



**Plunkett
Foundation**

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INTRODUCTORY GUIDE

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CHOOSING HOW TO RUN YOUR COMMUNITY PUB

**How to decide on a manager or tenant and
negotiate the right agreement for your pub**



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This guide has been produced as part of Plunkett Foundation's support for rural communities looking to save or set up a service through community ownership.

This guide complements Plunkett's core advisory service; for further help and support on setting up a community business, or if you would like to find out more about the benefits of becoming a Plunkett member, please email info@plunkett.co.uk or call us on **01993 810730** or visit our website at www.plunkett.co.uk.

Plunkett would like to thank Power to Change for their support in helping rural communities access the resources and advice to help set up community businesses.

Information provided here is for general information purposes only and does not replace professional legal, tax or accounting advice. Plunkett Foundation endeavours to keep written and verbal support up to date and correct and we make no representations or warranties of any kind. Any reliance you place on such information is therefore strictly at your own risk.

1 CHOOSING THE RIGHT OPERATING STRUCTURE

Many of the pubs that communities buy or lease are failed businesses. There is a reason why these businesses failed. Such pubs survived for years on the expectation that the next person going in would ‘get it right’. It isn’t easy to run a pub.

Although wage expectations (managers) and high rents (tenants) have played their part in the demise of many pubs the main reason is insufficient business planning. The correct business model, using the right operating structure, will mean your pub will be a sustainable business.

Factors that will inform your choice

Before you can decide upon which operating structure is the best way to run your business the community must answer a number of important questions. How will your pub trade? Will it be food led or drinks led or 50:50? Is there associated trade such as a shop? What other services will you offer?

Questions about your concept

- What are your expectations from the pub?
- What trade levels do you expect? Busy all week? Weekends only?
- What income are you expecting from the pub?
- What will your pricing policy be?
- How are you going to understand your business in the future?
- What help will you give to the manager or tenant?
- If you do not want to have too high a level of control what checks, and balances will you put in place to ensure the business does not run into difficulty?





- Will the community be offering voluntary help? Is it a better idea to have those members of the community who want to help employed as staff?
- Do you have the skills or experience or do they need outsourcing?

Business-specific questions

- What is your business model? How do you know it will work?
- Can your business model be operated by a manager, a tenant, or either?
- Who will your suppliers be?
- By what criteria will you select your suppliers?
- What professional support will you need (legal, accountant, stock-taker, training etc). Do you know what information you will want from them?

Questions about the property

- Who is responsible for the statutory obligations related to the building?
- What insurance is needed? Pubs are commercial public building. They not only have to be insured against damage to property but also to the people using them
- Are there any third-party rights and restrictions?
- Who is responsible for the maintenance and repairs?
- Who will own the fixtures and fittings? If the community owns them how will this be recorded? If there are breakages or damages who will pay for replacements?
- Will there be a cleaning programme to the interior? Even if there is a tenant responsible for this, how will the community ensure it is adhered to?
- Who will be responsible for the upkeep of the exterior?



Legal responsibilities

- What do you need to know about employment law?
- If you have neighbours what will your policy be in relation to third-party access and maintenance of the property?
- How will you know that you have the correct management contract or lease agreement?
- If the community secure grants and/or funding what will be the obligations (if any) on the property? What processes will be put in place to ensure the community are aware of the condition of the property and services so that repairs and renewals can be undertaken in a timely manner?



Additional questions if you are considering a manager

- Does your business plan provide enough profit to employ a manager?
- How will you support your manager in the day-to-day operation of the business?
- What will be the responsibilities of your manager?
- Will staff be recruited by the manager or the community? What process will be put in place?
- When the manager is off-duty or on holiday who will take on the manager's duties?
- If the manager leaves how will you run the pub?
- What knowledge is needed when choosing a managed operation?

Implications of choosing a manager

Pay

When considering employing a manager to run your pub, do not think it is a good option just because it provides a good financial option for shareholders or that this method will enable the community to keep a control on the business so it is run the way they want it to be run.

As of April 2018 the minimum wage for employees over 25 is £7.83. The working time directive means that a manager must opt out or can only work up to an average of 48 hours a week. The minimum salary for a manager is therefore £19,543.68. The benefits of live-in accommodation are normally seen as an addition. What is provided as live-in needs to be set out from day one.

It is a good rule of thumb to pay your manager a basic salary of 10% of net turnover. Any bonus should keep this formula in place (£200,000 = £20,000, £250,000 = £25,000 etc.). This salary must also be tied into a tight control of costs as bottom line profitability is the important factor when running a successful business.

With the manager's salary making up 10% of turnover and working as part of the overall staff team, the total wage costs should reach no more than 20% to 25% of turnover depending on the style of operation. This means there is only another 10% to 15% for additional staff. Don't forget to factor in sickness and holiday pay for the manager and staff.





Working hours and responsibilities

The manager will be busy managing the day-to-day running of the business. However, planning and analysing the business is important to ensure growth.

To get the best out of your manager they must work hard and know that the community will support them. The support the community provides must concentrate on three things – it should be organised support, support with business processes, and support with statutory responsibilities.

The community must decide how they will support their manager and make sure everyone knows the processes. It is impossible to provide support if everyone in the community is involved. Liaison with the manager should be a single person or small sub-committee (maximum three or four people). Ensure the manager and staff know how liaison with the community is organised and any breach of this protocol is addressed immediately.

What about the responsibilities of the manager? These can range from serving behind the bar through to complete control – the community need to decide the extent of these responsibilities

and have it clearly defined. This will help the manager know what is expected of them and the community knows where the manager's responsibilities extend.

The manager should serve behind the bar when working during opening times. Giving the manager control is a good option – this should include ordering, cost controls (utilities etc.), staff rota, planning events and analysing the success of events. The manager should also have a good knowledge of the premises licence and be the designated premises supervisor (DPS).

The manager will have to manage the staff and, if the correct processes are put in place, will also have to liaise with the community for all staff issues. Training should be provided where necessary to help the manager with this. It is a good idea to allow the manager to recruit staff and there needs to be controls in place to avoid overstaffing, and establish the community criteria for staff employed in the business. An alternative to this is to have a recruitment panel made up of the manager and community members. This also provides support for the manager.

A structure needs to be put in place for disciplinary procedures – and this would include disciplinary procedures in relation to and from the manager.

Cover

The manager will not be working all the hours that the business is open, so you need to ascertain what happens when he/she is off-duty or on holiday. Firstly, establish when the manager should work, i.e. when it is important they are on the premises, such as busy trading periods and when deliveries are to be taken in. The best method may therefore be for the manager and community to agree a process for the time when the manager does not need to be at the pub.

When the manager is not working, deliveries, stock in situ, gas, electricity, equipment, fixtures and fittings all need to be controlled as they represent a large financial risk to the business. The security of the site is essential for complete control. Staff or community members that have access to the site should do so under a known procedure. During such periods a 'relief manager' must be found. The number of experienced relief managers available is very low.

It is essential the community can trust the relief manager employed. One option is for existing staff to take on management cover – staff know the processes and the community know them. One benefit of a manager going on holiday is to allow the community to double check their understanding of existing procedures. Always be prepared to update procedures if they are not fit for purpose.

When the manager leaves

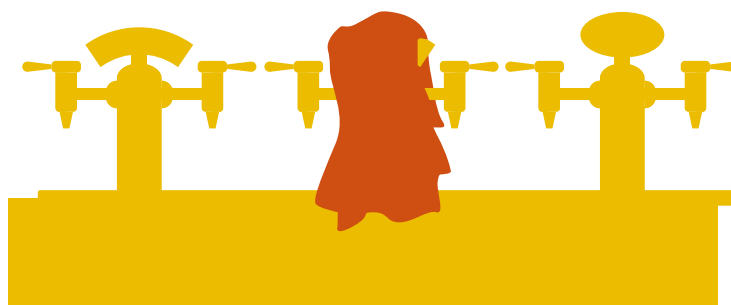
The two possibilities are a managed exit or a sudden and unplanned-for exit. Whichever happens the premises licence and the role of the designated premises supervisor (DPS) must be protected.

The preferred method for the community by which the manager leaves the business is by giving notice and serving a notice period. Having all the

processes in place will ensure the community knows how to run the pub. The manager should be asked to provide a report on all matters relating to the pub, delivery days, suppliers, pre-booked activities, deposits taken etc. Recruitment should start immediately.

The manager should be asked his/her opinion on the profile of the successor but not be involved in the recruitment process. Ideally, there should be a change day with stocktake and safe reconciliation between manager and successor. If this cannot be tied in then the same process between manager to community and community to successor should be put in place.

It might be the case that the manager leaves suddenly. Preparation for this is possible by once again putting a process in place. Ensuring the community knows how to run the pub will help keep the pub up and running. The community must immediately establish that the licence is secure and appoint a DPS. Appoint an existing member of staff to contact suppliers to establish delivery days and for those customers who have booked activities at the pub if any deposits have been taken. The community should appoint a member of the committee to support the staff. It goes without saying that recruitment should start immediately and a stocktake and safe reconciliation should take place before the pub next opens for business. Whatever the reason for the manager leaving the business, immediate vacant possession of the living accommodation should be established.





Implications of choosing a tenant

The benefit of a tenant for a community pub is that there does not need to be a minimum or maximum turnover to ensure that it is a workable option. The business will be operated by the tenant and it is for the tenant to present to the community a business plan that offers a projection of a sustainable business and that will support the business profile desired by the community.

The benefit for a tenant is that they are their own boss and the more they work the more they will make. They are not restricted by a working time directive.

If the community group only have a restricted amount of time to spend on the operation of the pub a tenant will help with this. Supporting a tenant will take up less time than supporting a manager. The community must still ensure they have a good idea as to how the pub works.

As with everything to do with a community-owned public house there are no shortcuts. The community group must identify what time they have available, which people can be involved, and then tailor the time available to the requirements. Ensure the tenant is kept informed as to the limit on time the community can offer.

Business and social implications

Some reasons why a community group may decide to choose a tenant as the preferred operational structure include:

- Your business model for the pub has limited finances to employ a manager
- The requirements of the business operation mean that a level of entrepreneurial input is needed by a tenant
- The community doesn't have the time or knowledge to manage a manager
- The community has limited funds only to buy the property. Offering the pub on a lease will mean the tenant will do the improvements when they are establishing the business
- You have the ideal candidate. They previously ran the pub/a similar pub

The expectations of the community for the type and style of operator they can attract must be carefully thought through. Skill levels with beer, wine, food and possibly entertainment are not established overnight. Even with a high level of entrepreneurial input from the tenant the community will still need to understand the business. A highly professional operator may require a greater extent of professional assistance from the community. When recruiting will a highly entrepreneurial tenant be suitable for a community-owned public house? How will you negotiate with the tenant to ensure that community needs and events take pride of place at the pub?

Financial implications

The community group must consider everything associated with this financial scenario and ask these questions:

- What does the business model show to be the financial outcome? Discovering that a business can only generate limited finances after completing the business model is not always a bad thing – it is realistic.
- If the income generated by the pub is too low is the community doing the right thing taking the pub on?
- Can the rent generated service dividends?
- Is the rent actually sustainable for the tenant? If it is too high the tenant's business will fail.
- A low rent may mean a low level of repair liability – what will the community do at the end of the term?

Buying the pub may use up all the capital that a community has. Having a tenant allows the community to limit their liabilities by offering the tenant a business in return for their investment. If the pub needs to be fully re-fitted the community must be realistic as to the limitations of investment needed. A tenant will only invest in something that will provide a return. If the pub is in a reasonable condition the incoming tenant may be happy to invest money themselves – they are the one who will see the profit. It is however important to remember that if the landlord/tenant relationship is to work it must be a business agreement. No one party is doing the other party a favour. Rent should always be maintained at a market rent level. This is how the value of your property will be calculated.

Rent to turnover ratios were as high as 18% before 2010. As the cost of operating a pub has increased and the scarcity of suitable applicants has become ever more evident this has fallen to between 9% and 10% of turnover. A rule of thumb is that the income for a tenant should be the same as the rent that you charge (for example £20,000 rent = £20,000 income). It must be remembered that a low rent can therefore be detrimental to achieving the quality of tenant for your pub. If it is felt that a turnover of only £100,000 will support a £10,000 rent then the tenant will only look to achieving a £10,000 income.



Lease or tenancy agreement?

A lease is fully protected by the Landlord and Tenants Act Part II 1954 (L&T Act) and will allow assignment, have a higher level of repair responsibility, and at the end of the term the tenant can expect a renewal of the lease.

A tenancy is normally of a shorter duration (three years) than a lease. Although both a lease and a tenancy can opt out of L&T Act protection it is more normal for this to be done in a tenancy.

A full repairing and insuring lease (FRI) will mean that the tenant has full responsibility of the upkeep of the property. The community insure the property and re-charge it back to the tenant. A protected lease will mean that the tenant can stay at the pub, and receive a new lease, at the end of the term. There are conditions on this but repossession by the community is not assured.

A three- or five-year tenancy that opts out of the L&T Act means that the pub reverts to the community at the end of the term. Repair liabilities for the tenant in this scenario are greatly reduced so there will probably be repair issues on repossession. The community can grant another lease to the tenant at the end of the tenancy.

2 RECRUITING YOUR MANAGER OR TENANT

Whether a community group is looking for a manager or a tenant the recruitment must be carried out in a way that provides the best possible choice of candidates for the pub.

Even with someone who appears to be the ideal candidate the following questions should be answered:

- Why are they leaving where they already are?
- If they ran the pub previously why did they leave, was it because the business failed, if so why?
- Would they work well with a community group? Ask someone/a group from the community who don't know them to look at their suitability.
- If it doesn't work out will you be able to replace them easily? Both tenants and managers have rights

If you cannot readily find the 'ideal' candidate then a process of recruitment will have to take place. The number of applicants for positions in the licensed trade (both managers and tenants) has reduced significantly since 2008. Recruiting the correct manager or tenant for your business is important for your business. There are a number of facilities available, both online and in print, but it is about attracting the correct applicant, not getting high numbers of potential candidates.

The two main options are the traditional agent, or a quality online facility. The traditional agent should take you through the whole process for either a manager or tenant. The online facility will produce greater numbers but with a limited level of filtering to ensure applicants meet the criteria of the community. Another option is for the community to advertise themselves for a tenant or manager. The concern with this last method is that the community will be left to their own devices during the recruitment process. It is important for the community to prepare the criteria for a manager or a tenant before recruitment begins.

A traditional agent can advise as to what your requirements should be. This will help the community to write up their applicant profile and identify the criteria for recruitment. The agent should provide a shortlist of candidates that meet your criteria. The agent can then advise what needs to be established at the interview. The agent should sit in on the interview as an observer but not ask questions. Following the interview the agent can advise on their observations. The final selection is made by the community.

The best online facilities will request a profile and criteria from you. It is often better not to go onto a facility that is just a noticeboard. Such facilities provide multiple applicants but there is no filtering and this can take up a great deal of time. Facilities such as **Findmypub.com** will appoint a member of staff to look after individual recruitment. The database for this type of facility is usually larger than a traditional agent but this does not guarantee quality.

The community group should keep an open mind and remain focused on the criteria they have developed. Compromising on this criteria to find any recruit can deliver an unacceptable operator to the pub. Once in situ, replacing such an operator may be time consuming and costly.



3 CHOOSING SPECIALIST SUPPORT

Accountant

A good accountant will help you develop the very best way to report the financial information of the pub.

Good reporting to the accountant will ensure the accountant can then report quickly to the community and make observations that help with the business.

If the community chooses to appoint a manager the accountant will be able to identify and address issues before they escalate to larger problems. If the community chooses a tenant, it will no doubt want the tenant to use a good accountant to ensure they keep their financial affairs in order.

The community may wish to employ the accountant separately from the tenant so that they can analyse the tenancy operation from another angle. This will help when the accountant helps to identify turnover when addressing a rent review.

Solicitor

Taking on the responsibility of a pub and recruiting a manager or tenant means that the community will have many legal liabilities. Law is an incredibly diverse matter for a single solicitor to be able to provide effective support. Finding a practice with a strong and experienced team of solicitors who can provide knowledgeable support will be vital in ensuring that unnecessary costs are not incurred.

Stocktaker

For a tenant or a managed operation, the stocktaker is the most important professional advisor. A stock-taker can advise on the following:

- Deficits or surpluses in stock – both results are bad news, something is wrong with the system
- Correct invoicing/delivery notes
- The sales-mix
- Stock holding
- Purchase prices
- Sales price
- Rogue deliveries.

Other professionals to use

Specialists in insurance, health and safety, and human resources. Legislation is constantly changing and to ensure the community adopt the best practices it is advisable to have specialists on hand or to be a member of a professional body (such as the BII) who can provide industry leading contacts for all the needs of the pub.

Retain an industry professional. They will assist in advising on all facets of operation. The worth of retaining such a professional should be calculated as to how much money they have saved you. Over time a thorough knowledge of the above will be established by the community if the correct checks and balances are put in place.



1 <https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers>

4 DELIVERING THE COMMUNITY'S MISSION

Once you have decided on the structure how do you ensure the delivery of the 'More than a Pub' vision and other community activities?

The community group has spent time putting together the right business model for the pub, the business plan has identified how to run the business, the perfect manager or tenant has been recruited. What do you do now to ensure all the hard work is not wasted? Establishing checks and balances for the business will help to ensure business sustainability and growth. If the business fails it is not because of the manager or tenant.

Make sure you have the correct legal footing

For a manager

- Make sure the contracts for the manager and staff are correct. Do they serve their purpose and reflect what the community want?
- Are all your statutory obligations covered? Do you have a direct line to your legal representative or professional body (BII) to call if you are unsure about anything?
- How do you update knowledge of your responsibilities?
- Put a process in place and review it at regular intervals. Make sure it is always up to date.

For a tenant

- The lease or tenancy must cover the community for every eventuality. You can give concessions, but you cannot insist a tenant must do anything that is not in the lease or tenancy agreement.
- Does the tenant understand their obligations to the agreement? They may be so excited



to get into the pub that they don't realise their responsibilities. Test the knowledge of the tenant. It is too late to go back once the agreement is signed. It is important for a tenant to show their understanding of the agreement before they sign so as to avoid misunderstandings when the landlord/tenant relationship hits difficulty further along the line.

- How will you communicate changes in legal responsibilities to the tenant during the term of the agreement? Put a process in place.
- Is the community covered for all of their responsibilities as a landlord? Check this with a solicitor.

Incorporate the desired business profile into any agreement

Use the business profile that the community group put together as the basis for the heads of terms for the lease or tenancy agreement. The solicitor should then incorporate the requirements of the heads of terms into the agreement. The tenant may want to negotiate such conditions of operation out of the agreement. The community must be prepared to negotiate hard to retain the heads of terms as the community want the pub operated. This may mean that the group lose the tenant as they are not happy with something in the lease. If the clause is important to the group it must remain. Losing it from the lease will mean that it is not adhered to and the pub will be operated differently from how the community group imagine.

In all areas of negotiation, whether it is the lease/tenancy agreement, manager's contract, supply contract from the brewer, insurance for the property, or any other contract to be decided in the set-up or future operation of the business, it is important that the community group decide what is important to them and negotiate to retain these points so that the pub operation reflects the profile of the business that the community put together.



5 OTHER LEGAL AND STATUTORY ISSUES

There are a few other issues that the community group may wish to consider when buying a pub, leasing a pub, and beginning to operate the pub.

Overage

When buying the pub the vendor may wish to impose an overage clause on the sale. This usually means that a payment has to be made to the vendor in the event of all or part of the plot being developed and the new owner receiving payment for such a development. In some cases payment is not even necessary and the simple point of development of the property can bring the overage clause into effect with the possibility of the community group having to pay the original vendor.

The community group should take advice prior to signing an overage clause. By their very nature they are individual to each transaction. Some points that may be worth considering however are:

- Will the community be developing some or all of the property? If not will the overage clause have any effect?
- How does the overage clause change the purchase price?
- Will the sale not go through if the overage clause is not included?
- Can your solicitor advise on the contract of sale to limit the liability of an overage clause?
- Is the overage clause limited to the community group? If it is sold is the clause revoked?
- What other liability is there to the community group that has not been considered?



Head lease agreement

If a pub is leased rather than bought outright it is very important for the community group to take into account the head lease. The group must ensure that the lease is fit for purpose. The group may wish to operate the pub with a tenant, so it is important to check that the head lease allows sub-letting.

Instructing a solicitor who has experience of commercial public house leases is important as assessing the responsibilities of a lease and should be part of the due diligence that the community undertake before legally entering into the head lease agreement.

Statutory responsibilities of the community group

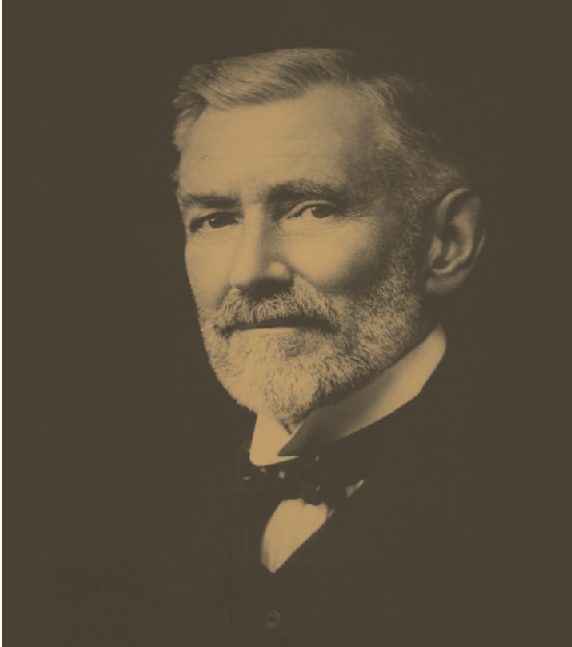
There are legal responsibilities in owning a commercial property. The moment a community group becomes the owner of a property all the statutory responsibilities associated with owning such a property become that of the community group. Use the solicitor who undertakes the conveyancing of the property to explain in full the responsibilities of the group. Over time new legislation will come into effect that will mean further responsibilities. In recent times this has meant asbestos reports, risk analysis and energy performance figures to name a few. The community group should use their professional advisors to regularly update the knowledge of statutory responsibilities.

Responsibilities of the community group by default

If the community group choose a manager to operate the pub there will be a responsibility delegated to the manager to look after the property. The community will still have to put a process in place to ensure these responsibilities are checked.

With a tenant, if the agreement is full repairing and insuring this will mean that the property is the responsibility of the tenant. The community should be careful however of providing implied consent to the tenant by allowing them to overlook statutory and other responsibilities. An example of this is if the community group, by regularly visiting the pub, does not draw to the attention of the tenant a necessary repair or outdated certificate. In this scenario this can mean that the community group is equally responsible for not drawing the tenant's attention to it.





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About the Plunkett Foundation

Established in 1919, Plunkett Foundation helps communities to take control of their challenges and overcome them through co-operation and collaboration. We support people, predominantly in rural areas, to set up and run community businesses; enterprises that are owned and run democratically by large numbers of people in their community. They help people to tackle a range of issues such as isolation, loneliness and poverty, and come in many forms including shops, cafés, pubs and land-based initiatives, and anything in between.

If you share our values, ask us about becoming a member

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