearance, character or value of the property.

3. General law is also likely to be relevant. Listed building consent will be needed for changes to listed buildings. This is sought through the URC’s “ecclesiastical exemption” procedure and not from the local authority. Planning permission may be needed from the local authority for alterations and extensions, and, even when this is not necessary, local authority approval under building regulations will be required.

#### **Professional advice**

4. The design and management of major projects is usually beyond the resources of members of local churches. Initial advice should be sought from Thames North Synod’s Property Development Worker who will be able to guide local churches through the various procedures and can give help with the selection of an architect or surveyor to design the scheme for church approval. The fees incurred, and local authority fees, are the responsibility of the local church.

#### **Building contracts – tenders**

5. There are two administrative details which should be decided while tender documents are being prepared as they may have a small influence on the costing of the project by prospective contractors.

- Is the local church or TNT on its behalf to be named as “the employer” for the building contract?
- How quickly is payment to be made to the contractor against invoices authorised by the architect?

The significance of these considerations is described below.

#### **Choosing “the employer”**

6. **Signing or sealing?** Contracts for building works may be made “under hand” (simply signed by an authorised person or persons) or “under seal” (with the company seal, where a

company is the employer) or "signed as a deed" (by individuals or some companies). A contract under seal or signed as a deed has a liability limitation period of 12 years (ie if anything goes wrong there are 12 years after the relevant date, which may be difficult to determine, in which to make a claim against a contractor). If the contract is only signed (ie under hand), the limitation period is 6 years. The more costly the work, and the greater the structural elements, the stronger the case for a contract under seal ~~usually to be preferred~~. The Synod's Property Development Worker and the project architect will be able to advise whether the nature and cost of the proposed works is such as to make it appropriate for the contract to be sealed. In practice contracts for less than £100,000 are not likely to be under seal.

7. **Execution** If a contract under seal is appropriate, it is simpler for TNT, being a company, to use the company seal in its usual way than to arrange for execution by a local church. It follows that the Trust is the employer. If a contract is to be executed by the local church (as a deed or under hand), charity law requires the charity trustees, ie the elders' meeting, to appoint at least two of their number to sign the documents.

### Time allowed for payment

8. Where TNT is making payments under a building contract, the money is usually held on a deposit account which is not with the Trust's clearing bankers. The Trust aims to honour the contractual obligation to pay within a stated time. The 14 days which is the contract norm is shorter than is comfortable for making the withdrawal and the subsequent payment. The Trust asks, therefore, for building contracts with which it is involved to provide for payment within **21** days (instead of 14 days) of the date of issue of an architect's certificate for payment. Provision for ~~this~~ this should be incorporated in tender documents and subsequent contracts.

### Involving the Trust

9. Churches are encouraged to contact the Trust at an early stage in the planning of ~~any~~ building projects. ~~These~~ The Trust is willing to act as "the employer" under contracts for building work (alterations, repairs and renewals) to church properties (churches, church halls, houses, other premises) where it is satisfied that -

- professional advice had been obtained by the church and all necessary consents (eg Synod, listed building, planning, building regulations) have been obtained
- the contract uses one of the Joint Contracts Tribunal's standard forms of contract for building works, the contractor is recommended by the professional adviser who is to supervise the work and the contract value is at least £100,000
- financial arrangements acceptable to the Trust had been made to meet the cost of the works and related fees, including a contingency margin (see Annex for the information required in this connection)
- insurance is arranged by the church and the contractor as required by the contract, and including any appropriate public liability insurance.

10. The selected contractor may be authorised by a "letter of intent" from the employer to begin work in accordance with the tender and agreed variations before the contract documents have been finalised and executed. The Trust must therefore be satisfied on the issues noted in paragraph 9 before it will issue such a letter. The draft of the letter is usually proposed by the supervising professional adviser.

11. If the Trust is "the employer", the Trust is responsible for payments to the contractor and expects to make those payments itself. The Trust has no free resources from which to make contract payments, and consequently the local church must satisfy the Trust that ~~that~~ adequate funding is available for the project. A statement on the lines of the Annex to this Note, adapted to the particular circumstances, is a convenient way of providing this information.

12. While work is in progress, it is essential ~~that~~ that the local church and its professional advisers maintain rigorous control over the contract, particularly in respect of variations which always seem to increase costs rather than reduce them, and ~~can quickly~~very rapidly exceed allowances made within contracts. TNT does not take any part in this process, but should be kept informed of changing estimates of the cost of the work.

### Payments to contractors and advisers

13. Payments ~~would usually be~~ are made by the Trust if moneys to be utilised are held by the Trust already or are to be provided by Thames North Synod. ~~are to be used~~ The use of money held by TNT on behalf of the church requires a church meeting resolution and Synod approval, and these authorities should be sought in good time. The Trust requires any moneys to be provided by the local church to be transferred to the Trust at the start of the contract.

### Other contracts

14. Where the Trust is not to be a party to a contract, the local church is entirely responsible for the matter. The need to be satisfied on the suitability of the work, any regulatory consents, finance and insurance (ie as in paragraph 9) is of no less important importance.

15. If-Should payment ~~is to~~ be made using in whole or part moneys held by the Trust, the procedures described in Guidance Note 10 on "Release of funds to churches" apply, and approvals should be obtained before contracts are agreed.

### VAT

16. VAT is payable at the standard rate on most building works to church property. The exceptions are:

- if there is a significant element of work to facilitate use of the building by disabled people;
- if a listed building is being altered.

Relief may be claimed from the VAT on the eligible part of the works. The architect or quantity surveyor should be able to advise on the procedure.

### The Trust's fees

17. Churches should note that under the scheme of charges described in Guidance Note 11 there are fees payable to the Trust for execution of the building contract and payments in connection with the contract.

## **BUILDING PROJECT BUDGET OUTLINE**

When acting for a church in a building project, and before entering into the building contract, TNT seeks to be satisfied that adequate resources are available/accessible if required in due course to meet costs in excess of the contract sum and related costs. Churches should therefore provide an appraisal on the lines of the following check list adapted to the circumstances. A spreadsheet version is available on request.

### **Project costs**

Planning and building regulations fees

Building contract (estimate or tender)

Professional fees (typically 12.5% of contract)

Architect

Quantity surveyor

Structural engineer

Planning supervisor

Mechanical and electrical engineer/other

Architect's expenses (allow 0.5% of contract cost)

VAT on contract and fees (no abatement for VAT exempt works)

Furniture, fixtures, fitting and equipment (not within contract)

VAT on furniture etc

### **Planned cost**

Contingency allowance (including VAT) at 11.75% of contract

(for all overruns, additional to any allowance within contract)

### **TOTAL potential cost**

### **Financing**

Net proceeds of sale of property

Net proceeds of sale of investments

Local congregation - donations in hand

Local congregation - donations promised

Local congregation - loans in hand

Local congregation - loans promised

Other local fund raising

Grants from ecumenical partners

Thames North Synod - grant

Thames North Synod - loan

Grants from other charities - approved

Grants from other charities - sought

From development partner

### **TOTAL resources**

### **Arrangements for meeting any excess of Cost over Resources (describe)**

To meet *Planned cost*

To meet *Potential cost*

### **Arrangements for repaying any loans, including any interest (describe)**

From members

From Synod

From non-URC sources

### **Note**

It is unrealistic to **assume** that in practice the project will be delivered within budget, although careful control of costs is exercised. The contingency allowance specified includes the consequential increase in professional fees associated with an overrun on the building contract above the contract price.

It is important to have some contingency plan at the outset for dealing with any excess of eventual expected resources. At the planning stage, some redesign may be needed to reduce costs.

Once contractually committed to the project, there is no turning back: the bills have to be paid.