

GENERAL SYNOD

LEGAL ADVISORY COMMISSION

Using Churches for Secular Purposes

1. INTRODUCTION

- 1.1. The Church Buildings Review Group reported in 2015. In their Summary, the Group observed:

"The primary purpose of churches is and should remain the worship of Almighty God, to be houses of prayer. But that can and needs to be sensitively combined with service to the community. The imaginative adaptation of church buildings for community use in many areas is breathing new life into them."

- 1.2. Appendix 3 to the Report usefully summarised the legal position with regard to authorising secular use of consecrated land and/or buildings as follows:

"1. There are currently two legal models under which rights in relation to an open church building can be conferred on a person or body. One is a contractual licence; the other is a lease. Both models involve conferring legally enforceable rights on the other party to the arrangement. The rights in question will include a right to use the building, or part of the building, for specified purposes.

...

6. Although the incumbent (in his or her corporate capacity) will normally be the person who grants the licence or the lease, the incumbent cannot do so except under the authority of a faculty. That is for a number of reasons. First it is because although the property in the church and churchyard is vested in the incumbent in right of his or her office, it is subject to the control of

the Ordinary (in the person of the chancellor as judge of the consistory court). Secondly, a consecrated church cannot lawfully be used for secular purposes except under the authority of a faculty. Thirdly, so far as leases are concerned, there are statutory provisions which require the incumbent to obtain a faculty to authorise the grant of a lease.

7. *That means that before a licence or a lease can be entered into, it is necessary to submit a petition to the consistory court and to obtain a faculty. The petition will normally be accompanied by a draft of the proposed licence or lease.*
8. *There are no special statutory provisions which govern the exercise of the faculty jurisdiction to authorise the grant of a licence. But the court cannot grant a faculty for a licence to use a church in a way which would be inconsistent with its status as a consecrated building as such use would be unlawful. Provided that the proposed use is consistent with the church's consecrated status, the court has a discretion whether to grant a faculty. The court will wish to be satisfied that if the licence is granted the building will continue to be a church and that the proposed use will not prevent its use as a church when it is required for that purpose – which will not merely be on Sundays but also, for example, for the occasional offices.*
9. *A lease of a church cannot be granted except under the relevant provisions of section 68 of the Mission and Pastoral Measure 2011. The relevant provisions were originally introduced by the Pastoral (Amendment) Measure 2006. The aim of that Measure was to facilitate alternative use of churches in cases in which parishes found that, if such use were to be possible, the intended user group needed to have a lease of the part of the church in question, rather than merely a licence. In many cases this would be because a lease was required to enable the user group to secure financial*

support from one or more public funding bodies (this being a common requirement of a number of such bodies). The purpose of the Measure was not to provide a mechanism for transferring responsibility for the maintenance of church buildings away from the PCC and a lease under section 68 is not an apt means for doing so. (See further below.)

10. *Section 68 of the 2011 Measure empowers the consistory court, in its discretion, to grant a faculty authorising the incumbent to grant a lease. But this is subject to two overriding requirements. The lease must be of part only of a church: it is not possible to grant a lease in respect of the whole church. Moreover, the church building, taken as a whole, must continue to be used primarily as a place of worship after the lease is granted.*
11. *One reason for imposing these requirements was that the grant of a lease under faculty was not intended as an alternative means of effectively closing a church for regular public worship and appropriating it to other uses.*
12. *A further reason, of some practical importance, was that if the building as a whole ceased to be used primarily as a place of worship, it would cease to benefit from the ecclesiastical exemption from listed building control. The result of that would be that the church became subject to secular control in addition to the faculty jurisdiction.”*

- 1.3. This Opinion sets out the relevant secular planning law on change of use and considers the implications for the Ecclesiastical Exemption of effecting such change as Ecclesiastical Law allows. The implications for rating are also considered. Other regulatory requirements are not covered in this Opinion, but will need to be considered in relevant circumstances. For example, part of St Mary’s, Ashford¹ is now a permanent performance review/arts centre with a bar which sells alcoholic drinks. Therefore, a licence is required for that part of the premises.

¹ Following the grant of a Faculty which was the subject of the decision of the Court of Arches in (2011) Ecc LJ 244

1.4. Nothing in this Opinion should be taken as detracting from the need for authorisation by faculty in the case of changes of use within premises covered by the faculty jurisdiction.

2. SECULAR PLANNING LAW

2.1 So far as likely to be relevant to church activities, secular planning law is divided into three main areas of regulation. These are: planning control, listed building control and special controls (specifically, trees and advertisements). These three areas will be examined below, starting with listed building and conservation area control. The first and third of these matters are dealt with principally by the Town and Country Planning Act 1990 and secondary legislation made under it. The second is covered by the Listed Building and Conservation Areas Act 1990.

2.2 *Listed Building and Conservation Area Control*

2.2.1 Listed church buildings are exempt from secular listed building control by virtue of s.60 Listed Buildings Act 1990 (“LBA 1990”) which provides as follows:

“(1) The provisions mentioned in subsection (2) shall not apply to any ecclesiastical building which is for the time being used for ecclesiastical purposes.

(2) Those provisions are sections 3, 4, 7 to 9, 47, 54 and 59.

(3) For the purposes of subsection (1), a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office shall be treated as not being an ecclesiastical building.

(4) For the purposes of sections 7 to 9 a building shall be taken to be used for the time being for ecclesiastical purposes if it would be so used but for the works in question.

(5) The Secretary of State may by order provide for restricting or excluding the operation of subsections (1) to (3) in such cases as may be specified in the order.

(6) An order under this section may—

- (a) *make provision for buildings generally, for descriptions of building or for particular buildings;*
 - (b) *make different provision for buildings in different areas, for buildings of different religious faiths or denominations or according to the use made of the building;*
 - (c) *make such provision in relation to a part of a building (including, in particular, an object or structure falling to be treated as part of the building by virtue of section 1(5)) as may be made in relation to a building and make different provision for different parts of the same building;*
 - (d) *make different provision with respect to works of different descriptions or according to the extent of the works;*
 - (e) *make such consequential adaptations or modifications of the operation of any other provision of this Act or the principal Act, or of any instrument made under either of those Acts, as appear to the Secretary of State to be appropriate.*
- (7) *Sections 7 to 9 shall not apply to the execution of works for the demolition, in pursuance of a pastoral or redundancy scheme (within the meaning of the Pastoral Measure 1983), of a redundant building (within the meaning of that Measure) or a part of such a building.” (Emphasis added).*

2.2.2 Pursuant to subsection (5) (highlighted above), the Secretary of State has made an Order² restricting the operation of s.60 to “*church buildings*” and defining “*church building*” as “*a building whose primary use is as a place of worship.*”

² The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010 (SI.2010/1176)

- 2.2.3 S.75(1) LBA 1990 similarly exempted from the requirement for Conservation Area Consent ecclesiastical buildings which are for the time being used for ecclesiastical purposes. Conservation Area Consent for demolition is now no longer applicable in England by virtue of amendments made by the Enterprise and Regulatory Reform Act 2013, meaning that demolition of unlisted churches in conservation areas is regulated – so far as secular controls are concerned³ – by means of a requirement for planning permission. In Wales, the position remains as originally enacted in 1990.
- 2.2.4 The exclusions from the control of the LBA 1990 are colloquially referred to as the “*Ecclesiastical Exemption*”.
- 2.2.5 It will be noted that the exemption does not apply to clergy housing (ss.60(3), 75(1))⁴ but “*ecclesiastical purposes*” are not otherwise defined. The specific statutory exclusion of clergy housing was added in response to case law which suggested a wide interpretation both of the terms “*ecclesiastical building*” and “*ecclesiastical purposes*”: see Phillips v. Minister of Housing and Local Government [1965] 1 QB 156 at 164, where it was said that “*Parliament never intended hard and fast lines to be drawn*” in relation to ecclesiastical buildings and, obiter, that, if necessary, “*ecclesiastical purposes*” would have been construed to include a parsonage house used by the rector as the centre of his spiritual vocation and work of the cure of souls.
- 2.2.6 As noted above, the Secretary of State’s Order removes the Exemption in the case of church buildings which are no longer used primarily as places of worship, notwithstanding the breadth of the Act’s phrase, “*ecclesiastical purposes.*”
- 2.2.7 In the case of a church which has been closed under the Mission and Pastoral Measure 2011, s.60(7) LBA 1990 is supplemented by the provisions of the non-statutory “*Skelmersdale Agreement*”, a convention under which the Church Commissioners seek the guidance of the Secretary of State as to the future of any closed church which they wish to demolish, after the holding of a public inquiry if the Minister deems it necessary.

³ Section 17 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 provides for faculties to be granted for the demolition of churches in the limited range of circumstances set out in the section. A faculty or some other form of ecclesiastical authority (e.g. an order under section 18 of the 1991 Measure, or a scheme under Part 6 of the Mission and Pastoral Measure 2011) will be required in addition to any secular permission. Special notice of a petition for a faculty authorising demolition of listed churches and of unlisted churches in conservation areas is required to be given to Historic England, the local planning authority and relevant national amenity societies: see Part 9 and Schedule 2 to the Faculty Jurisdiction Rules 2015.

⁴ Subject to the Church of England (Miscellaneous Provisions) Measure 2014 No.1, Sch.2, para 11 which provides (as amended) that the exclusion of a clergy dwelling applies “*unless it is a chapel forming part of an episcopal house of residence and is included in the list maintained by the Church Buildings Council under s.1 of the Care of Places of Worship measure 1999 or is otherwise subject to the faculty jurisdiction.*”

2.2.8 The Ecclesiastical Exemption does not apply to planning control, which is separate from listed building control, and affects land and buildings generally.

2.3 *Planning Control and Special Controls*

2.3.1 Broadly speaking, planning permission is required for development. “Development” is defined by s.55 Town and Country Planning Act 1990 (“TCPA 1990”). S.55 provides as follows (so far as relevant for the purposes of this Opinion):

"(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(1A) For the purposes of this Act “building operations” includes—

- (a) demolition of buildings;*
- (b) rebuilding;*
- (c) structural alterations of or additions to buildings; and*
- (d) other operations normally undertaken by a person carrying on business as a builder.*

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

- (a) the carrying out for the maintenance, improvement or other alteration of any building of works which—*
 - (i) affect only the interior of the building, or*
 - (ii) do not materially affect the external appearance of the building,*

and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;

...

- (f) *in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.*”

2.3.2 “*Development*” is, therefore, divided into two classes:

- (a) operational development; and
- (b) material change of use.

2.3.3 It will be appreciated that many changes to churches which require authorisation by way of Faculty do not require planning permission. If works are purely internal, no question of planning permission arises by virtue of s.55(2)(a)(i). External repairs and minor external works are unlikely to require planning permission by virtue of s.55(2)(a)(ii), though it is good practice to check that this is the case in respect of any contemplated works by speaking to an officer of the Local Planning Authority. In cases of difficulty, a binding statutory determination may be sought from the Authority under s.192 of the Act. If the matter is, for any reason, not straightforward, such that a certificate under s.192 might be appropriate, then expert planning advice should be sought.

2.3.4 Trees and advertisements are subject to specific statutory controls within the secular planning regime. In summary, if a tree is the subject of a Tree Preservation Order or is within a Conservation Area, the consent of the Local Planning Authority is required for the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of the relevant tree unless removal of the tree has been authorised under a planning permission. Notices in churchyards may require advertisement consent depending on the circumstances. The Ecclesiastical Exemption does not apply to these forms of regulation. Once more, it is always prudent to consult the Local Planning Authority when any question arises as to the possible engagement of these statutory provisions.

2.3.5 Returning to planning permission and the definition of “*development*”, it is necessary to consider the two limbs a little further. Operational development results in some physical change to land or buildings. Material change of use, on the other hand, is concerned with some change in the activities carried out on land or in

buildings.⁵ It is not necessary to consider operational development further for the purposes of this Opinion which is concerned with the implications of introducing secular activities into church buildings.

2.3.6 The phrase “*material change of use*” is not comprehensively defined in the legislation. It has therefore fallen to the courts to establish principles to guide the determination of whether or not a change is material, subject to the overall approach which is that application of such a general concept is a matter of fact and degree for the Local Planning Authority in the first instance.

2.3.7 Of particular relevance to the question under consideration are the concepts of materiality, primary and ancillary uses and mixed uses.

2.3.8 When considering whether or not a change requires planning permission, that is, whether or not it is material, the Courts will identify what the primary use of the land in question is. Statutory provision has made this task easier in many instances by means of the Town and Country Planning (Use Classes) Order 1987, which lists and groups together certain classes of land use. Broadly speaking, changes between uses in the same groups are declared by s.55(2)(f) TCPA 1990 (set out above) not to constitute development and do not, therefore, require planning permission. Churches are included with Class D1, which groups together the following uses:

" Any use not including a residential use —

- (a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,*
- (b) as a crèche, day nursery or day centre,*
- (c) for the provision of education,*
- (d) for the display of works of art (otherwise than for sale or hire),*
- (e) as a museum,*
- (f) as a public library or public reading room,*
- (g) as a public hall or exhibition hall,*
- (h) for, or in connection with, public worship or religious instruction."*

⁵ See Lord Denning in Parques v Secretary of State for the Environment [1979] 1AER 211 at 213.

2.3.9 Reverting to the general position, it is important to remember that, unlike planning control, listed building consent is not governed by the concept of “*development*” therefore the exception in ss.60 and 75 LBA 1990 in respect of “*any ecclesiastical building which is for the time being used for ecclesiastical purposes*” does not extend to other Class D1 uses, even though change of use of a church to, say, use as a day centre, would not require planning permission. The critical question in relation to applicability of the Ecclesiastical Exemption is, therefore, the nature of any change of use of the building *from* use for ecclesiastical purposes *to* something else. This question will need to be judged in the same way as other questions about material change of use, that is, as a matter of fact and degree and general principle. Clearly, the provisions of the Order will also be relevant and, for the benefits of the Ecclesiastical Exemption to be retained, the primary use must continue to be as a place of worship.

2.3.10 It is not every change of use which is “*material.*” A change is not material if it is *de minimis* (i.e. so minor in nature that the law takes no notice of it). The Courts have accepted that it is relevant to consider the possible off-site effects of a change, for example traffic or noise impacts. Of particular importance for this Opinion is the concept of primary and ancillary uses. The Courts have recognised that a primary use might encompass a range of activities. For example, in recognition that a hotel use might involve many different aspects which might otherwise be capable of being uses in their own right, it was held that a non-residents’ bar was incidental to a primary hotel use, even though only 20% to 30% of its customers were hotel residents: Emma Hotels Ltd v Secretary of State for the Environment [1979] JPL 390; [1981] JPL 283. It is a question of judgment as to whether a use is truly ancillary; uses which start in that way may grow such that the ancillary link is lost. To choose a religious illustration of this principle, the Court considered in Hussain v Secretary of State for the Environment [1971] 23 P&CR 330 the planning status of use of part of retail premises for the ritual slaughter of chickens in accordance with Moslem law. Although a certain amount of preparation of articles for sale could be regarded as incidental to retail use, the Court held that the slaughtering of animals was not.

3 ECCLESIASTICAL LAW PRINCIPLES

3.1 As Halsbury’s Laws of England succinctly states: “*It is not possible to alienate consecrated land or buildings completely from sacred uses and to appropriate them*”

*permanently to secular uses without the authority of an Act of Parliament or a Measure of the Church Assembly or General Synod.”*⁶

- 3.2 As noted above, the current statutory provision which enables alienation to be authorised is the Mission and Pastoral Measure 2011. In the case of a total appropriation of a listed building to and use for non-ecclesiastical uses, then the Ecclesiastical Exemption would cease to apply, since the building in question would no longer be “*used for ecclesiastical purposes*”, as set out in sections 60 and 75 LBA 1990⁷. Moreover, the provisions of the Order would operate to remove the effect of the Exemption. The special and separate position of demolitions pursuant to a scheme under the Measure are dealt with by s.60(7) LBA 1990 and the Skelmersdale Agreement.
- 3.3 The more usual situation and the one which has been encouraged by the Church Buildings Review Group is, however, the use of part of a church for something other than activities which would normally be regarded as use for “*ecclesiastical purposes*” and/or part time use for purposes other than worship or other church-run activities. As the Church’s understanding of mission evolves, it may be that its approach to “*ecclesiastical purposes*” and “*primarily as a place of worship*” will become rather more flexible than that of the secular Local Planning Authority or Court. There is little authority on the point. The wide approach of the Court in Phillips is noted above; the proposition that any building that happened to be owned by the church might fall within the definitions was, however, rejected. That decision is now nearly fifty years old and, prior to amending legislation, concerned a building which might be thought fairly obviously to have been in use for ecclesiastical purposes. Modern secular courts faced with more innovative uses and activities in church buildings might be less deferential. On balance, though, given the caveat in s.68 Mission and Pastoral Measure 2011 that a lease may only be authorised in respect of part of a church and that the Consistory Court must ensure that the premises remaining unlet, together with the premises let are, taken as a whole, used primarily as a place of worship, we consider that any potential planning difficulties are more apparent than real in the case of leases.

⁶ 5th edn. Vol.34, para 840

⁷ Therefore an offence is committed if listed building consent is not obtained prior to demolition, since at the date of commission of the offence (ie. the demolition itself) the building would not be in use for ecclesiastical purposes: see A-G ex rel. Bedfordshire County Council v. Trustees of Howard United Reformed Church [1976] AC 363. A statutory defence is available for works to a building which are urgently necessary in the interests of safety or health or the preservation of the building: see section 9(2) LBA 1990. An equivalent defence is available for the urgent demolition of an unlisted building in a conservation area: see section 196D(4) TCPA 1990. Section 18 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 provides for the chancellor to authorise the emergency demolition of a church without a faculty in circumstances where a statutory defence would be available under LBA 1990 or TCPA 1990.

- 3.4 Licences were not brought within the scope of the amending legislation⁸ since these could already be authorised by Faculty. It nevertheless seems to us that, when considering the grant of a Licence under Faculty, Chancellors should be guided by the same principle of primacy of use as a place of worship. Whether or not a material change of use has occurred as a matter of secular planning law is not determined by the precise legal nature of any occupation. Hence, loss of primacy as a matter of fact, pursuant to a licence, albeit that such occupation would not have the same property law incidents as a lease, would be determinative as a matter of planning law. Quite apart from the clear legislative intention of the Measure not to endorse the complete change of use of a church in the absence of a scheme under its other provisions, it would be imprudent, in the case of a listed church, to fail to observe the primacy principle because of the risk of losing the Ecclesiastical Exemption.
- 3.5 The primacy principle enshrined in s.68 of the Measure sits well with the secular notion of primary and ancillary uses and it is difficult to conceive of planning problems arising, provided the ecclesiastical law principles set out above are observed.
- 3.6 Another secular planning concept is that of mixed uses. Such situations are to be distinguished from those where there is a primary use to which other uses are incidental or ancillary. Mixed uses exist when it is not possible, amongst two or more activities, to discern one which has primacy to which others are ancillary. In such situations, where there was previously a single use, development will be held to have occurred. Here, it seems to the Commission, there is greater scope for a mismatch between ecclesiastical and secular law. This is because the secular arm might have a narrower view of “*ecclesiastical purposes*” or “*primarily as a place of worship*” than the ecclesiastical court which would, as a matter of practice, have regard to the role of a church as a local centre of worship and mission⁹.
- 3.7 Once again, however, having regard to the primacy of worship principle set out in s.68 of the Measure, we do not foresee difficulties in terms of the Ecclesiastical Exemption. “*Ecclesiastical purposes*” in the LBA 1990 is, plainly, a wider phrase

⁸ The original predecessor to s.68 was contained within the Pastoral (Amendment) Measure 2006, which, as noted by the Church Buildings Group (above) was intended to enable secular use of churches by organisations which needed the security of a lease, provided such uses were not inconsistent with the primary use as a place of worship.

⁹ In *Re St Luke Maidstone* [1995] 1AER 321, the Court of Arches held that s.1 Care of Churches and Ecclesiastical Jurisdiction Measure 1991 does not apply to the ecclesiastical courts but observed that the statutory provision, had it applied, would, in any event, have added nothing to the existing duty and practice of chancellors.

than the Measure's words, "*used primarily as a place of worship*". In Whitstable, St Peter [2016] ECC Can 1, a faculty was granted for the temporary siting of a Post Office "*pod*" inside the church. Planning permission had already been granted for change of use. The Commissary General had regard to the size and positioning of the "*pod*" and the practical implications for worship, concluding that they would be acceptable, providing that provision were made in the licence for accommodating occasional offices. She also had regard to the Petitioners' mission objectives. As the church was unlisted, no question of loss of the Ecclesiastical Exemption arose.

- 3.8 It seems to the Commission that the particular mission of the local church, for example in terms of service to the community or consciousness-raising, would be relevant in the event that the scope of "*ecclesiastical purposes*" were to be questioned in any case involving a listed building. Circumstances will vary, but even in a case of a mixed use of place of worship (Use Class D1) and something else (e.g., part time shop or broadband or mobile phone installations under licence), there would continue to be use for "*ecclesiastical purposes*". This conclusion is reached because a faculty should not have been granted without primacy of the worship function having been secured; furthermore, the mission rationale for the other use should have been clearly explained both to the Local Planning Authority and the Chancellor.

4 RATING

- 4.1 The Local Government Finance Act 1988 Schedule 5 paragraph 11 provides as follows:

"(1) A hereditament is exempt to the extent that it consists of any of the following—

- (a) a place of public religious worship which belongs to the Church of England or the Church in Wales (within the meaning of the Welsh Church Act 1914) or is for the time being certified as required by law as a place of religious worship;*
- (b) a church hall, chapel hall or similar building used in connection with a place falling within paragraph (a) above for the purposes of the organisation responsible for the conduct of public religious worship in that place.*

(2) A hereditament is exempt to the extent that it is occupied by an organisation responsible for the conduct of public religious

worship in a place falling within sub-paragraph (1)(a) above and—

- (a) is used for carrying out administrative or other activities relating to the organisation of the conduct of public religious worship in such a place; or*
- (b) is used as an office or for office purposes, or for purposes ancillary to its use as an office or for office purposes.*
- (3) In this paragraph 'office purposes' include administration, clerical work and handling money; and 'clerical work' includes writing, book-keeping, sorting papers or information, filing, typing, duplicating, calculating (by whatever means), drawing and the editorial preparation of matter for publications.”*

4.2 Places of worship are exempted from non-domestic rates, as is any ancillary use falling within the scope of paragraph 11. The use of the words “*to the extent that*” requires apportionment where ancillary use falls outside the scope of paragraph 11. In some cases, the apportionment will be on a spatial basis and in others, on a time basis, or both, depending on the nature of the use. Particular difficulty can arise in relation to multi-functional buildings. The question of whether or not a building is exempt and the extent of the exemption is determined on a day to day basis, at the end of each day. The place of worship must “belong to” the Church of England in order to benefit from the exemption. The words “belong to” do not refer to legal ownership. The status of churches build before 1855 is preserved by the Places of Worship Registration Act 1855. For buildings after this date, a building “belongs to” the Church of England if it has been consecrated or licensed for public worship. The building must be used for public religious worship.

4.3 A church hall must be used for the purposes of the Church of England. A hall that is let for a range of purposes including wider community purposes that go beyond religious life and extend to social life will not lose its exemption, but a lease of a church hall for the exclusive occupation by a third party will not be exempt. For example, occupation by a youth group under the control of the minister or the PCC will be exempt; occupation by a scout group will not be exempt unless the Church of England sponsors the scout group and its membership is drawn predominantly from the congregation. Similarly, the position in relation to occupation by children’s nurseries will depend on whether or not that nursery is under the control of the minister and PCC. The wording of any lease or licence arrangement will be a significant factor in establishing whether or not the exemption applies.

- 4.4 Commercial occupation, including retail premises, bookshops, gift shops, function rooms that are separated from the place of worship and religious training centres, is unlikely to be exempt.¹⁰
- 4.5 The use of premises by the Church of England for office accommodation, as defined, is exempt. Such occupation is not limited to occupation by the parish office of the parish concerned. The user by the Church of England may be for other purposes connected to the Church or by a group of parishes or by the diocese. Office user by another independent body will not be exempt.
- 4.6 For those properties falling outside the exemption afforded by the Local Government Act 1988 Schedule 5 paragraph 11, other relief may be available. Relief of 80% of the business rate liability is given by section 43(6) Local Government Finance Act 1988:
- 4.6.1 where the ratepayer is a charity and the property is used wholly or mainly for the charitable purposes of that charity or another charity or charities¹¹, or
- 4.6.2 where the ratepayer is registered community amateur sports club¹² and the property is used wholly or mainly for the purposes of that registered club or another registered club or clubs.
- 4.7 Relief will not be available where the charity occupies a small part of the property. The amount of mandatory relief given under s43(6) is 80% of the business rate liability.

¹⁰ For example: *Glenwright and Durham CC v St Nicholas PCC* [1988] RA 1 where a former vestry, which had received planning permission for a change of use to a shop subject to a condition that it should operated for the benefit of the PCC and was occupied by a charitable company, was held not to be exempt; *The Chapter of the Abbey Church of St. Alban v Booth (VO) (2004) VT* [2004] RA 309: a shop and refectory run by a separate company with a separate identity with objectives quite separate from those of the Cathedral was not exempt; compare *Ebury (VO) v Church Council of the Central Methodist Church* [2009] UKCT (LC) 138: two rooms in a church buildings used as a bookshop selling Christian books, greetings cards, devotional items and including a coffee shop run by volunteers and used part of the time for church activities were exempt. In *Romily Lifecentre v Tuplin (VO)* [2011] RVR 255 a café and bookshop run by a separate charitable company limited by guarantee in premises some distance from the church was not exempt. The *Ebury* case was distinguished because in that case the kitchen was not a commercial kitchen and the turnover was very small. By comparison, the *Romily Lifecentre* operation was commercial in appearance, operated from kitchens of a commercial standard, had a very high turnover and gave no financial support to the church.

¹¹ The Local Government Finance Act 1988 contains no definition of “charitable purposes”. See the definition of “charitable purposes” contained in the Charities Act 2011. Local Government Finance Act 1988 s.64(10) provides that property used wholly or mainly for the sale of goods donated to a charity will be treated as being used for charitable purposes where the proceeds of sale of the goods, after deduction of expenses, are applied for the purposes of a charity.

¹² The club, society or other organisation must be a community amateur sports club for the purposes of Chapter 9 of Part 13 Corporation Tax Act 2010.

- 4.8 The Local Government Finance Act 1988 section 47(5) gives the local authority a discretion to give relief from non-domestic rates of up to 20% if:
- 4.8.1 the whole or part of the property is occupied for the purposes of one or more not for profit institutions or organisations and the main objects of each such institution or organisation are charitable or otherwise philanthropic, religious or concerned with education, social welfare, science, literature or the fine arts, or
- 4.8.2 the property is used wholly or mainly for recreation and is occupied for the purposes of a club, society or other organisation not established or conducted for profit.

5 CONCLUSIONS

5.1 The following conclusions can therefore be drawn:

- (1) that a faculty will be required in all cases where it is intended to use part of a church or other consecrated premises for secular purposes;
- (2) that, whilst the decision whether or not to grant such a faculty will be a matter for the discretion of the consistory court, the primacy of the purpose of the premises for worship should be retained;
- (3) such an approach to the wider use of church premises for mission objectives should ensure that the benefits of the Ecclesiastical Exemption from secular listed building control and exemptions under rating law are retained;
- (4) in cases raising doubt or difficulty in relation to the implications for secular planning and/or rating law, the advice of the relevant local authorities should be sought, supplemented by independent expert advice where necessary.

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