

Managing charity property in uncertain times webinar – Q&A responses

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Question	Answer
<p>We are an exempt charity – regulated by the Secretary of State Education – some aspects of governance remain with the charity commission however and we are building a new campus – does managing charity property in the context of our exemption make things easier or difficult, especially when we are to dispose of or rebuild a college, a portion of which is Grade II listed?</p>	<p>Joanne Burton, Stone King</p> <p>William Ray and Paul Greenwood, Gerald Eve</p> <p>Your FE College Corporation has the status of an Exempt Charity, under Schedule 3 of The Charities Act 2011. It is subject to charity law but it is not directly regulated by the Charity Commission, but by a Principal Regulator appointed by the Commission. The Secretary of State for the Department for Education has been appointed Principal Regulator for Further Education Corporations. The trustees of an exempt charity have the same general duties and responsibilities as trustees of other charities and, as such, are expected to comply with charity law. Although exempt charities are not subject to the statutory restrictions on dispositions of land thus giving an FE corporation less stringent processes to comply with in disposing of their property. However it is important to consider that they must fulfil their general duties when disposing of charity land and include the statements required by the Charities Act 2011.</p> <p>The governance guidance for Further Education Corporations addresses estate matters, with the following relevant points extracted:</p> <p>Your board is responsible for overseeing the management of land and buildings, and for ensuring estates are used in the most efficient way for the benefit of students. It should ensure that:</p> <ul style="list-style-type: none"> • decisions on estate matters are: <ul style="list-style-type: none"> – made in the interests of your corporation, including getting the best possible deal in property transactions

	<ul style="list-style-type: none"> – supported by appropriate information, such as written professional valuations • it obtains appropriate professional advice • sales or leases are advertised, unless a surveyor advises otherwise. <p>In terms of a disposal, the college is not subject to the statutory restrictions on dispositions etc as set out above, but it always good practice to take advice from professional advisers, if the Trustees/governors have any concerns, or if they feel that they would benefit from independent advice we would be pleased to pick up in more detail.</p>
<p>How do you balance :</p> <ul style="list-style-type: none"> A. use as investment/ asset B. sell to increase funds C. invest in property to improve to be able to increase returns. 	<p>Amanda Francis, Buzzacott</p> <p>The strategic direction of the charity will be key to informing this. It is important for trustees to have a long term plan – where do they want the charity to be in five to ten years’ time? How will that strategy be achieved? What assets will be needed to facilitate the plan and further the work of the charity? The long term strategic direction of the charity needs to be considered in detail and the financial implications of various scenarios assessed and compared.</p> <p>If trustees are holding a property asset that is intrinsic to the charity being able to carry out its work now and in to the future, then it makes sense for that property to continue to be held and maintained as a tangible or functional fixed asset.</p> <p>If there is some doubt as to whether the property is, or will continue to be, suitable for the charity’s purposes, then a decision needs to be made as to whether it should be disposed of, when that disposal should take place and whether the proceeds will be used to purchase something more suitable.</p> <p>A key decision in this scenario will be whether the charity replaces the building through purchase or whether, because of cash flow and timeframes and/or the complexity of the building required, it would make more sense to lease a replacement property.</p> <p>If the building is simply surplus to requirements then it may be appropriate to consider whether the building should be sold – such a decision would result in an relatively quick increase in liquid assets. Alternatively, the property might be retained as an investment property. The latter decision may be taken if, for example, rather than an immediate influx of liquidity, it was more important to hold a long term asset that should retain its value but which would produce a regular income in the form of rent. Factored against this will be the cost of maintaining the asset and retaining ultimate responsibility for the property. Some of these issues can be mitigated by the drafting of the relevant lease but</p>

the charity should consider other risks associated with holding investment property also, such as the risk of not finding suitable tenants/lessees and having periods when the property is empty and has to be secured and maintained.

Treating the property as an investment property for a short period may be sensible if it is felt that the charity may have need itself for the property for its own work in the longer term despite not requiring it in the short term.

If the administrative burden of retaining a surplus property and using it as an investment property appears too onerous, it may be worth considering selling the property and investing the proceeds in listed investments. If listed investments are already held (and a decision is made to retain the property as an investment asset), this should be communicated to the charity's investment managers as they may wish to revisit their asset allocation as a result.

William Ray and Paul Greenwood, Gerald Eve

This is a difficult balance but ultimately the question of whether to sell or hold for income should be based on the charity's objectives and whether income or capital receipts better suit the charity's financial requirements, looking at the short to medium term, or over the length of a lease.

Holding investment property places a management and often a financial burden on trustees which can detract from core charity responsibilities which should be considered against the balancing process.

Investing in improvements, repairs and alterations is to a degree expected for those that hold investment properties, particularly where repairing liabilities are the responsibility of the landlord which again, should be carefully considered as part of the decision making process.

Hugh Pearce, Stone King

If a charity has a property it may be bound to hold by the trusts on which it is held to use it for operational asset purpose. If it is not then I view it as a part of Trustee duties to keep an eye on each operational property in context of the charity's strategic plans to be sure that still remains the best place/way to deliver charitable mission. If the property is an investment asset then one also to consider against the charity's (investment) strategy to consider if land is best way to invest. This can take account of possible future return to mission use as sometimes properties are short term out of mission use. The investment return approach (capital/income returns?) again is I think best considered and led by the strategic investment return needs/priorities of the mission (having regard for property's illiquid nature and usual management-heavy issues, weighted against perceived stability/tangible nature).

	<p>As to investment to improve returns, care must be taken not to fall into trading issues within the charity that may make the charity indistinguishable from a property developer. Trustees should be careful to take advice before pursuing a significant piece of work. The time and energy distortion from mission should also not be underestimated.</p> <p>It is not anathema - the Qualified Surveyor's Report regs anticipate the possibility of worthwhile works to give net return benefit on disposal – but care should be taken.</p>
<p>Is there any particular focus to the additional due diligence taking place?</p>	<p>William Ray and Paul Greenwood, Gerald Eve</p> <p>We do not necessarily consider that buyers are raising additional due diligence, but we are seeing buyers insisting on fuller and more detailed information from sellers prior to exchanging contracts than would otherwise be expected in stronger markets/historically. This is not necessarily a COVID matter, but a reflection of comparatively weaker markets following the GFC and the lead-up and post Brexit combined which has been exacerbated by COVID.</p> <p>Funders are asking more questions as their lending criteria has tightened, which comes back on the seller, and buyers generally are less willing to 'take a view' on areas which present risk to the use, funding or future ability to sell or mortgage the asset.</p> <p>We are recommending that sellers spend more time investigating their own property prior to a sale, including title investigations, local searches, measured surveys, for example, in an attempt to highlight particular issues which could arise at contract stage and compromise a sale with a view to addressing these prior to marketing. The level of pre-sale due diligence will depend on the type and complexity of the asset.</p> <p>Kathryn Williams, Stone King</p> <p>It is also worth noting that standard due diligence (in particular search results from local authorities) are taking a lot longer to be processed which is making the pre-contract stage of a transaction a lot longer. There has also been issues when further information is required from a local authority (e.g. copies of historic planning permissions) - some local authorities are just unable to provide copies of documents if they are not stored electronically which has then delayed matters whilst buyers consider and assess the risk.</p>
<p>Do you see central London offices/buildings being more difficult to sell than elsewhere?</p>	<p>William Ray and Paul Greenwood, Gerald Eve</p> <p>Not an easy question to answer in this forum as there are many contributing factors. In short, it is too early to predict how the markets will react to new working practices and much will depend on how long it takes to get to the 'new normal'. Generally speaking, we have not seen downward pressure on office</p>

	<p>property prices in London, albeit evidence is thin on the ground and many are predicting an influx of second hand, 'grey' office space to the markets, which is likely to have a downward impact upon pricing for poorer quality stock.</p> <p>One material factor which separates London from some other areas is the high underlying land values and strong demand.</p> <p>Ultimately the saleability of the asset will depend on its location, physical configuration, planning policy, potential for alternative use and demand in that area.</p>
<p>Paul referred to nurseries and changes from D to F as well as a "cluid"? Apologies I'm not familiar with the terms here. Please could you clarify. It was in respect of church halls which may have nursery tenants</p>	<p>William Ray and Paul Greenwood, Gerald Eve</p> <p>Community use properties including; places of worship, schools, medical & health services, non-residential education and training centres, day nurseries, museums and libraries, used to fall within use class D1 (Non-residential institutions).</p> <p>However, as part of the recent use class order reform from 1 September 2020, the property uses mentioned above now fall within use class F1, which excludes day nurseries and crèches and forms part of a much wider use class E, including retail and offices and other more commercial uses.</p> <p>The new F1 use class, includes:</p> <ul style="list-style-type: none"> a) the provision of education, (schools, colleges) b) for the display of works of art (otherwise than for sale or hire), c) as a museum, d) as a public library or public reading room, e) as a public hall or exhibition hall, f) for, or in connection with, public worship or religious instruction. <p>Owners of community use properties such as place of worship or church halls that are currently being exclusively used by nurseries, may wish to consider making an application for a CLEUD (a Certificate of Lawful Existing Use or Development) to the local planning authority, to certify the properties existing use as being within F1 (i.e. as a place of worship) or E, depending on the future use of the property. In order to prevent the property from being certified by the tenants for an alternative use and to establish the property's planning use.</p>