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Charities Act Valuation Report

A Church Growth Trust Briefing Paper
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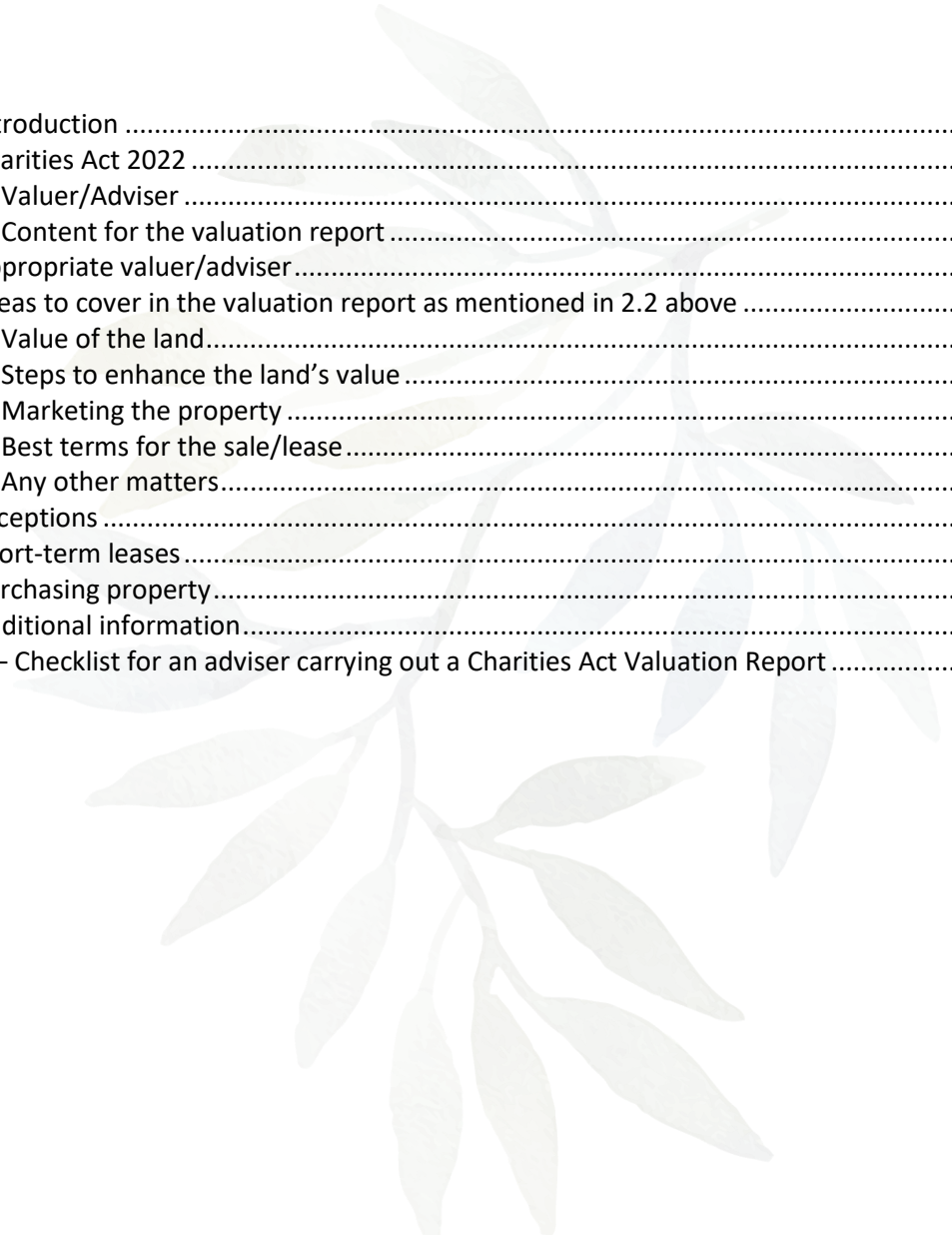
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1.0 Introduction

Trustees of a charity that owns land/property sometimes consider selling or leasing the land/property. Often, they are unaware of the requirements in charity law that they must fulfil for any sale/lease to be legal. It is important for trustees to understand their legal responsibilities and to act accordingly. This briefing paper will help trustees know what is required.

There is a general requirement in charity law for charity trustees to act in the best interests of the charity and this includes obtaining best value for the charity's assets. There is a specific requirement in the Charities Act 2011¹ for trustees that are disposing² of land and property (e.g. church building, hall, land or house) that they should obtain a Charities Act Valuation Report as evidence that they have acted in the best interests of the charity and obtained best value for the asset. There are some exceptions to this. Some trustees think the last part of selling or leasing a property is to produce a valuation report, whereas, this is the first action to take, in order to know what the value of the property is, what action may be required to optimise its value and how best to market it. **If you are thinking about selling or leasing land/property, take action early to obtain the Charities Act Valuation Report.**

There were some changes to the valuation report that were introduced by the Charities Act 2022 and these will be considered in the briefing paper. It will also consider the qualification of a valuer/adviser who is asked to produce the valuation report and matters for the charity trustees to consider when instructing a valuer.

2.0 Charities Act 2022

The Charities Act 2022 brought about a number of changes to the Charities Act Valuation Report, including who is allowed to produce the report and what should be included in it.

2.1 Valuer/Adviser

Previous to the Charities Act 2022 only a qualified member of the Royal Institution of Chartered Surveyors (RICS), who is licenced to carry out valuations, was allowed to produce a Charities Act Valuation Report (often referred to as a qualified surveyor's report). As from mid-June 2023, when the relevant part of the Charities Act 2022 was implemented, additional professional valuers are now allowed to produce the report. This includes fellows of the National Association of Estate Agents and fellows of the Central Association of Agricultural Valuers (CAAV). As with RICS valuers, the valuer would need to have the relevant experience and knowledge of the type of property being sold/leased. It is likely that a CAAV valuer would be only used for a valuation report on agricultural property. A residential property estate agent may not be an appropriate valuer for a church property, if he/she does not have experience of church properties.

2.2 Content for the valuation report

For many years the valuer for a Charities Act Valuation Report had been required to follow the Charities (Qualified Surveyors Report) Regulations 1992, which was fairly prescriptive and detailed on what should be contained in the report. It was also inflexible to allow for special circumstances relating to the purchaser (e.g. if it was a special purchaser because the purchaser owned the neighbouring property) or to allow for specific circumstances of the charity (e.g. there were no funds available for the charity to obtain planning permission for a

¹ Section 119 of the Charities Act 2011

² Disposing can include selling, leasing, surrendering a lease or grant an option to purchase.

more valuable use or to carry out repairs or improvements to the property to increase its value).

The Charities Act 2022 now allows for a more flexible approach to the valuation report, which is covered by the Charities (Dispositions of Land: Designated Advisers and Reports) Regulations 2023. The areas the valuer is required to cover are as follows:

- The value of the relevant land;
- Any steps which could be taken to enhance that value;
- Whether, and if so, how the relevant land should be marketed;
- Anything else which could be done to ensure that the terms on which the disposition is made are the best that can reasonably be obtained for the charity; and
- Any other matters which the adviser believes should be drawn to the attention of the charity trustees.

These areas will be considered in more detail later. The main differences with the 1992 Regulations and the 2023 Regulations are that the new ones allow more flexibility/freedom in the steps that are obligatory/compulsory, whereas the 1992 Regulations required the adviser to cover all of the points set out in the Regulations, when some of these were not relevant (e.g. where marketing would not have been appropriate for the surrender of a lease). This also included a requirement for the charity to market the property for the period that the valuer recommended, which again may not have been appropriate in certain circumstances (e.g. selling to the owner of a neighbouring property for a premium).

3.0 Appropriate valuer/adviser

Any valuer/adviser producing a Charities Act Valuation Report will need to make a statement in the report that “the adviser has ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question” and “the adviser has no interest which conflicts, or would appear to conflict, with that of the charity”. It is important therefore that the charity trustees choose carefully the person to carry out the valuation, ensuring that he/she does not have any conflict of interest with the charity (e.g. this might be that he/she or their firm is also acting for the charity that is purchasing/leasing the property) and that he/she has the right level of experience and knowledge to be able to value the particular property. It has sometimes proved challenging in the past to find an appropriate valuer for church property, but, with the increase in the pool of valuers available and the added flexibility to the valuation assumptions, the intention of the changes is for the Charities Act valuation process to become easier and more targeted. Matters that valuers will need to focus on in particular include the planning designation of the property, the local planning policy affecting the property and the potential value of any change of use if planning permission was to be granted for redeveloping the property.

It is also helpful for the valuer to have some knowledge of the charity and its particular circumstances. However, the onus is on the charity trustees to inform the valuer of any specific circumstances that affect the charity and the sale of its property, so that the charity gets the valuation report from the valuer that it really needs for the charity’s purposes. It should then be in a position to make a timely decision on the matter with all relevant information to hand. Specific circumstances could for instance be that there is a need to raise funds quickly or that there are no funds available within the charity to obtain planning permission for a change of use or carry out repairs or improvements to the

property. A suggested list of requirements for a valuer and specific circumstances that may affect the charity are set out in the Appendix to this paper.

It is also important to check that the valuer has the appropriate professional indemnity insurance in place for carrying out such a valuation. Someone who is retired from business is unlikely to have this.

Where a charity trustee, officer or employee has the appropriate qualifications and experience it is now possible for a charity to produce the valuation report internally. This is providing that there are no conflicts of interest – any trustee who is acting as an adviser must not be part of the final decision making. The trustee/officer/employee must be qualified to the required level in one of the three above named professional bodies and not just someone who has an idea of what the property might sell for! If a trustee is to act in this capacity the charity should check that this would be covered by its insurance and should bear in mind that there would be no outside party to sue if things went wrong. Whilst this change has the potential for greater flexibility and reduced costs, it is fraught with problems and it is unlikely most trustees would be willing to take on the risk.

4.0 Areas to cover in the valuation report as mentioned in 2.2 above

There are areas that must be covered in the Charities Act Valuation Report as follows:

4.1 Value of the land

The valuer is required to give a market value for the property as it is with its current use, condition and restrictions. If the valuer is recommending that there are ways of increasing the value of the property (see below) then he/she should also give an idea of the value if some or all of those things are put in place. It may also be appropriate to give the value of the land to a special purchaser. This could be for instance where the sale of a piece of land significantly increases the garden to the neighbouring property and thus increases the value of that property; whereas the value of the land to anyone else would be considerably less.

4.2 Steps to enhance the land's value

There may be a number of ways of enhancing the value of the property that is being sold, including:

- Removing any restrictions limiting the use of the property (e.g. where it can only be used as a place of worship). These may be restrictive covenants affecting the title to the property or planning restrictions. With the former, the party benefitting from the restriction (e.g. the previous landowner) would need to agree to the restriction being lifted. With the latter, planning permission for a change of use would be required.
- Obtaining planning permission, full or outline, (or even a positive response from a pre-application enquiry) to develop the land for an alternative higher-value use. This could include converting a church building to a residential building or a number of flats, or developing the whole site for office or residential development.
- Carrying out repairs, refurbishments or alterations to put the property in good condition or improve it, so that it may be more attractive for any purchaser and therefore more likely to sell. The same would apply to any lease where works could increase the rental value and/or make the property more likely to be lettable.
- Dividing the property up, so that it is sold in separate lots (e.g. selling a manse and a separate building plot in the garden) or combining the land with another property (e.g. where the larger property would be more attractive to a developer).

- Serving the appropriate papers to legally terminate an existing tenancy, so that the property can be sold with vacant possession.

4.3 Marketing the property

The valuation report should include a recommendation on whether it would be advantageous to market the property or not. If it is a lease to an existing tenant that is being renewed or the sale to a special purchaser (e.g. the occupying church), marketing the property would be unlikely to be of any benefit and may in fact cause difficulty with the lease/sale. Where the valuer advises that marketing should take place, he/she should also make recommendations on the best method of marketing the property and may need to amend this recommendation if it is unsuccessful.

4.4 Best terms for the sale/lease

The valuer should also advise the charity on the best terms that can reasonably be obtained by the charity for the sale/lease. These may include for a lease, the length of the lease, the repair responsibilities, whether the tenant (and/or the landlord) has a right to break the lease early, whether there are restrictions on the use of the property and whether there are requirements for the tenant (and/or the landlord) to carry out works. For a sale, terms could include a timetable for exchange and completion, restrictions on future use (including the possibility of a clawback clause so that if the property is developed in the future the charity would receive a proportion of the increased value), or that certain works are carried out by the purchaser (e.g. fencing the boundary between the property being sold and any retained property).

4.5 Any other matters

The 2023 Regulations³ refer to any other matters that the adviser believes should be drawn to the attention of the charity trustees. These can also be factors that have been raised by the trustees that relate to the specific circumstances of the charity. The advantage of this aspect of the valuation report is that the valuer can include unusual factors that may affect the valuation, the land and the circumstances of the charity, as well as giving some flexibility on how he/she deals with the valuation, potential enhancements and marketing.

5.0 Exceptions

There are a number of exceptions for sales and leases where trustees are not required to have a formal valuation report. This is not required for granting a licence or a hiring agreement. It is also not required where a charity is gifting or selling at under-market value or granting a lease at a nil or low rent, when the charity is selling or leasing to another charity with similar objects or where the second charity has objects that are within or part of the first charity's objects or where the charity by selling or leasing at an under-value is directly fulfilling its own objects (e.g. providing accommodation for someone who has been homeless, when one of the charity's objects is the relief of poverty).

Where a charity is granting a lease for seven years or less a simplified report from someone with appropriate experience either within the charity or as an external adviser, to state that the rent is a market rent, is all that is required. See section 6 below.

³ Charities (Dispositions of Land: Designated Advisers and Reports) Regulations 2023

6.0 Short-term leases

Where a property is let for seven years or less, unless it is let within the charitable objects of the charity, advice should still be given by someone with appropriate experience and knowledge (but not necessarily with the same qualifications that are required for a full Charities Act Valuation Report) to confirm that the terms of the proposed lease are the best that can reasonably be obtained for the charity. There is no prescribed form for content of the report.

7.0 Purchasing property

The Charities Act does not require trustees to obtain a valuation report when purchasing or leasing land or property, but the Charity Commission guidance does recommend (rather than require) trustees taking a number of actions, including:

- Ensuring they have the necessary power or authority to purchase the land.
- Making sure the property is suitable for its intended use and, in particular, is not subject to any legal or planning restrictions or conditions which might conflict with that use, or with which it may be difficult for the trustees to comply.
- Obtaining any necessary planning permission(s).
- Ascertaining that the price or rent to be paid is a fair one compared with similar properties on the market.
- Considering whether the charity can afford the purchase - in particular that if a property is being bought with a mortgage, the mortgage can be financed out of the resources of the charity and that any potential rises in interest rates have been budgeted for.
- When acquiring a lease, they understand the obligations to which the charity will be subject under the lease, and that the terms of the lease are fair and reasonable.
- Taking appropriate professional advice including legal advice; the cost of taking professional advice can be met by the charity.
- Obtaining and considering a report from a designated adviser acting solely for the trustees. The report would normally include advice on a reasonable price range for the land, or on the maximum bid the trustees should make at auction. The trustees should also be careful to ensure that the report covers all factors relevant to the proposed purchase, including:
 - of any repairs or alterations the trustees would need to make, and the estimated cost;
 - anything else that could be done to ensure that the terms of the proposed purchase are the best that can reasonably be obtained for the charity;
 - anything else the designated adviser thinks relevant, including a description of any restrictive or other covenants to which the land is subject.

A designated adviser should be similarly qualified as shown in section 5 below. The designated adviser can be a trustee, officer or employee of the charity if they are suitably qualified, any conflicts of interest are managed and the charity has insurance that will cover negligent advice given by an adviser who is also a trustee, officer or employee of the charity.

There may be occasions when the trustees decide not to obtain a report from a designated adviser on the proposed land purchase. If the trustees decide not to obtain a report before purchasing land, they must be satisfied that they have taken all relevant matters into account and have paid careful attention to whether the transaction is in the best interests of the charity.

8.0 Additional information

The Charity Commission's guidance on disposal of charity property has been recently updated and is available from the Government website.

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

Websites to help find a suitably qualified and experienced surveyor, estate agent or agricultural valuer are as follows:

Royal Institution of Chartered Surveyors: <https://www.ricsfirms.com/>

National Association of Estate Agents: <https://www.propertymark.co.uk/>

Central Association of Agricultural Valuers: <https://www.caav.org.uk/>

Appendix – Checklist for an adviser carrying out a Charities Act Valuation Report

1. Qualification

Ask the valuer/adviser to confirm that he/she:

- a. Is either a fully qualified member of the Royal Institution of Chartered Surveyors and a licenced valuer, or is a fellow of the National Association of Estate Agents or a fellow of the Central Association of Agricultural Valuers.
- b. Has experience/knowledge of the relevant land that is being sold and the area in which the land is located.
- c. Is familiar with the requirements of the Charities Act and the Charities (Dispositions of Land: Designated Advisers and Reports) Regulations 2023.
- d. Has appropriate professional indemnity insurance.

2. Areas to cover

Make it clear to the adviser that you will expect him/her to advise on the following:

- a. The value of the relevant land;
- b. Any steps which could be taken to enhance that value;
- c. Whether and, if so, how the relevant land should be marketed;
- d. Anything else which could be done to ensure that the terms on which the disposition is made are the best that can reasonably be obtained for the charity; and
- e. Any other matters which the adviser believes should be drawn to the attention of the charity trustees.

Ask the adviser whether the sale should be delayed, whether alterations or improvements to the property are recommended, whether there should be any repairs carried out prior to a sale or whether planning permission should be obtained to change the use and increase the value of the property. Also ask for an idea of values if the various recommendations are carried out.

3. Specific circumstances

Make clear to the adviser any specific circumstances that are relevant to the property and the charity. These could include the following:

- a. Other neighbouring property that is owned by the charity or where there is a special relationship with the neighbours;
- b. Planning permission for alternative uses has already been obtained;
- c. Whether there is a special purchaser (e.g. neighbouring property owner or existing tenant); and
- d. If the charity has a lack of funds to carry out works or even obtain planning permission for change of use.

4. Valuer's statement

The valuer/adviser should be asked to make a statement in his/her report that “the adviser has ability in, and experience of, the valuation of land of the particular kind, and in the particular area in question”; and “the adviser has no interest which conflicts, or would appear to conflict, with that of the charity”.