

Options for the disposal of redundant churches and other places of worship

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Introduction

This guidance note sets out options that are open to trustees wishing to dispose of places of worship that are no longer needed for regular worship. Broadly speaking, and depending on the circumstances, trustees and members of religious charities may wish to:

- transfer the building to another similar charity that will continue to use it for worship;
- sell the building and use the proceeds for charitable purposes, or
- transfer the building to a trust to be preserved and/or used for the benefit of the local community

If the building has any special architectural or historic interest, such interest might be best preserved by arranging for the building to continue in use for religious purposes or be used for the benefit of the community.

The purpose of the guidance is not to recommend any one course of action, but to make it clear that trustees who wish to dispose of a place of worship are not always obliged to dispose of the property at full market value. The most appropriate option in any particular case will depend on, amongst other things, the exact legal form by which the charity is established, the terms of its governing document and the different laws and regulations that apply to the entity which owns the building.

While the guidance describes the most common options in general terms, this is not an exhaustive list, nor should it be relied upon for a full description of legal matters affecting any disposal. Further guidance should always be sought from the Charity Commission and from a trust's own legal advisers.

N.B. none of the following advice applies to Church of England buildings which are subject to the Pastoral Measure 1983. (More information on disposal of those buildings can be obtained from the relevant diocese or from the Closed Churches Division of the Church Commissioners (see page 8 for contact details).

What are the options?

In disposing of property held in trust, the trustees of a charity must act in the best interests of the trust and its beneficiaries as required by charity law and, in particular, in accordance with Section 36 of the Charities Act 1993.

Where a new owner proposes alterations to a building, trustees of the disposing charity are advised not to confirm any contract for sale until they are satisfied that the new owner has, or is likely to obtain, listed building consent (if applicable) and planning permission for any alterations or change of use.

In some cases the transfer of property will require the approval of the Charity Commission, which will take account of all the relevant circumstances surrounding the disposal of the property in making its decision.

OPTION 1. A gift (or disposal at below market value) of a place of worship to another charity, permitted by the disposing charity's governing documents

A charity can gift its property to another charity for free, or at less than market value, if the disposal is permitted by the disposing charity's governing document (section 36(9)(b) of the Charities Act 1993). If this is the case, Charity Commission consent for the disposal will not be required.

There are two ways in which this disposal of property may be permitted: (i) where the disposal is furthering the purposes of the disposing charity and is, therefore, in execution of its governing document; or (ii) where the disposing charity has power conferred by its governing document to dispose of land to another charity.

A charity with objects of furthering the Christian faith, for example, might be able to use this option to pass their building onto another Christian charity with similar doctrines, provided the objects of the receiving charity are not wider than those of the donating charity. Where the objects of

CASE STUDY

Woodbridge Quay Church, Woodbridge, Suffolk



The United Reformed (URC) congregation of this grade II listed, early 19th century chapel had shrunk to the point where it was no longer possible for it to keep going as an active worshipping body (and maintain a grade II listed building). Fortunately a Baptist congregation was also using the building and was in a position to take on ownership. The close links between the congregations made this the preferred option for the URC trustees.

A surveyor was instructed to give a valuation on the property if sold as a church to another Christian denomination and taking into account the urgent building repair work needed. The fact that the remaining members of the old congregation were to join the new one satisfied the Charity Commission that the sale, although not at full market value, was in the best interests of the disposing charity and in Spring 2009 the sale went ahead.

Nevertheless the Commission required a clawback arrangement so that if the building was sold on for development within a specified period the URC trust would benefit from any increase in value. The result has been to keep alive a place of worship with a long history while also allowing the trustees of the disposing charity to fulfil their obligations.

The receiving charity are wider – but the objects of the donating charity are included within them – the disposal *may* still be possible but the trusts relating to the disposed property may need to be restricted to the original, narrower objects.

If the donating charity had wider objects than solely the promotion of a particular faith, for example the relief of those in need or the wellbeing of a particular community, it might be able to transfer the building for a range of community uses.

If the charity is constituted by separate documents, it is the document that sets out the purpose for which *the property* may be used that should be consulted when considering a gift of the place of worship, rather than, for example, the document that sets out the purpose for which the congregation's working funds are held.

OPTION 2. Disposal of a place of worship at full market value

Trustees may decide to realise the value of a property on the best possible financial terms, particularly if a redundant place of worship has a significant market value, and apply the proceeds to furtherance of the charity's objects. Alternatively it may be that a charity wishes to dispose of a place of worship to an organisation which is also a charity but which has objects which are not sufficiently similar to its own to justify any reduction in the disposal price.

There are two initial tests in relation to this option:

- Does the charity have the power and authority to sell the property?
- Does the charity have the power and authority for receiving and deploying the proceeds of sale?

Assuming these tests are met, in order to dispose of property at full market value, the charity will then need to comply with the requirements of sections 36 and 37 of the Charities Act 1993. This includes:

- Seeking professional advice (from a qualified surveyor) on the timing and method of the disposal
- Ensuring that the property is marketed in a way which will encourage the most offers
- Accepting the best financial offer which is made, except where there are other special factors

CASE STUDY

Chapel of St John the Baptist, Matlock Bath, Derbyshire



In 2002, the Friends of Friendless Churches acquired this isolated, grade II* listed private chapel high above the River Derwent outside Matlock in Derbyshire. Built in 1897 to the designs of architect Sir Guy Dawber it contains many fine Arts and Crafts fittings by artists including Louis Davis and George Bankart. It had been owned by a trust set up by the founder Mrs Louisa Sophia Harris to care for the chapel after her death. By the late 1990s the trust's funding from endowments had all but dried up and so it was finding it difficult to discharge its responsibilities.

The Charity Commission was persuaded to allow transfer to the Friends of Friendless Churches in 2000 on the basis of its prescribed charity (or 'named beneficiary') status. The transfer was made without charge and the small amount of money left in the trust was also passed to the Friends. They have undertaken a programme of repairs, including the gates into the churchyard.

Guidance can be found in the Charity Commission's publication *CC28 – Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land* which is available on the Charity Commission's website. If trustees are able to comply with the statutory requirements in relation to the type of disposal they are carrying out (contained in sections 36 and 37 of the Charities Act 1993) before entering into an agreement for disposal they will not need to obtain the Commission's consent.

OPTION 3.

Transfer of the place of worship using the power given to the Charity Commission by the Redundant Churches and other Religious Buildings Act 1969

The Redundant Churches and other Religious Buildings Act 1969 (the “1969 Act”) allows a charity to transfer a redundant place of worship to a “prescribed charity” (see page 6) for the purposes of preservation, at less than full market value, even if the disposal does not further the disposing charity’s objects. A transfer under section 4(2) of the 1969 Act needs to be authorised by means of a scheme made and approved by the Charity Commission. Trustees should note that this would change the purpose of the building from advancing religion to preservation and conservation.

The Charity Commission can exercise this power where:

- the premises are no longer required as a place of public worship (by any congregation, not just the group that is seeking to dispose of the building);
- the transfer of ownership is for less than full consideration, and
- it is not otherwise within the powers of the Commission to effect such a transfer.

This power can only be exercised where the building is a listed building (within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990) or a scheduled monument (within the meaning of the Ancient Monuments and Archaeological Areas Act 1979), **and the recipient charity has been prescribed by the Secretary of State for the purposes of the 1969 Act.**

The Commission has an application form (CSD 1057) which can be used to supply the necessary information for them to consider making and approving a Scheme. This is available on request.

CASE STUDY

St George’s German Lutheran Church, Whitechapel, London



St George’s is the oldest surviving German church building in Britain, opened in 1763. Although shorn of its bell turret and clock on the street façade (removed in 1934), the grade II* listed building remains little changed. Its history is typical of many churches founded by small immigrant communities. Successive generations of German immigrants kept the church in use for over two hundred years but by 1996 there was only a handful of regular worshippers. As a result the congregation was merged with that of another German church in London and St George’s was closed.

In 1999, the Historic Chapels Trust stepped in to secure the building’s future (in the face of alternative proposals that would have involved changes including the removal of pews), using its status as a prescribed charity to facilitate the acquisition. The Trust carried out extensive repair and restoration work, costing some £900,000. The church is now used for concerts, lectures and meetings and occasional services of worship, while the Trust has relocated its office to the vestry. This sympathetic new use has allowed for the retention of a fine 18th century interior and the preservation of an important part of the history of London’s German population.

Prescribed charities

Only charities that are “prescribed charities” for the purposes of the 1969 Act may receive a redundant place of worship under the terms of the Act. The charities currently prescribed are:

- The Churches Conservation Trust - for historically or architecturally significant Church of England churches which have been closed for regular worship. [N.B. Option 3 does not apply as there is a specific legal procedure through which buildings are vested in the Trust.]
- The Historic Chapels Trust - for redundant, non-Anglican places of worship of outstanding architectural interest situated in England.
- The National Trust (for Places of Historic Interest or Natural Beauty in England, Wales and Northern Ireland) for places of worship situated in England, Wales or Northern Ireland.
- The Friends of Friendless Churches - for churches and chapels of any denomination, situated in the British Isles.
- Ymddiriedolaeth Addoldai Cymru / the Welsh Religious Buildings Trust - for nonconformist places of worship in Wales or associated with Wales.

If a charity wishes to seek prescription in order to become an eligible ‘receiving charity’ it must contact the Department for Culture, Media and Sport (see page 8 for contact details).

A charity may apply for prescription to facilitate the acquisition of a particular building or to stand as a receiving charity ‘in waiting’ to facilitate future acquisitions not identified at the time of application. The latter is likely to be appropriate only for established charities whose primary purpose is the preservation of buildings. A prescribed charity can not make any material change to the nature of its objects, constitution or financial position in the period between the application and the acquisition of a building.

The Secretary of State for Culture, Media and Sport, who is likely to consult English Heritage, as statutory adviser, on any application for prescription, will need to be persuaded that it is appropriate to prescribe the relevant charity. The following criteria are likely to be viewed as relevant considerations in favour of prescription:

- The power to care for historic buildings demonstrated by the objects and governing documents of the Charity. An example of wording likely to be considered an indication of appropriate object and purpose is as follows:

“To secure the conservation, repair and maintenance of land and buildings of historic, architectural, archaeological or artistic interest, or any part thereof, for the benefit of the public generally.”

[For reference, the objects of the currently prescribed charities can be found on the Charity Commission website] ;

- A demonstrable track record in caring for historic buildings and/or (where the charity has not previously cared for an historic building) a demonstrable commitment to care for the building and to use it for the benefit of the local community or general public;
- Firm and detailed plans for the use of the building which provide for both publicised public access, and minimum intervention into the historic fabric of the building and its setting;
- Access to sufficient resources to effect any repairs necessary at the point of transfer and to keep the building in a good state of repair (evidence of the financial status and history of the charity will be expected);
- Any other relevant consideration demonstrating the suitability of the charity for prescription.

Charities considering seeking prescription under the 1969 Act should note that, whilst applications for prescription are encouraged and welcomed by the Department for Culture, Media and Sport, a commitment to caring for a listed building is not one that should be taken lightly. Local authorities have a range of powers to intervene where a listed building is not being adequately cared for. More guidance on owning and managing a listed building can be found at www.english-heritage.org.uk/listing

OPTION 4. Disposal authorised by Charity Commission Order because the trustees cannot comply fully with Section 36 of the Charities Act 1993

There may be specific circumstances when the trustees cannot comply fully with the requirements of Section 36 of the Charities Act 1993 (i.e. they cannot demonstrate that they are accepting the best terms reasonably obtainable for the disposal) but can demonstrate that a disposal on the proposed terms is nevertheless in the best interests of their charity.

In such cases, the trustees would need the Commission to authorise the disposal by an Order under Part IV or Part V of the Charities Act 1993, and would therefore need to satisfy the Commission that, amongst other requirements to be met, the proposal was in the charity's interests.

OPTION 5. 'Albemarle Scheme' for shared use

An Albemarle Scheme authorises trustees to permit a wider use or to grant a lease of their property to another appropriate charity when this would otherwise be outside their powers. This option can be used when:

- the property is not needed all the time for the activities of the place of worship, but is needed on an occasional and regular basis; and
- the charity has insufficient funds available to maintain the property or to improve it to acceptable standards; and
- the property is needed by the wider community for an additional *charitable* use, which does not qualify as a purpose of the place of worship, such as for a village hall or youth centre.

Such schemes have typically been made for church halls, but they could equally be used for places of worship, for example where there is a community charity interested in the using a church building on a part-time basis, with reserved use for worship and other church activities on certain days.

CASE STUDY

The Diseworth Centre, Diseworth, Leicestershire



In November 2000 the grade II listed Baptist chapel in Diseworth, a village of some 670 people not far from East Midlands airport, was damaged by the flooding of the brook which runs alongside it. The congregation struggled with the repair of the damage and decided eventually to close the church and dispose of the building.

The deeds of the church trust indicated that funds arising from sale of Diseworth Chapel should benefit another local church. The market value of the property, however, was depressed by the possibility of compulsory purchase associated with development of the airport as well as by the poor state of the building. The disposing charity was prepared to wait for a group of local residents to form the Diseworth Heritage Trust and raise funds to purchase the property, for a figure recommended by their surveyor.

The repair and improvement of the former chapel were completed in March 2009. The Diseworth Heritage Centre now provides a focal point for the village and surrounding area with flexible space and modern facilities for both business and community use, alongside displays on local history. The Trust feels that Baptists have always made a contribution to the village and the Centre both commemorates and perpetuates this.

An Albemarle Scheme is, however, only an option where a congregation is no longer able to take sole responsibility for maintenance of a property, but would utilise the building as a place of worship if it could share the responsibility. The Albemarle Scheme would not be an option where worship and mission have ceased altogether.

An arrangement of this sort can only be made by means of a Charity Commission scheme. Further guidance can be found in the Commission's publication *CC18 - Use of Church Halls for Village Hall and Other Charitable Purposes* which is available on the Commission's website.

OPTION 6.

Amending the objects of the charity so that they are broader and allow for a gift of the place of worship for preservation or other new purpose

In circumstances where Option 1 is not possible because the new use that trustees would like for their redundant building does not meet the objects of the charity, the possibility may exist to change those objects so that a gift or transfer could be made. Depending on the existing governing document of the disposing charity and its income, the trustees may have a power to amend the objects themselves; alternatively a Commission Scheme would be needed.

The Commission can amend a charity's objects by a scheme under the terms of the Charities Act 1993 (as amended by the Charities Act 2006). The Charities Act 1993 sets out the circumstances and requirements for such a scheme and these include the need for the new objects to be as close as possible to the original objects. When deciding what this means, the Commission will take account of the spirit of the original gift, as well as the current social and economic circumstances. On this basis, no general advice can be offered on this option, other than to contact the Commission.

Further guidance about amending a charity's governing document can be found in the 'Apply for It' section of the Commission's website.

Further information

Charity Commission Direct
PO Box 1227, Liverpool L69 3UG
General enquiries 0845 300 0218
www.charitycommission.gov.uk

Department for Culture, Media and Sport
2-4 Cockspur St
London SW1Y 5DH
General enquiries 020 7211 6200
enquiries@culture.gov.uk
www.culture.gov.uk

Closed Churches Division
The Church Commissioners
Church House
Great Smith Street
London SW1P 3AZ
General enquiries 020 7898 1783
www.cofe.anglican.org/about/churchcommissioners

For more information on the case studies, see:

www.woodbridgechurch.org.uk

www.friendsoffriendlesschurches.org.uk

www.hct.org.uk

www.diseworthcentre.org

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