

## THE CHURCH OF SCOTLAND GENERAL TRUSTEES DISPOSAL GUIDANCE

### 1. Introduction

The disposal of a 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 where the title is held in the name of the General Trustees but many of the points made will be equally relevant to the disposal of properties where the title is held in the name of local trustees.

### 2. Ecclesiastical Consents

Notwithstanding the Presbytery Mission Planning process, in terms of GA 2024 Act 5 (The Church of Scotland General Trustees (Properties, Funds and Endowments) Act 2024) an extract minute should be sent from the Kirk Session (and Financial Board if different) to the Presbytery providing for the release of the building. An extract of a vote in favour of a Basis of Adjustment, which provides for the release of the building, is generally accepted. On receipt, the Presbytery should reaffirm the decision and send an extract from the Presbytery approving the sale to the General Trustees. The sale cannot progress until this extract is received by the General Trustees. Finally, once the approvals have been received by from the Kirk Session and Presbytery, the disposal will go to the General Trustee Board for approval, following which, instruction will be issued to the Law Department.

### 3. Responsibilities

When a building is categorised “B” in a Presbytery Mission Plan, or is otherwise closed, the Financial Board of the congregation (which means the Kirk Session, Congregational Board, Deacons Court, Committee of Management or other congregational authority responsible for finance and for the maintenance of the Ecclesiastical Buildings) continues to be responsible for maintaining, insuring and generally looking after the building. It can be helpful if the Financial 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 property to be disposed of rests upon the General Trustees but they act in close consultation with the Financial Board.

In the case of a dissolution, the title to any property where title is held in the name of local trustees must be transferred to the General Trustees prior to the dissolution taking place. The General Trustees then expect the Presbytery to take on the responsibilities which fall on the 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

From an insurance and security point of view, congregations are encouraged to keep the building in use until a purchaser has been found. When the building ceases to be used there may be a security/vandalism problem. COSIS should be contacted straight away and the conditions of the Unnoccupancy section of the Policy Contract should be followed. Circumstances vary but in all cases the building should be rendered lockfast and visited regularly. All combustible items (books, 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 Financial Board however COSIS and the General Trustees should be notified.

#### (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 General Trustees' Sanctuary Development Manager (formerly 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 as soon as possible so a detailed inventory of the building can be carried out 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, they 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 building being disposed of 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 or fixed to 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. 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 dealt with before the General Trustees are in a position to give a clean title. The General Trustees normal practice is to place a property on the market only once any title difficulties have been resolved.
- The General Trustees will consult the Financial Board 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 that are not forming part of the sale, the need to reserve any rights over the property, insurance, date of entry or the potential for including neighbouring glebe land or car park in the sale. Following instruction from the Trustees, the Church of Scotland Law Department 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 most cases the property will be advertised, offers received and the sale completed. In more complicated cases an application for Listed Building Consent to demolish may be lodged and there may be a need to negotiate some rights over adjoining property. This may delay the final sale.
- **Marketing:** In the majority of cases the property to be disposed of will be advertised on the basis of Particulars of Sale which are checked with local parties before marketing arrangements are finalised. 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 Law Department will keep in touch with a local correspondent to discuss such matters as further advertising, the fixing of a closing date etc.

- **Off Market Sales:** The General Trustees may in certain circumstances consider offering a period of exclusivity to a community-based group, to allow them to acquire the building without advertising on the open market. In terms of the General Trustees' policy, the group would need to be a constituted legal entity, such as a SCIO, and be willing to pay at least valuation, as defined by an independent surveyor's Red Book valuation. The Trustees may also insist on advertising on the open 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 or no connections to water and drainage services may be suitable for an off-market sale. This approach reflects the General Trustee's trusteeship responsibilities and the requirement to act in the best interests of the charity. For buildings where the titles are held in the name of local trustees, they 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 would be fixed. Details of offers received by the closing date are sent to the local church contact with an expectation that a recommendation is received before the next meeting of the General Trustees at which a final decision is taken. In between meetings, to minimise delay in accepting an offer, the General Trustees have delegated powers to the Chair and Vice Chair to approve acceptance of offers for churches and halls. 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 General 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 charity trustees and have trusteeship responsibilities. Trustees have a legal obligation to act in the best interests of the charity which includes obtaining the best value for the disposal of trust assets 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 process such as insurance premiums, cost of Report and Valuation, any payment to a person that benefits from a title condition, advertising costs and legal expenses are normally met in the first instance by the General Trustees. The outlays are recouped from the sale proceeds but if these are insufficient the congregation is required to clear the debit balance.
- **Levy:** The GTs charge a 15% Levy on the proceeds of sale which is transferred to the Central Fabric Fund. This is then redistributed as grants and loans in support of fabric works at any GT Vested property, subject to application to the General Trustees.
- **Consolidated Fabric Fund:** Following the aforementioned deductions, the remaining funds are credited to the Consolidated Fabric Fund as Capital, for the benefit of the congregation. These funds may be used to cover fabric-related expenditures on any of the congregation's General Trustees Vested property, subject to application to the General Trustees. Additionally, the funds may be applied to Locally Vested buildings, provided that the Assembly Control Clause is included in the title deeds.
- **Churches in Graveyards:**

The buildings are owned by the church however the graveyards are not, they are owned by the Local Authority of that area. 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 graveyard.

- **Planning Permission:** Questions are often raised about whether Planning Permission or Planning Permission in Principle should be sought before marketing a property. While there may be exceptions depending on the specific circumstances, the general advice from the General Trustees is that properties should be marketed without any planning permissions in place. This approach preserves flexibility and maximises market interest, as applying for permission tied to a specific use can restrict potential buyers to those with that same intended purpose. The responsibility for obtaining planning consent is typically more appropriate for the purchaser, once they have determined their intended use for the property. Securing planning permission can also involve significant upfront costs due to the need for various surveys and supporting reports, with no guarantee of a successful outcome or financial return. In addition, the application process can cause considerable delays to the sale.
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### Summary of Main Responsibilities of Kirk Session / Financial Board

1. Contact Head of Planning and Policy, The Church of Scotland General Trustees, [gentrustees@churchofscotland.org.uk](mailto:gentrustees@churchofscotland.org.uk), 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 Law Department (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 Law Department will take the initiative with regard to these matters and delegation to a small group can be helpful).
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