# THE CHURCH AND HOUSING

DAVID FAULL and JOHN REES
*Solicitors*

## 1. INTRODUCTION

The Church's attitude to housing issues is, of necessity, complicated. At the most basic level, human beings need shelter in order to survive: they need protection from the weather, and from predators, and all human beings need to sleep securely for several hours every day. The Christian gospel enjoins Christ's followers to assist in meeting such human need: "in as much as ye did it unto one of the least of these my brethren, ye did it unto me".[1]

At the same time, Christ called his followers to a certain casualness about material concerns: "take no thought for the morrow. . ."[2] So we have the beginnings of a difficult judgment, balancing proper response to recognised need against the risk of self-indulgence. The Church is called to give effective teaching about this tension, and to practise what it preaches in the way it handles its historic commitments both as an employer,[3] and as a major land-owner.[4] It presents its lawyers with a highly complex set of moral claims and responses to distil into enforceable rights and duties.

In this article, we shall leave aside issues which might be characterised as mere social fashion, such as the relative position of clergy in society,[5] and concentrate on issues of legal substance. In relation to the latter, we shall consider first the Church's approach to housing its own workers, and secondly its use of its resources to house the homeless. As we shall see, each is a topic worthy of separate, and considerably fuller, treatment, and each touches on a range of further issues which there is not space to deal with in this short article.

## 2. HOUSING CHURCH WORKERS

We make no apology for using the generic term "church workers" to include the whole range of Christian people whose commitment to full-time ministry requires that they have no opportunity to support themselves financially in a secular calling.[6] The term is used here to comprehend beneficed and unbeneficed clergy, the holders of higher ecclesiastical office, and layworkers (such as Church Army officers) whose calling is acknowledged and supported by the Christian community. Each has a different legal claim to accommodation, and in some cases this claim originates far back in the Christian history of this country.

### 2.1 HOUSING OF BENEFICED CLERGY

From the earliest times it was recognised by the Church of England that where there was a consecrated church, there there should be a manse, or as we would now call it a parsonage house.[7] The church and parsonage have been seen as essential to each other, and it has been a general rule that no bishop will consecrate a church without ensuring that there is adequate clergy accommodation provided with it. This accommodation may take a variety of forms.

1. Matthew 25:40.
2. Matt. 5:34; and vv. 19-34 *passim*.
3. see below for a brief discussion of the sense in which this concept is used in this article.
4. In addition to its parish churches and clergy housing, the Church still owns many thousands of acres of glebe land, and has invested in other forms of real estate.
5. For further consideration of issues such as this, see, for example, A. J. Russell, *The Clerical Profession* (SPCK, 1979).
6. Though the balance is changing inexorably in favour of non-stipendiary ministry, in accordance with policies which have been advocated at least since the Paul Report in 1964.
7. see Burn's *Ecclesiastical Law*, (4th ed.) vol. 2, p. 297; the "manse" originally included the glebe, which is now vested in the Diocesan Boards of Finance under the Endowments and Glebe Measure 1976.

When a priest is inducted into the temporalities of a traditional benefice, the parsonage house becomes his freehold possession.[8] However, it is a legal curiosity in that although the fee simple is vested in the incumbent as a corporation sole and he can make title to it, his role is more akin to that of a trustee under the Settled Land Act: he may not sell the property without obtaining the relevant consents and, unless the money is spent on a new parsonage house, the proceeds of sale do not benefit him directly but instead go to the Diocesan Pastoral Account.

With the proliferation of parishes over the centuries, especially under the impact of the Industrial Revolution and the growth of vast urban populations, provision was made for new sites and houses to be acquired.[9] New parsonage houses on green field sites may now be acquired by the Church Commissioners under the New Parishes Measure 1943, and the property will vest automatically in the incumbent.[10] Where a new parsonage house is being provided for an existing parish then the conveyance will be to the incumbent or, during a vacancy, to the bishop under the Parsonages Measure 1938.[11] Under the 1938 Measure, the house and site must be "suitable for residence and occupation of the incumbent of the benefice", with a statutory limitation on size (including "orchard, garden and appurtenances") of six acres.[12]

There is a tendency at the present time for local authorities to try to insist that where a parsonage house is acquired on a local authority building estate, then the local authority will only grant a leasehold interest. By virtue of s.20 of the Parsonages Measure 1938 and the Church Property (Miscellaneous Provisions) Measure 1960 the Church Commissioners may acquire leasehold land, although this is a power that is rarely exercised because of the long-term nature of the Church's commitment to a presence in the locality. Whilst it is possible to proceed along these lines, this is to be deprecated and generally speaking is resisted. However, it should be borne in mind that local authorities do have power to include a compulsory purchase option in a freehold conveyance, which will be enforceable notwithstanding the general provisions of the Perpetuities and Accumulations Act 1964.[13]

Once a proper benefice house has been established, the incumbent must reside in it.[14] Where a benefice has no suitable house of residence the bishop may allow the incumbent to reside elsewhere.[15] If the benefice has no house of

8. the learned editors of Moore's *Canon Law* (3rd ed., Mowbray, 1992) comment that "Legislation facilitating removing of incumbents and reorganisation of parishes has eroded a beneficed clergyman's rights to such an extent that it is no longer entirely accurate to describe his office as a freehold." This erosion of the freehold is likely to gather pace under the present difficulties faced by Dioceses in consequence of the Church Commissioners' financial problems; see, on reform of the freehold generally, Rupert Bursell, *The Parson's Freehold,* 2 Ecc. LJ 259.
9. see, on the Victorian reforms generally, K. A. Thompson, *Bureaucracy and Church Reform* (OUP, 1970), Part I.
10. New Parishes Measure 1943, ss. 13 and 16 (s. 16 as amended by the Church Property (Miscellaneous Provisions) Measure 1960 changes the old rule that the property vested in the incumbent only on consecration of the church or churchyard.
11. Parsonages Measure 1938, s.2.
12. *ibid.*, s.2(1)(a).
13. Perpetuities and Accumulations Act 1964, s.9(2); In some cases where a leasehold is taken, it may be possible to enfranchise under the (rarely used) Religious Premises (Enfranchisement) Act 1920.
14. ibid., s.32. The Pluralities Act was passed to curb the abuse of pluralism, which had been a scandal of long standing. For a not unsympathetic explanation of the problem, see D. L. Edwards, *Christian England,* (Collins, 1983) vol. 2, pp. 490 *et seqq.*
15. Pluralities Act 1838, s.46: (now repealed by Sch. 4, Church of England (Miscellineous Provisions) Measure 1992) had provided that such licence be limited to a maximum of two years. The licence now appears to be indefinite in duration.

residence at all, then the bishop's permission is not required to enable the incumbent to reside in a particular house provided it is within the area of the benefice.[16] Otherwise any house in which the bishop allows the incumbent to reside must be within three miles of the church, or within two miles if the church is in a city or market or borough town.[17]

If he does not have the permission of the bishop to reside elsewhere, and absents himself for more than three months at one time or different times in any one year, he is liable to forfeit one third of the annual value of the benefice, provided that the total absence does not exceed six months. If it exceeds six months he will forfeit one half of the annual value of the benefice, two-thirds if the absence exceeds eight months, and three-quarters if it lasts for the whole year. The forfeiture is recoverable in the consistory court, but as all glebe has been transferred to the diocesan board of finance the full value of the benefice is likely to be very low. The reality, of course, is that in such circumstances, proceedings are likely to have been brought against the incumbent for neglect of duty or breakdown of pastoral relations;[18] however, it is not unthinkable that proceedings might be brought under the Pluralities Act in preference to the more modern legislation if the case warranted such action.

The bishop may grant a licence not to reside in the house of residence in certain specified cases. The most important of these for practical purposes are:

1. if the incumbent is prevented from so residing by an incapacity of mind or body[19]

2. for a period not exceeding six months, renewable only with the Archbishop's permission, on account of the dangerous illness of his wife or child residing with him

3. if he is to live in his own property within the parish, but in this case he must continue to maintain the house of residence in good repair.[20]

The bishop may also allow the incumbent to reside outside the limits of the benefice in other cases but he must then obtain the Archbishop's consent.[21]

Once installed in his house of resisdence, an incumbent is secure from removal from it except on deprivation of his benefice after due proceedings under the Ecclesiastical Jurisdiction Measure 1963 or the Incumbents (Vacation of Benefices) Measure 1977. This appears to be the case even in the event of the personal bankruptcy of the incumbent.[22]

16. *Wynn v Smithies* (1815) 6 Taunt 198 at 199.
17. ss. 33, 43, 44, Pluralities Act 1838.
18. Ecclesiastical Jurisdiction Measure 1963, s. 14 (1)(b)(ii); Vacation of Benefices Measure 1977, (as amended). The compensation now awarded under the 1977 Measure as amended includes an amount to take into account the loss of housing (Schedule 2, 1(2)(b)).
19. *Scammell v Willett* (1799) (3 Esp 29).
20. Other possible specific cases are also set out in the Act, but none is likely to apply in present conditions.
21. The permission must be under the Archbishop's own hand: s.44 Pluralities Act.
22. As to which see generally Halsbury's *Laws* (4 ed., vol 14, paras 894 *et seqq*, especially paras. 913 and 919, and the cases there cited).

For rating purposes, parsonage houses have always been seen as property that was *sui generis*. Parsonage houses used to receive special treatment from the local authorities in respect of general rates. This concession disappeared with the community charge, in consequence of which the Church Commissioners increased the level of stipend to meet the expense laid upon clergy and their families; it is understood that no concessions are now being made available by local authorities in respect of the council tax, which is now being paid by the diocese rather than by the individuals concerned.

Finally, it is worth noting in passing that *sales* (as well as purchase) of parsonage houses are free of stamp duty.[23] This is a curious anomaly, which is occasionally overlooked by advisers acting for the purchasers of parsonage houses. It should always be drawn to the attention of potential purchasers as it can increase the sale price of parsonage property by several thousand pounds in suitable cases, with consequent benefit to the diocesan budget.

## 2.2 HOUSING OF UN-BENEFICED CLERGY AND OTHERS

By contrast the accommodation of un-beneficed clergy and other church workers frequently lacks any formality whatever. That is not to say that it has no legal status, but that the arrangements lack many of the statutory rights and obligations so clearly worked out over the years for beneficed clergymen.[24]

The most common arrangement is for assistant curates to occupy clergy houses under a bare licence, frequently not evidenced in writing.[25] It is most unusual for clergymen to pay rent either to the Diocese or to the Parochial Church Council. Maintenance obligations will be such as may have been agreed with the Diocesan Board of Finance or the Parochial Church Council (and there will frequently be no maintenance obligations at all), and termination will either be as agreed in writing or linked to continuance in office. Whatever termination provisions may have been agreed, these are, of course, subject to the overriding provisions of the Protection from Eviction Act 1977; but ultimately an un-beneficed clergyman can be removed from office and dispossessed of his home in a relatively straightforward manner.[26]

The same will generally apply to lay church workers who hold their property by virtue of their appointment. However, in their case, the nature of their employment status (as "employees" in the meaning of the Employment Protection Leglislation, as opposed to "office holders"[27]) means that they are likely

23. the exemption on sales derives from s.15 Clergy Residences Repair Act 1776, now incorporated in s.18 Parsonages Measure 1938.
24. There are statutory frameworks for the provision of accommodation of various higher ecclesiastical office-holders; however, these tend to be enabling powers, for example s.3 Episcopal Endowments and Stipends Measure 1943, which empowers the Commissioners to let episcopal houses of residence to the bishops concerned, and s.26 Cathedrals Measure 1963, which authorises administrative bodies of cathedrals to allocate property held by capitular bodies to deans, canons and other cathedral clergy.
25. a model form of licence is set out in the *Legal Opinions Concerning the Church of England,* (CHP 1994) (hereinafter cited as *Legal Opinions*), at p.12; this form was reproduced in the previous edition of the *Encyclopoedia of Forms and Precedents* (Butterworth, 1967, vol. 8, p. 210), but is not in the current edition.
26. a recent case in the Lichfield Diocese was widely reported in the press; changes in County Court practice taking effect from November 1993 mean that tenancies having the status of service occupancies may now be dealt with on a shortened procedure, on application to the District Judge, provided that the arrangement is in writing and all appropriate notices have been served. See, for example, [1994] SJ 36.
27. see *Legal Opinions,* pp. 120 *et seqq*.

to enjoy rather greater protection and have more opportunity for continuing to occupy their home whilst legal remedies are being pursued than would be open to an ordained person.[28]

As may be seen from this brief summary, there is considerable variation in the legal structure affecting the occupation of 'church housing' by its range of workers. If, as seems likely, the entire pattern of ministry in the Church of England is to change over the next few years,[29] this diversity of protection, rights and responsibilities will be one of the areas that will need careful re-structuring. Any review will need to address the ethical questions of the appropriateness of the accommodation to be provided for the various types of church worker involved, the basis (contributory or otherwise) of its provision, and the security of tenure which should be available to the occupier.[30]

## 3. SOCIAL HOUSING

Arguably, the church need not concern itself with housing the homeless. Certainly this was the view taken by the courts in *Bishop of Oxford v The Church Commissioners*.[31] The same principle would seem to apply to a Diocesan Board of Finance in its dealings with both its glebe land and corporate property, though a Parochial Church Council may have slightly greater latitude to use its assets for wider charitable purposes as part of its general duty to further "the whole mission of the church".[32]

However, the strict legal position leaves many Christian people, and many of the church's administrators and advisers, feeling distinctly uneasy. As a major landowner, can the Church simply pas by on the other side of crying human

28. In their case, if there is no separate occupation licence, the issue may have been dealt with (and certainly should be mentioned) in the contract of employment with the Board or the PCC, either of which may be the employer, depending upon the circumstances. There are suggested forms of written particulars of employment in *Legal Opinions* (pp 126 et seqq), but they do not include an explicit reference to residence, presumably on the basis that this will be dealt with separately by licence or tenancy agreement between the parties. It would, however, in the writers' view, be prudent to make cross reference between the documents so that it is quite clear that the right to occupy terminates simultaneously with termination of the appointment.

29. One proposal on which the writers have recently been asked to advise is the occupancy of vacant parsonage houses by non-stipendiary ministers licensed to serve on a long-term basis in parishes; legally, this is a straight-forward arrangement, taking effect as a sequestrators' letting, but it creates in effect a two-tier NSM pattern, in which some non-stipendiary clergy are totally unremunerated, and others receive free or subsidised accommodation from the Church as if they were stipendiaries.

30. A further issue, of considerable importance in the light of the Commissioners' difficulties, is the provision of housing for retired church workers; it might be considered whether there might be scope for clergy to build up a 'share-holding' in the various properties they occupy during their working lives, which could then be 'cashed in' on retirement to enable them to provide retirement housing. There must be some doubt how much longer the Commissioners can continue to provide retirement housing on the schemes they presently operate.

31. [1993] 2 All ER 300; commenting upon the proposition that "land owned by the [Church] Commissioners in a village where local young people are finding housing difficult to afford . . . might be made available for low-cost housing at a price below the open-market value", the Vice-Chancellor commented that "The Commissioners are not a housing charity. There is force in the Commissioners' contention that local housing needs are or should be reflected in local planning policies. When planning permission is available for a particular type of development, it is not a proper function for the Commissioners to sell their land at an undervalue in order to further a social objective on which the planning authority has taken a different view . . . If the Commissioners' land is to be disposed of at an undervalue, they need an express power to do so" *(at 309)*.

32. see Parochial Church Councils (Powers) Measure 1956 and *Legal Opinions*, pp. 1 *et seqq* and 199 *et seqq*. "The whole mission of the Church comprises not only religious objects in the narrow sense, but also the Christian duty of relieving the poor, the sick and others in need" (*ibid.*, p. 200) - this comment is in the context of donations to other charitable purposes (usually the relief of poverty), but the principle may be capable of extension to other use of PCC property. However, charitable donations themselves are challenged from time to time, and PCCs will be aware of the degree of unease that might result if they were to commit property to long-term use in this way.

need in reliance only upon the restraints provided by the law courts? The dominical commination was as clear as His commendation: "in as much as ye did *not* do it unto one of these ye did it not unto me".[33]

There is an undoubted human need. There is an undoubted legal problem. Is there a way in which the Church can do justice to both? Several devices have been explored. The Church has from time immemorial been involved in housing those who were less well off than most in the community. Alms houses were often built and endowed alongside churches or church land by the same benefactor. Many church people feel strongly that in spite of the commercial considerations it is bound to acknowledge, the Church of England should be actively seeking ways to continue to concern itself with housing people in need.[34]

## 3.1 USING SURPLUS CLERGY HOUSING FOR SOCIAL PURPOSES

The first and perhaps most obvious device would be to accommodate the homeless in existing church housing during periods when it is not needed to house the clergy or other church workers. If circumstances make the accommodation permanently surplus to the Church's own requirements, might it then be made available for wider social purposes? Even leaving aside the strict charity law difficulties,[35] the need for replacement clergy housing elsewhere, and the need to release capital, are practical reasons why parsonage houses, extensive gardens and other church workers' housing tend to be sold once it becomes clear that they will never again be needed for future acommodation of church workers.

This does not, however, mean that church workers' housing cannot be used at all for wider social purposes. With a degree of thought and care, temporary vacancies provide opportunities for wider social use of surplus housing, albeit only whilst it is not needed for its primary purpose, or whilst long-term decisions are being reached about its future disposal. There are a variety of obstacles in the way of doing so, depending upon the nature of the house in question, but these are by no means insuperable.

Perhaps ironically, it is because of the Victorian legislation affecting them that official parsonage houses are the easiest type of property to use in this way. The Rent and Housing Acts do not apply to parsonage houses: it was at one time thought that the Rent Acts could be called upon to protect the tenants of such property, but in the case of the *Bishop of Gloucester v Cunnington*[36] it was determined that s.59 Pluralities Act applied, notwithstanding the statutory security of tenure afforded to most tenants of residential property under the Rent Act regime. That section provides that every agreement for letting a parsonage house in which an incumbent may be ordered by the bishop to reside is to contain a condition terminating the tenancy upon a copy of the bishop's order being served upon the occupier.[37] In this case the tenancy did not contain such a clause but the court held that this omission only had the effect of making the tenancy void on service of the bishop's order.

33. Matt. 25:45.
34. see, for example, Michael Bourke, *The Archdeacon's Dilemma, (Theology,* May 1989), p. 196.
35. see note 31 *supra.*
36. [1943] 1 All ER 101.
37. If the relevant notice is not contained in the lease, the lease itself is null and void. For a precedent of the notice, see *Encyclopoedia of Forms and Precedents* (Butterworths, 1987) vol. 13, p. 101, Form 53.

This decision was followed in *Brandon v Grundy*.[38] The *ratio* of these decisions is that the Pluralities Act provides a quite separate regime of control for parsonage houses, which is not overridden by the Rent Acts. There are no reported cases under the Housing Act 1988, which replaces the Rent Acts regime for all new tenancies from 1989 onwards; but it is believed that the same principle enunicated by the courts under the 1940s cases would continue to apply.[39]

The practical consequence is that, whether or not the appropriate provision is contained in the lease, no security of tenure will arise in favour of the tenant, and lettings can therefore be set up for even very short periods without any question of the property becoming irrecoverable for long-term church workers' accommodation. It has however been suggested that the Court of Appeal might not uphold this line of cases if the bishop did not call the incumbent into possession. This is a point to consider if there is likely to be any doubt about the future of the house, or if there are two or more parsonage houses (for example when a new house has been built, or bought, to replace an existing parsonage house).[40]

Thus, an incumbent who holds licence of the bishop to reside elsewhere may let his official house of residence.[41] However, not only is the nature of the tenancy circumscribed in the way we have indicated, but also there is no power for an incumbent to grant a lease of the parsonage house so as to bind his successors. Upon an incumbent ceasing to hold office, a fresh lease will need to be drawn up in the name of the sequestrators of the benefice, or, in the event of a pastoral scheme vesting the property in the diocesan board of finance, the board will need to let the property.[42]

Similarly, during a vacancy in the benefice, the sequestrators may let,[43] but this has become a rather more complicated procedure than it used to be, due to the provision concerning sequestrators contained in the Church of England (Miscellaneous Provisions) Measure 1992. Section 1 of that Measure provides that, in place of the writs of sequestration which in the past were required for the appointment of sequestrators during a vacancy, the appointment shall now be made automatically, and shall comprise the wardens of each parish in the benefice concerned, the rural dean, and any other individual who may be appointed by the bishop. In several recent cases to the writers' knowledge, this has resulted in serious difficulty or delay, where multi-parish benefices have fallen vacant, and the wardens of the various parishes comprised in the benefice have been reluctant to agree to a letting.[44]

38. [1943] 2 All ER 108.
39. The writers are aware of several recent cases which have not been reported and in which the issue has not been raised by the defendant tenants.
40. In a recent unreported case, it is understood that a County Court judge did grant security of tenure of a cottage in the grounds of an existing parsonage house. This case is considered by the writers to have been wrongly decided. In a recent case where the incumbent will be remaining in the 'old' house and the new house erected in its garden is let commercially, the writers have drafted the lease in alternative form, making reference to both the Pluralities Act and the Housing Act.
41. s.59 PA 1838.
42. in which case, particular care will need to be taken, since a lease by the board will not fall under the protection of the Pluralities Act, and will attract the protection of the Housing Act 1988.
43. see *Encyclopaedia (op. cit.)* p. 1010, Form 54.
44. The unease generally results from fear that letting signifies that the vacancy will not be filled, or will be delayed unduly. In one recent case in the Diocese of Oxford, there were a dozen wardens to be consulted, three of whom refused to agree to the letting, and the matter was resolved only by personal intervention of the archdeacon and reference being made to the bishop's power to direct sequestrators in the care of the parsonage house under the Benefices (Sequestrations) Measure 1933, s.2(2)(ii).

Nevertheless a letting by sequestrators enjoys the same exemption from the Rent and Housing Act as a letting by the incumbent, giving great flexibility to respond to temporary housing need in suitable cases.

Other church workers' houses do not enjoy the same statutory flexibility. In *Worcester Diocesan Trust Registered v Taylor*,[45] a house was bequeathed to the diocesan trust and had become its property subject to the trusts of the bequest. The trust let it to the defendant. The Bishop ordered the vicar of St Matthias (who was also curate of the daughter Church of the Ascension) to reside in the house for the better performance of his duties as curate of that church. There was an official parsonage house belonging to the benefice of St Matthias, but this house had been let. The Bishop's order was served on the defendant who refused to give up occupation. On appeal it was held that this was not a house of residence under the Pluralities Act 1838 and therefore the tenant was entitled to the security of tenure provided by the Rent Acts. Houses held by a board of finance as corporate property, as glebe or upon trust for a PCC, will equally fall outside the provisions of the 1838 Act and within the security of tenure granted to tenants under the Rents and Housing Acts.

There are provisions in the Housing Act of 1988[46] (which replace similar provisions in the old Rent Acts) remedying the difficulty identified in this case. A court will order possession to be given to a church body in circumstances where:

(1) a dwelling house is normally held for the purposes of occupation by a Minister of Religion as a residence from which to perform his duties, and
(2) notice was served not later than the beginning of the tenancy that possession might be obtained on this ground, and
(3) the court is satisfied that the house is required for that purpose.

However, it would not be safe to let property under these provisions if there is any doubt as to whether it will be needed for future occupation by a clergyman. It would be altogether safer to let, in such circumstances, under an assured shorthold tenancy under s.21 HA 1988, but such a letting is much less flexible, requiring a minimum term of six months' duration.

Overlaid on any proposed use of some clergy houses in these circumstances is the requirement of the Charities Act 1993[47] that any letting be recommended by a qualified professional surveyor or valuer. This of course brings us back to the nub of the problem: if the primary intention of the Board or PCC is to let its vacant property at a concessionary rate in order to ease the plight of persons who would otherwise be homeless, it will rarely be possible to obtain the necessary surveyors' recommendation. In the nature of things, the potential tenants are unlikely to be able to pay a full market rent. Nevertheless, a surveyor may feel able to recommend a discounted rent on the basis that occupancy of the property will safeguard it from deterioration or vandalism, and this would certainly be a powerful argument to justify the trustees' conduct in appropriate cases.

45. (1947) 177 LT 581 CA.
46. Housing Act 1988, s.7(3) and Schedule 2, Ground 5.
47. Charities Act 1993 s.36; in the case of short lettings, this needs only to be a person reasonably believed to have the ability and practical experience to advise; but NB the important exceptions to this requirement in favour of ecclesiastical corporations (including incumbents as corporations sole) and glebe land, under s.96(2) of the 1993 Act.

## 3.2 PLANNING AGREEMENTS UNDER s.106 TCPA 1990

In relation particularly to glebe land, planning legislation may on occasion be used to restrict the value of the property in question so that it then becomes affordable for those who need it. The provisions of s.106 Town and Country Planning Act 1990 (which replaced s.52 of the 1968 Act), have been used by Diocesan Boards of Finance to justify sales of land to Housing Associations or other bodies concerned with social welfare at less than the price that such land might have achieved had there been no restriction upon its commercial development.

This pre-supposes, however, that it is appropriate to impose such a restriction, and normally this would only be the case where the land in question is land falling outside the normal development pattern for a community, and where the planning authority are prepared to grant permission only for this specific social purpose. Indeed, if this arrangement were attempted in order artificially to restrict the value of land which might be available without such a restriction, it is hard to see how a surveyor could give a report and recommendation to the church body concerned in accordance with the Charities Act 1993.

A further point that should be borne in mind is that planners may now revoke a s.106 agreement,[48] and a church body which had sold land at a value which reflected that restriction, and which was subsequently lifted on the application by a successor in title would feel justifiably aggrieved. The provisions of the s.106 agreement should therefore be mirrored either in the form of restrictive covenants within the sale of the freehold, where that is likely to be enforceable in years to come,[49] or, better, to be incorporated in a restriction on use contained within a long building lease.

## 3.3 DIOCESAN HOUSING ASSOCIATIONS

A more adventurous and wide-ranging approach has been adopted elsewhere, notably in the Diocese of Southwark. This involves the creation of a Housing Association linked with the diocese.

From the 1960s, the Church of England began to take advantage of new legislation to set up housing associations in deprived areas. Many of these have now become major housing associations and are clear evidence of the Church's concern to put the Gospel into more practical terms for those in need.

In recent years, the Diocese of Southwark determined to set up its own housing association with a view to being able to sell property to its own association at rather less than market value. The Charity Commissioners were approached about this and were not unsympathetic. Their view was that if the housing association could be controlled by the Diocese, then it might be possible to allow property to be sold by the Diocese to its own association at a discounted price.

The Housing Corporation, however, did not permit housing associations to be controlled by any particular body of people and it was therefore necessary to find a formula which satisfied both the Charity Commissioners and the Housing Corporation. Briefly, this formula was that the membership of the Association should be 55% Anglican, with a Management Committee to consist of no more than four clergy, no more than four people who were on electoral rolls

48. see the TCPA 1990, 106A (introduced by the Planning and Compensation Act 1991).
49. note in this connection the clear but restrictive directions given to landowners by the Court of Appeal in *Surrey CC v Bredero Homes Limited*, [1993] 3 All ER 705.

in the Diocese and at least six people who had a special concern with housing, social issues and related matters. In addition, the Diocesan Board of Finance was to be given nominations rights in respect of 25% of the tenancies.

This compromise proved acceptable to both the Housing Corporation and the Charity Commissioners, and Southwark Diocese is in the process of completing its first scheme. The procedure is likely to become increasingly valuable as land prices rise again, since at the present time land prices are sufficiently depreciated to enable most housing associations to buy at a normal market price. It is an attractive scheme in which other Dioceses are showing interest. It demonstrates that where there is a will, the law can be used to find nicely balanced solutions to problems relating to the social needs of the community, and it has enabled the Church to do justice both to its normal concerns and to the strict requirements of a proper investment policy.

## 4. CONCLUSION

To summarise, it is entirely proper for the Church to be concerned with housing issues: indeed, it must be concerned with them, not least because of its responsibilities towards its own workers. However, it is by no means obvious that overall it has a coherent strategy for balancing its various concerns.

The present arrangements for housing the Church's own ministers work tolerably well, but bear the stamp of antiquity, and are out of line with current expectations. At the same time, the legal provisions which might enable the Church to use its extensive resources in order to meet serious human need depend heavily upon ingenuity and creative interpretation of charity and planning law.

It is clear that the Church's involvement with housing is far-reaching: it can demonstrate a healthy commitment to providing proper housing for its own workers, and for those less privileged (even) than the clergy of the Church of England. But from a legal point of view, neither set of issues can be said to be provided for satisfactorily at the present time, and this article is offered as a stimulus for general review.



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