



Community Land Trusts - the legal perspective Land ownership - the heart of the CLT

Community Land Trusts (CLTs) are about preserving land value for community benefit. There may be other ways of doing this, but the CLT approach is that the land is owned by an organisation which is going to hold and use it for the benefit of the community. It is therefore different from other forms of community benefit organisation which may benefit from land values but which are not directly involved in controlling and creating them.

This seems to be the most difficult aspect of CLT for people to grapple with. Many organisations will speak warmly about the idea of a CLT but when asked to actually transfer their land to them, they tend to think of reasons why it would be so much better if they went on owning their land. Situations where the land ownership is elsewhere and surpluses are going in to some form of a trust may be useful and valid arrangements, but they are not CLTs.

What kind of legal entity should the CLT be?

Three or four years ago we tended to think that a CLT would be a charity – but there is no prescriptive view.

It might be charitable or non-charitable.

Many people have thought about CLTs as being charities. It is possible to see occasions where a CLT might prefer to be a non-charitable entity or to establish a separate non-charitable arm. This would give it more freedom of action. It would ensure that it can dispose of land at less than market value in circumstances where a charity might have difficulty in doing so. It could behave more like a social enterprise.

Charities could hold shops as investments but a CLT which held a large amount of commercial property within it might well decide the charitable status was too restrictive and that it wanted to remain as a non-charity, and if necessary take some tax burden in return for greater freedom.

If a charity, it could be:

- a company limited by guarantee;
- a trust

in both cases registered with the Charity Commission or

- an Industrial and Provident Society registered with the Financial Services Authority.

Note that as and when the current Charities Bill becomes law, the charitable Industrial and Provident Society will in fact be regulated by the Charity Commission (unless a registered social landlord).

Non-charitable CLTs could be:

- a non-charitable Industrial and Provident Society registered with the Financial Services Authority
- a company limited by guarantee
- a community interest company.

The advantage of the community interest company is that it is subject to special rules regarding an 'asset lock', under which its assets must be permanently retained within the community interest company and used for the purposes for which it was formed. At present, in theory, companies limited by guarantee and non-charitable Industrial and Provident Societies could be converted into private companies in the way that we have seen building societies and mutual life insurance companies becoming Plcs. Community interest companies were developed to deal with this issue as there was real concern for those who were setting up and running social enterprises that they risked their enterprises at some stage in the future no longer being social.

Tax

In making a choice between charitable and non-charitable, CLTs will need to consider their tax position. A non-charitable CLT might well end up with tax liabilities which, if land values rise significantly in their landholding, could be large. A

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possible thought is whether a non-charitable community land trust could be structured so that it would qualify for tax relief under the new regime for Real Estate Investment Trusts which is set out in the Finance Bill currently going through parliament.

What would the objects of the CLT be?

We envisage wide objects as needs may well change over time. The CLT is intended to be a very long lasting entity like some of the old charities which have existed for hundreds of years. So this decade affordable housing might be the issue, but next decade it might be provision of health facilities. Provision of educational facilities has once again become a real issue.

Urban or rural regeneration is likely to be relevant for some but not all.

If a charity it needs to be clear what it would do if the area it is benefiting becomes wealthier – will its objects be wide enough to cope – is this a disadvantage of charitable status?

What does a CLT do?

Different CLTs will want to engage in different activities but a likely core activity will be granting leases (or other interests) both long and short over land to providers of commercial development, private housing, social housing and community facilities.

A CLT is also likely to be involved in the direct provision of affordable housing.

Use of leases is key to the CLT. Leases will give the CLT at the very least a ground rent and of course in some circumstances, particularly with commercial leases, a substantial rent. It gives the CLT long term secure income – a huge advantage for any charity or community organisation which is not project related – and it can be used to develop the organisation and its assets further.

Could a CLT be an RSL?

If the essence of a CLT is that it is a local organisation that owns its land and manages it for the benefit of the community then a CLT could be a small, locally based RSL. Registration with the Housing Corporation gives access to grant funding and comfort to tenants. However, the original idea of the CLT would be that the CLT would focus on land ownership and management. It may be that a better model is for the CLT to be the

landowner and for it to lease land on long leases to RSLs. It enables large national RSLs to participate in CLTs while leaving the land ownership genuinely local.

CLTs and affordable housing

There are a number of models under which CLTs can provide or facilitate affordable housing. These have ranged from leases and housing equity sharing mechanisms to rental models coupled with equity stakes for tenants. In every case the essence is the same, which is that as an area improves, values increase, and a significant portion of that increase in value (or equity growth) should stay with the CLT so that it can be recycled for the benefit of the community. It should not become private profit. This does mean that people who live on land owned by CLTs will not benefit as much as full owner occupiers might from rises in house prices.

Leasehold enfranchisement - a real difficulty?

Where a CLT (or an organisation with a long lease from a CLT) develops houses or flats and these are let on leases to purchasers, then the occupying leaseholders may have the right to enfranchise and acquire their freeholds so destroying the CLT's ownership. Where flats are concerned the flat owners may be able to acquire the freehold collectively.

There is no simple legal solution to this. However, if long enough leases are used the incentive to enfranchise becomes limited. Enfranchisement tends to occur either where a lease is short and so a property is losing value, or where the freeholder is meant to be providing services and these services provided are poor or expensive.

Through use of long leases and proper management the incentive to enfranchise may be reduced. There is an exemption from enfranchisement for charitable housing trusts but most CLTs would probably have too wide objects and activities to use this exemption.

Other disposal models (which do not involve the grant of long leases to purchasers) avoid the enfranchisement issue altogether.

How does a CLT access increased value?

There are a number of mechanisms that can be used. For example, shops can be granted business leases on low rents to enable start-ups to develop their businesses, with rent reviews which provide for increases at suitable moments, profit sharing arrangements and turnover rents. Where long leases are granted to developers who

are then able to dispose of these in the future, there can certainly be clawback and profit sharing.

CLT as neighbourhood manager

Some CLTs might see themselves as primary landholders focussing on their land management function but other CLTs could take a wider role in neighbourhood management, providing a consistent focus for locally based good management to encourage the right mix of facilities for their own locality.

High Bickington in Devon – a case study

The proposal here was that Devon County Council who owned a farm would give it to High Bickington CPT which was specially set up for the purpose. It was set up as a charitable Industrial and Provident Society. It was going to develop affordable housing, school facilities and other social amenities and there was going to be private housing developed by a private developer as well as affordable housing with an equity share mechanism for low cost home ownership and shorthold tenancies for rental properties. At one stage equity stakes for departing tenants were under discussion as well. Devon County Council had agreed in principle to transfer the land to High Bickington CPT for £1. Significant social aims were going to be achieved. A particular point of

interest is that as part of the planning process a Section 106 agreement had been agreed with the district council for the affordable housing with High Bickington CPT, which is not a registered social landlord, and which recognised within the Section 106 agreement the different approaches to affordable housing that the trust was developing.

The planning application was called in by the government office and earlier this spring the DCLG issued a planning refusal.

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