

## Property transactions with local authorities

Charities and local authorities are established (albeit in different ways) to operate for the benefit of the public.

Negotiations between charities and local authorities are sometimes positive and efficient, but can however be fraught and beset by delay. Property transactions in particular can involve difficult negotiations that do not reflect the fact that to a great degree the negotiating parties are trying to achieve the same outcome.

In this article, we consider the ways in which local authorities can act to benefit charities and the large overlap in objectives between the two.

The [Ethical Property Foundation Charity Property Matters Survey 2016](#) (carried out by that organisation and on behalf of the Charity Commission) tells us that when presented with the statement “we feel that our local authority understands our problems, particularly those about our premises” only 25% of charities gave the response that they agreed or strongly agreed and 40% said they disagreed or strongly disagreed.

This is a matter of concern given the sheer number of property transactions which take place between local authorities and charities, ranging between everything from short leases to major asset transfers.

### **What can councils do in property transactions?**

Under the Local Government Act 1972, councils are not generally permitted to dispose of property (by lease, or freehold sale, or otherwise) for “a consideration less than the best that can reasonably be obtained”. The only exception to this is with respect to a lease of less than seven years, or with the consent of the Secretary of State.

It may appear on the face of things then that they should take a “hard-nosed” attitude in all negotiations, including those with charities.

However, the 2003 General Disposal Consent (issued by the Department for Communities and Local Government) in England (and a broadly similar consent applying to disposal of land in Wales) does allow a local authority to dispose of land otherwise than at the best price reasonably obtainable where they consider that this will help to secure the promotion or improvement of the economic, social or environmental well-being of its area, provided that the element of the undervalue does not exceed £2 million.

### **How does this fit with what charities do?**

The wording of the consent chimes in with the wording of the purposes for which an organisation must be established if it is to be a charity, as codified under section 3 Charities Act 2011. A number of charitable purposes fit within the wording, for example:

- *promotion or improvement of economic...well-being*: the prevention or relief of poverty or rural or urban regeneration
- *promotion or improvement of social...well-being*: the advancement of health or the saving of lives, the advancement of citizenship or community development, and the advancement of the arts, culture, heritage or science
- and of course, *promotion or improvement of environmental well-being* has an almost exactly similar corresponding charitable purpose under section 3(1)(i), being “the advancement of environmental protection or improvement”

This provides a convenient peg from which to hang a property transaction between a charity and a local authority and means that local authorities can (and indeed it is often very much to the benefit of their area and its inhabitants that they should) dispose of land to charities on less rigorously commercial terms than they might if the transaction did not deliver those objectives.

### **Joint endeavour**

Both local and community charities and local authorities of course each have their own duties of proper governance, appropriate application of their resources and strategic management of risk.

However in seeking to benefit their local area they do to a large extent sing from the same hymn-sheet, and it is very important in negotiations between the two that they recognise where their interests actually coincide in acting in the interests of the area in question and that they recognise the extent to which their property transaction is a joint venture for the benefit of the individuals and organisations that both are established to support.

[James McCallum](#)

Partner

+44 (0)20 8394 6481

[James.McCallum@russell-cooke.co.uk](mailto:James.McCallum@russell-cooke.co.uk)

[Clare Garbett](#)

Associate

+44 (0)208 394 6487

[Clare.Garbett@russell-cooke.co.uk](mailto:Clare.Garbett@russell-cooke.co.uk)

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