

## **THE CHURCH OF SCOTLAND GENERAL TRUSTEES DISPOSAL OF REDUNDANT CHURCHES**

### **1. Introduction**

The disposal of a redundant church building may give rise to sensitive issues. The object of this paper is to give guidance on the procedures to be followed in the case of the disposal of such a building which is vested in the General Trustees but many of the points made will be equally relevant to the disposal of locally vested properties.

### **2. Ecclesiastical Consents**

In terms of Act VII 1995 an application to the General Trustees for authority to sell a church vested in them should proceed from the Kirk Session / Financial Board of the congregation with the approval of the Kirk Session (if a different body), the congregation and the Presbytery.

A fair number of church sales follow upon readjustment of agencies and whether or not fresh approvals from the Financial Board, Kirk Session, congregation and/or Presbytery are required will depend on the exact wording contained in the Basis of Dissolution, Linking or Union and existing title conditions, as well as the conditions of the Presbytery Mission Plan Act 2021 (section 10).

The Kirk Session / Financial Board of the congregation should not defer contacting the General Trustees until all necessary ecclesiastical consents have been secured. It will help to expedite progress if contact is made with the Secretary and Clerk of the Trustees whenever a decision in favour of a sale has been made by the Kirk Session / Financial Board. General Trustees staff can then prepare the necessary application for authority to sell and advise on procedures.

### **3. Responsibilities**

When a building is categorised "B" in a Presbytery Mission Plan, or is otherwise closed the Kirk Session / Financial Board of the congregation continues to be responsible for maintaining, insuring and generally looking after the building. It can be helpful if the Board remits responsibility in this regard to a small group which can arrange to keep the building under close surveillance and liaise with the General Trustees regarding its disposal.

The responsibility for selling the redundant property rests upon the General Trustees but they act in close consultation with the Kirk Session / Financial Board.

In the case of a dissolution, the title to any locally vested property is transferred to the General Trustees prior to the dissolution taking place. The General Trustees expect the Presbytery to take on the responsibilities which fall on the Kirk Session / Financial Board in a normal case. It is particularly useful in such circumstances for Presbytery to delegate responsibility to a small group which would normally contain representatives of the former congregation.

### **4. Procedures**

#### **(a) Closure**

It is not the practice of the Church of Scotland to deconsecrate buildings but there will normally be a closing service which should incorporate an expression of thanks for the use of the property as a church over the years.

From the security point of view, it is good practice for the building to continue in use until a purchaser has been found and there have been cases in which Presbytery has deferred the union of two congregations until a redundant building has been sold. This will often not be practical, however, and when the building ceases to be used there may be a security/vandalism problem. Circumstances vary but in all cases the building should be rendered lockfast and visited regularly. All rubbish (paper, old furniture etc.) should be removed and services turned off at the mains.

It is suggested that if a building is likely to be subject to vandalism the best plan initially is to try to give the impression of continuing use by regular comings and goings but once vandalism starts it may well be advisable to take immediate steps to board up points of access.

Responsibility for taking all necessary steps in this regard rests upon the Kirk Session / Financial Board.

COSIS should be contacted at an early stage where a building has been categorised “B” in the plan, or is otherwise closed, to discuss options for insuring the building and the ongoing management of the building.

(b) Fittings, Fixtures and Furnishings.

Although the building itself and the heritable fittings and fixtures belong to the General Trustees, furnishings and other moveable items will be the property of the congregation which will be responsible for the disposal of them. The Church has been criticised in the past for cavalier treatment of moveable items in church buildings. It is appreciated that the clearing of a redundant building can be time consuming but it does the image of the Church no good if a building is handed over to a new owner with the interior strewn with old bibles, hymn books and abandoned ecclesiastical artefacts.

The General Trustees (CARTA) will advise on the merit of fittings, fixtures and furnishings. Detailed advice about the process can be obtained by contacting the General Trustees office by emailing [gentrustees@churchofscotland.org.uk](mailto:gentrustees@churchofscotland.org.uk). We recommend that you should make direct contact with us as soon as possible to will carry out a detailed inventory of the building before any items are removed.

Although fittings and fixtures are treated as heritable items and strictly their disposal is a matter for the General Trustees, the Trustees will look to local parties to form a view with regard to them. Provided that it is clear that the removal of a particular item is not going to prejudice the sale of the property, or conflicts with the requirement for listed building consent, it may be possible that some items could be removed for use in another building pertaining to the congregation or to another Church of Scotland church. It should be noted that (a) the consent of the General Trustees and, depending on its regulations, the Presbytery will be required for the installation of an item in the other building and (b) if the redundant building is listed under The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Listed Building Consent may well be required for their removal.

Memorials to individuals and War Memorials call for particular consideration. In the case of listed buildings the legal position is that if a memorial is built into/ fixed to the structure it will be deemed to be part of the building and be the property of the General Trustees. Unless there is some speciality, the legal position will be that if a memorial is built into the structure it will be deemed to be part of the building and be the property of the General Trustees. If the family of an individual to which there is a memorial can be traced it is good practice to contact them to ascertain whether they have any interest in the item in question. Items such as War Memorials should normally be removed, particularly if the building is likely to be used for secular purposes or demolished. In some cases, it may be appropriate to install such items in another Church of Scotland building. We will be happy to advise. The possible need to obtain Listed Building Consent should be borne in mind with regard to the removal of memorials. Items which have been gifted to the congregation should also be dealt with sensitively and not simply alienated or discarded without consultation with the donor or a relative if they can be traced.

(c) Mechanics of Sale

The exact procedure followed by the General Trustees in effecting a sale will inevitably vary from case to case but the following outline of the main points may be helpful.

- **Title:** The title will be examined at an early stage. Titles to former *Quoad Omnia* buildings tend to be straightforward but in the case of former *Quoad Sacra*, United Free and Church Extension properties there will frequently be title restrictions which will have to be evacuated before the General Trustees are in a position to give a clean title. The Trustees are flexible on the point but it is their normal practice not to put a property on the market until they have resolved any title difficulties. This may mean protracted negotiations with the Superior or other party entitled to enforce a title condition and at the end of the day an application may have to be made to the Lands Tribunal for a possible discharge of a condition should it prove impossible to reach an accommodation with the Superior. In the case of Burgh

Churches, the Local Authority will enjoy a right of pre-emption and the Trustees will be in touch with it early in the proceedings. Legislation has been enacted (with more to follow) to reform many aspects of land tenure which should simplify these aspects in the future.

- The General Trustees will consult the Kirk Session on various matters of detail including the exact boundaries of the subjects to be offered for sale, details of any fittings and fixtures which will still be in the building at the time of its being offered for sale and are to be reserved, the need to reserve any rights over the subjects of sale, insurance, date of vacant possession or the potential for including neighbouring glebe land in the sale. Following instruction from the Trustees, the Church of Scotland Solicitors will contact the Kirk Session to arrange a valuation and discuss specific marketing arrangements. How an individual transaction will proceed will depend on the circumstances of the case. In many cases the property will simply be advertised, an application for Listed Building Consent to demolish may be lodged, there may be a need to negotiate some rights over adjoining property.
- **Marketing:** In the majority of cases the redundant property will be advertised on the basis of Particulars of Sale which are checked with local parties before advertisements are instructed. The local person who is handling the viewing arrangements is expected to keep a note of the names and addresses of the parties who inspect the property and the General Trustees will keep in touch with a local correspondent to discuss such matters as further advertising, the fixing of a closing date etc.
- **Off Market Transfers:** The Trustees may be willing to consider offering exclusivity to a community-based group, to allow them to acquire the building without going to market. The group would need to be a constituted legal entity, such as a SCIO, and be willing to meet valuation, as defined by an independent red book valuation. The Trustees would generally not look to sell off market to other denominations, faith groups, individuals or estates. The Trustees may also insist on testing the market in instances where the building is considered highly marketable. This would include buildings that are in centres of population in well-defined plots. Rural Kirks in Local Authority owned churchyards, with poor access and few services would generally be considered low risk (in terms of potential loss of proceeds) and therefore would be suitable for an off-market deal. This approach reflects the Trustee's trusteeship responsibilities and the requirement to act in the best interests of the charity. For buildings that are locally vested, the Local Trustees would be required to take a view on how to best exercise their own trusteeship responsibilities.
- **Acceptance of offer:** In many cases where a number of parties have noted an interest in a property a closing date will be fixed. Where possible the General Trustees try to fix such a date for Noon on the Thursday before a meeting of the Trustees or one of their Committees which take place at roughly fortnightly intervals on Tuesdays and Wednesdays. Details of offers received by the closing date are sent to the local correspondent with a view to local parties considering them over the following week-end and making a recommendation prior to the meeting of the Trustees or the Committee at which a decision is taken. In other cases an individual offer may have to be considered on its merits and a decision taken on its acceptability. In all cases, however, there will be local consultation before the Trustees accept any offer for a property.

With reference to local recommendations, particularly when there are a number of offers, it should be noted that in law the General Trustees are trustees and have trusteeship responsibilities. It is one of the duties of a trustee not to alienate trust property except for a proper price or consideration and accordingly while the Trustees will always consider a local recommendation regarding the acceptance of a particular offer their trusteeship responsibilities may give them very little room for manoeuvre in taking a decision on the offers before them.

(d) Miscellaneous

- **Outlays:** Outlays incurred during the course of the marketing procedures such as insurance premiums, cost of Report and Valuation, any payment to a Superior or other person in right of a title condition, advertising costs and legal expenses are normally met in the first instance from a Temporary Account opened in the books of the General Trustees. Interest is charged against the debit balance on such an account half-yearly being assessed on a monthly

basis and running at a rate marginally less than that payable on monies invested in the Church of Scotland Investors Trust Deposit Fund. The outlays plus interest are recouped from the sale proceeds but if these are insufficient the congregation is required to clear the debit balance on the Trustees' books.

- **Churches in Churchyards:** The disposal of a redundant church in a burial ground, particularly if the Churchyard is still in use, raises sensitive issues. At one time it was not considered appropriate to dispose of such buildings and there are a number, particularly in the Highland area, which were simply closed and have in succeeding years given rise to problems as their condition deteriorates. In more recent years a number of such buildings have been sold for secular use and with one outstanding exception the sales have not tended to give rise to any difficulty.

Local parties involved in the disposal of a building in a burial ground should consider the future of memorials which may be to people buried in the churchyard and the possibility of separate access.

Reference is made to the succeeding section of this paper.

- **Listed Building Purchase Notice Procedure:** On occasion a redundant church building may prove impossible to sell and it may be desired to demolish it. If the building is one which is listed under the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997, Listed Building Consent will be required for demolition. If an application by the General Trustees for such consent is turned down it is open to the General Trustees to serve on the Planning Authority a Listed Building Purchase Notice requiring it to purchase the property from the General Trustees. It rests with the Scottish Ministers whether or not to confirm the Notice but if they are satisfied that the building is one which should be preserved and that it is incapable of reasonably beneficial use then they will confirm the Notice and require the Local Authority to purchase the building. The price received following a Listed Building Purchase Notice will tend not to be significant but the foregoing procedure can result in a building of merit which is of no practical use to the Church of Scotland or any other body being maintained at the expense of the Local Authority rather than by the Church.
- **Restrictions on Use:** In the past it was common practice to impose restrictions against the future use of redundant churches for what were considered to be undesirable purposes such as use for gambling, as licensed premises or for religious purposes which might have been distasteful to the congregation which previously worshipped in the building. Whether restrictions were imposed and if so which, were matters of consultation with local parties. In the light of the legislation relating to land tenure reform the General Trustees reported back on this aspect to the General Assembly of 2001 which approved of the suggestion made by the Trustees that they should depart from the concept of imposing restrictions on future use for undesirable purposes unless such were being conceived to safeguard the use or enjoyment of adjacent or nearby property in Church ownership. It is still possible under the new legislation to impose restrictions which will be enforceable on a contractual basis against the first purchaser but it will usually be possible to enforce against succeeding owners only where adjoining or nearby property is owned and the General Trustees can show a continuing interest to enforce. Consideration of whether or not restrictions should be imposed should, therefore, take this into account and the General Trustees will normally wish to impose restrictions against undesirable uses only if the Church owns other property nearby.

**Summary of Main Responsibilities of Kirk Session / Financial Board**

1. Contact Secretary and Clerk, The Church of Scotland General Trustees, 121 George Street, Edinburgh, EH2 4YR (0131 225 5722) at as early a stage as possible for advice on procedure.
2. Ensure, preferably through a small group, that the property continues to be maintained, insured and generally looked after.
3. Consider the future of fittings, fixtures and furnishings, make sure that suitable arrangements are made for the removal from the building of items which are not to be included in the sale and generally clear the property.
4. Liaise with the Solicitor of the Church (who will act for the General Trustees in the carrying through of the sale) in connection with the preparation of Particulars of Sale, the showing of the property to interested parties and the consideration of offers (Note: The Solicitor will take the initiative with regard to these matters and delegation to a small group can be helpful).

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