

What to consider when letting church halls

Introduction

Under the provisions of the PCC (Powers) Measure 1956, Parochial Church Councils may not own property in their own right: Parish property, such as a Church Hall or a curate's house or flat, is held by the St Albans Diocesan Board of Finance as Custodian Trustee with the PCC having the role of Managing Trustee, taking 'day to day' responsibility for the property. In the event of a sale, lease or license of any Parish property, other than a casual hiring, the consent of the Diocese must be obtained. Any restrictions in any trust deed must be taken into account and the requirements of the 2011 Charities Act met.

Church Halls – Casual Hiring

There is no precise legal definition as to what type of lettings can be classed as casual hiring. However, as a guide these may be individuals or groups who rent a hall or other accommodation for a single occasion only or for one or two periods a week. Some examples of this type of user are:

- A church-based Under 5s group
- Fellowship Club
- Women's Institute
- Mothers' Union
- Alcoholics Anonymous
- Birthday parties or Wedding Receptions

(A suggested form of casual hiring agreement which may be adapted by Parishes for their own use is available from the Diocese. However, you should note that in certain circumstances, exclusive use of premises at particular times and on particular days may be interpreted as a tenancy for which a lease should be considered. Please speak to the Diocese if you are in any doubt.)

Church Halls – Formal Lettings

Any letting other than a casual hiring will require a formal agreement between the Fund, as Custodian Trustee, and the user. (The PCC may be joined in the agreement as Managing Trustee).

Users under this category are individuals or groups who have exclusive use of the premises (or part) and/or use the premises for business purposes. Uniformed Organisations should, also, be included under this category as they will often require exclusive use of storage facilities. Some examples of this type of user are:

- Nursery Schools
- Small businesses
- Worship Fellowship/Faith Groups
- Theatre Groups
- Scouts and Guides
- Martial Arts Clubs

Matters to consider

If you are considering letting out your church hall there are a number of matters to consider:

1. whether you have the power to let/hire out the premises;
2. whether this use of the premises is authorised; and
3. whether there any restrictions on how any income arising from the arrangement is applied.

In order to check this, the following documents will need to be considered:

- i. the trust deed (if any);
- ii. the lease (if the landlord holds the premises under a lease);
- iii. the title documents for the premises (i.e. are there any restrictive covenants which
- iv. prevent the intended use);
- v. whether there are any relevant planning conditions affecting the property.

If it is necessary to change the lease, trust deed or title documents in order to obtain the required power or allow this use and there is no power of amendment in the relevant document then Charity Commission consent may be needed in order to do this (as well as any landlord's consent if relevant).

At all times you should check with the Diocese. Their consent may be needed as well, but they will also be able to advise you on the process and put you in touch with their professional advisers if necessary.

It is also important to check with any mortgage provider that the letting will not conflict with any terms of the mortgage agreement.

Getting the best deal for your church

Under the various Charities Acts, any “disposal” (which will include sales or lettings) must be at full market value unless the charitable objects of the proposed user can be deemed to be parallel with the charitable objects of the parish.

Every charity trustees is under a duty to get the best deal for their charity. If the letting is for more than 7 years then it will be necessary to get written advice from a surveyor, including a valuation. It may also be necessary to advertise the arrangement (unless your surveyor confirms that this is not necessary).

If the letting is for less than 7 years you should obtain advice on the proposed disposition from a person whose ability and practical experience makes them competent to advise you. This can be a local lettings agent, but Diocesan staff can advise you further. You must be satisfied on the basis of that advice that the terms agreed are the best that can reasonably be obtained for the charity.

Legal requirements

You should ensure that any agreement is in writing and except in very exceptional circumstances be drafted by a solicitor.

Any occupational arrangements on consecrated land, such as parish churches (and less commonly church halls) will require a licence or lease under a Faculty. Diocesan staff can advise you should this be the case.

Unless the arrangement is for an occasional or one-off hire, it is important to ensure that the occupation is formalised. This would normally be by means of a licence or lease.

If you do not do this, you could inadvertently grant rights to any occupier that you had not intended to give. It will also make it more difficult to obtain vacant possession when you want the property back.

You should ensure that any lease is contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954. It is important to be clear about what type of agreement is being entered into; it may in fact be the case that the agreement is a lease even though it is called a licence.

Safety

You should also ensure that any occupier abides by the PCC's safeguarding policy.

It is also recommended that written confirmation is obtained from the occupier that they use the Disclosure and Barring Service if working with children and vulnerable adults, and if they do work with children, you should obtain a copy of their Child Protection Policy. Diocesan staff can advise you further on this.

It is important to ensure that your existing public liability insurance covers the letting (including the use and the employees and volunteers using the premises). You should also obtain proof from the occupier that they have their own public liability insurance in place as well (as the occupier's liability will not be covered by the landlord's insurance). Any agreement should ensure that the occupier maintains this insurance throughout the term.

Use

You must be very clear from the outset what the premises is to be used for. This will avoid the premises being used for any embarrassing or unsuitable purposes.

You must also ensure that their kitchen, toilet and hall all meet current health and safety standards. It is also necessary to ensure that the relevant health safety checks are carried out. This will include testing on electrical appliances (PAT testing), fire safety, asbestos, intruder alarms and first aid.

If food is to be prepared on the premises the relevant food hygiene legislation and regulations will need to be followed.

If you want to be able to use the building during any occupation, this must be set out in the agreement.

Utility bills and repairs

Any agreement you reach with an occupier clearly defines who is responsible for the payment of bills (or how they are to be split if use is not exclusive). It should also state who is responsible for repairs and maintenance and whether the occupier should pay towards the cost of insuring the premises.

Equality legislation

Landlords are under a duty under the Equality Act 2010 to make "reasonable adjustments" for disabled people, for example providing disabled access to the premises. Please note however that this is not an absolute duty and depends on the circumstances (for example the size of the premises and the cost of the changes).

Energy Performance Certificates and church halls

The Energy Efficiency (Private Rented Property) (England and Wales) ("MEES") Regulations 2015 apply to the majority of privately rented non-domestic buildings in England and Wales and require landlords (for church halls, this would be the PCC or, in some cases, the vicar and churchwardens) to obtain an Energy Performance Certificate ("EPC") with a minimum E rating before either marketing the premises as available for letting, or granting a new lease. As from 1 April 2023, the minimum E rating will also apply to existing lettings.

Although there are some exemptions from the MEES regulations, including buildings used for religious worship, lettings of church halls are likely to be caught by the regulations. However, some short leases and licences are exempt. There are also some exemptions for listed buildings and buildings in conservation areas. PCCs should take professional advice before entering into leases and licences of church buildings to make sure you are compliant with the MEES regulations.

Where a PCC considers that an exemption applies allowing them to let, or continue to let, a sub-standard property below the minimum energy efficiency standard, the PCC will need to provide details and evidence of the exemption to a centralised self-certification register – the PRS Exemptions Register.

In 2021, the Government launched a consultation on MEES which proposed a series of deadlines for non-domestic buildings between 2023 and 2030:

- 1 April 2025 – all privately rented non-domestic buildings that are not exempt must present a valid EPC;
- 1 April 2027 – all privately rented non-domestic buildings must meet a minimum EPC standard of C or have a valid exemption registered;
- 1 April 2028 – landlords of all privately rented non-domestic buildings must check their EPCs to help identify any properties that require further improvements; and
- 1 April 2030 – all privately rented non-domestic buildings must meet a minimum EPC standard of B or have a valid exemption registered.

The results of the consultation are awaited, but the Government's stated aim is for a minimum EPC B rating for privately rented non-domestic buildings by 1 April 2030. PCCs should therefore assess their church buildings now to see whether they fall within the MEES regulations, so that the PCC is ready to comply if the Government does implement the deadlines set out above which are proposed in its 2021 consultation.

As managing trustees, PCCs are responsible for having a valid EPC for lettings and would need to pay to make the necessary energy improvements to bring let premises up to the minimum rating (currently E, possibly rising to B by 2030). The penalties for non-compliance may include a substantial fine (based on rateable value of the property but a minimum £5,000) as well as being recorded in a public register. At present, there is a ceiling on the amount which needs to be spent on energy improvements, but this may change in future. Your professional adviser can provide more information.

When making improvements in the interests of energy efficiency, PCCs should take professional advice to make sure that these will have the desired effect of resulting in a higher EPC rating which is MEES compliant.

Links to further guidance

<https://www.gov.uk/guidance/charity-land-and-property> - Government guidance on charity land and property

<https://www.gov.uk/government/publications/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land-cc28> - Government guidance for charity trustees on the disposal of land

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468276/cc18.pdf
- Government guidance on use of church halls

<http://www.ecclesiastical.com/churchmatters/churchguidance/churchhealthandsafety/hiringofchurchpremises/index.aspx>

<http://www.hse.gov.uk/index.htm>

<https://www.gov.uk/government/publications/non-domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance> - Government guidance on Energy Performance Certificates

These notes are only intended as a general guide. Please speak to Iain Blythe (01727 818157 or iblythe@stalbans.anglican.org) at the Diocesan offices for further information.