

Taking on a Tenant

a guide for Community Pub groups



I Introduction

When a community group takes ownership of a public house it immediately has responsibilities. You are not only responsible to the wider community and Member shareholders but also to the upkeep of the property and meeting statutory responsibilities. As the public house is a commercial property there are responsibilities to the general public and the public liability that goes along with this.

These responsibilities remain throughout the lifetime you own the property, and do not necessarily end if your community group appoint a tenant. This will depend upon the agreement that is granted on the property (we will deal with the terms tenancy or lease agreement later). It is therefore important for each community group to fully understand their responsibilities, how you want to use the property, and the sort of relationship you want with your tenant. You will have responsibilities to your tenant when an agreement is granted, and the tenant will have responsibilities to their landlord, the community group. To ensure a good relationship continues throughout the term of the agreement both sides must fully understand these responsibilities at the time they sign.

A tenancy or lease agreement is a legally binding document. The reason these documents need to be properly drawn up is to avoid future disagreements and ensure the smooth running of the business. This guide aims to outline a process that can be used when drawing up these agreements to reduce the possibility of uncertainty being an unintended consequence of the final document.

Each community group will be different, as will every pub, so there is no standard agreement that will be used by all groups. This guide provides a template for building a profile of the type of business you want your public house to operate, and then from that a tenant can be recruited who matches the profile. Having recruited your desired tenant, the heads of terms for the lease can be drawn up and presented to a solicitor to draw up the final agreement. Having prepared the heads of terms in conjunction with the prospective tenant, both parties (landlord and tenant) should fully understand the contents of the agreement. This reduces unnecessary and costly negotiations between solicitors.



It is important to reiterate that the agreement between the landlord and the tenant is legally binding. No part of the agreement can be changed unless both parties agree to it. If there are any changes these may be costly for either party if they are not documented properly. Your community group should protect your interests and assets at all times, and not leave the responsibilities outlined at the beginning of this section to the tenant if the agreement retains these with the landlord. For example, if a lease is full insuring and repairing it means just that. The tenant must fully insure and completely repair the building. In this instance the community group have no responsibility for repairing the property at all. The tenant may not wish to take on such an onerous condition, especially if the property is not in 100% good condition. In that situation, the agreement may grant a limited repair liability which will need to fully outline what the tenant is responsible for, and what the landlord retains responsibility for. The property will still need to be inspected periodically to ensure that the landlord's areas of responsibility are being looked after by the tenant. Failure to do this, and identify any problems, may result in heavy repair costs for your community group at the end of the agreement term.

Getting the agreement right at the beginning will protect both parties throughout the term if each side adheres to the conditions of the agreement.



I Lease and tenancy agreements. What is the difference?

The terms lease and tenancy are often interchanged. To keep this document in plain English and easy to understand we will use the term 'agreement' throughout. Here is the basic difference between a lease and tenancy for reference.

When considering a commercial property, a tenancy agreement is considered a periodic lease whereby the landlord or tenant can issue a termination period of one month. Under a lease, the terms are set and the landlord or tenant cannot easily introduce new terms into the lease until it expires.

So, a three-year agreement where either side can give one month's notice may be referred to as a tenancy. The same agreement that has no built in notice period and runs for the full term would be referred to as a lease.

Why is this important?

When your community group offers their prospective tenant an agreement, to start with you need to think through the following:

- How long do we want the term to be, and just as important 'Why'?
- Do we provide a notice period so that we can give the tenant notice?
- If so, what length of notice? Could we get a new tenant in that period?
- Why would we want to get rid of our tenant?
- Do we provide a notice period so that the tenant can give us notice?
- Why would we do this?
- If either side or both sides can give notice how do we ensure that the tenant has fulfilled all their parts of the agreement before they go? If they haven't how will we pay for cleaning and repairs to the property before we get a new tenant?
- If the agreement has no notice period, what do we do at the end of the term of the agreement?

- Will a new agreement be automatically granted at the end of the term?
- If no new agreement will be automatically granted will the tenant agree to opt out of Landlord and Tenants Act protection?

If your community group answers the above questions, you will begin to get an idea of the sort of agreement you want to offer a tenant. However, this is only the beginning. No question should be left unasked when drawing up a profile of the business your community group want for your pub. As each situation is different it is impossible to draw up a proscriptive list of questions to ask. We provide the following as the most common questions a community group needs to ask themselves. The answers to most of these questions should be in your community group's business plan. Plunkett Foundation has published guides for how to write a business plan for a community business.

Your community group need to ascertain the following:

- What sort of business do you want to be run from the public house? E.g. Food led? Wet led? Music? Community activities?
- What responsibilities do you want to pass onto the tenant and which ones do you want to retain yourselves?
- What are the consequences of passing on responsibilities to the tenant or retaining them?
- What sort of tenant do you want (community orientated, business orientated, mixture of both)?
- How does your community group ensure that you retain enough influence over of the operational side of the business whilst allowing the tenant to run the business? How will you work in partnership or collaborate with the tenant?

Example - The Abingdon Arms, Beckley, Oxfordshire: The Abingdon Arms is owned by Beckley & Area Community Benefit Society and one of the main requests that came out of local consultation was for the pub to provide a flexible space for meetings, in order to explore topics of interest as identified by the community. As a result, the pub hosts monthly events for local residents, and these cover subjects ranging from literary talks, scientific topics and local history to poetry readings and much more. In addition, the pub also hosts monthly jazz evenings.

The tenants enjoy hosting these events free of charge as part of their commitment to the community. These talks help to increase footfall and attendees may become regular customers. Local people benefit from the opportunity to meet up and make new friends, as well as taking part in a stimulating and interesting activity, and of course having a friendly drink.

The tenancy agreement includes various 'operating guidelines' covering pub style, housekeeping and the requirement to support 'More Than A Pub' events as agreed between the Society and the tenants.

The Society have relatively formal liaison meetings with the tenants, roughly every 4- 6 weeks (in non-Covid times), and we also meet to coordinate property maintenance.

Gabriel Brodetsky from the Management committee puts the successful relationship down to **“tenant willingness to work with the community, hopefully in an enlightened way that recognises doing so will be good for their business. This is an area we probed carefully when selecting our tenant. Other than that, maintaining a dialogue is of course important, and agreeing how the relationship will work. We don't get involved in individual customer issues such as poor service, but we will discuss such things if we get feedback directed to us from within the community. Also, we're keen to make sure the pub supports local businesses, especially breweries, so we spend time encouraging the tenants to build good relationships. Luckily it's very much pushing at an open door.”**

I Community Pub Profile

Things to consider when developing a profile for the pub and the tenant who will operate it. This list is not exhaustive and each community group and pub may have additional elements they may wish to address

- When do you want the agreement to start?
- Who will the landlord be? Full name or title
- Who will the tenant be?
- Will you allow the tenant to be a limited company, if so who will be guarantor and what will be the liability for the guarantor?
- How much annual rent will you charge?
- Will the rent be stepped in any way?
- Will the agreement have break clauses? Why?
- What will be the process, in full, for the break clauses?
- How long will the agreement last?
- What restrictions will be put on the tenant for any works carried out at the pub? How will consent be given? Will works carried out need to be to a minimum standard?
- In the event of late or non-payment what interest levels will be charged?
- How will the property be insured? This is normally sourced and paid by the landlord and the tenant is charged the full amount which is paid in addition to the rent
- Will all of the property owned by the community group form the agreement? If not which part? The exact area covered will need to be defined in the agreement
- Is the property to be let registered at the land registry?
- If the community has an interest in any of the neighbouring land or part of the land that is not included in the agreement this needs to be clearly defined on the agreement so as to avoid any misunderstandings.
- The fixtures and fittings that remain belonging to the landlord are called the landlords fixtures and fittings. Ensure that they are correctly accounted for in an inventory before the agreement is set out and decide what will happen to these fixtures and fittings if they are damaged or broken.
- What can the pub be used for? Check on the planning rights and ensure what your community expect the pub to be used for is set out in the agreement.
- What will be the rent commencement day?
- On what dates will the rent be paid? Weekly, monthly, quarterly?
- How will service media be treated (gas, electric etc). Who is responsible for this? Are there any areas of shared responsibility?
- Will there be any other form of outlet? Shop, brewery etc? What restrictions will be put on that if any?
- Are there any third party rights on or over the land?
- Are there any days that are special to the pub where the tenant must provide a service (or be closed) – Each week, month, year, holidays?
- Are there any services for the community you expect to be provided?
- Is the property full repairing or part repairing? If only part repairing exactly what part? If only part repairing who is responsible for the repair to the part retained by the community? How will repairs to these areas be financed by the community group?
- Any other items that need to be added to the agreement?
- When building a profile of the tenant what attributes must they have? Why? Make a comprehensive list
- Have you developed a community group pub profile, application form, and pro-forma business plan for the tenant to complete?

Top Tip: Make a list of additional considerations your community group feel are important.

I Recruiting a tenant

There are two main ways of recruiting a tenant for your pub. You can approach a licensed property specialist agency or advertise directly.

- A licensed property specialist agency will have a list of prospective tenants who approach them looking for pubs to rent. They will also advertise your pub on their website and possibly on one of the commercial property portals such as Rightmove commercial, Rightbiz, and/or 'Find my Pub'. They will present to you prospective tenants for which you pay a fee. You will still have to sort out the application form, business plan, credit check and interview. There will be a fee for this work from an agent
- If your group advertise directly you are in charge of how the position for a tenant is put over and can screen candidates. The community group are also in control of the cost of this method, choosing to advertise where and when they feel would be the most useful.

The relationship between the community group and the tenant will hopefully be a long and happy one. To help ensure this happens the following process can be used to fully inform the tenant what a community owned pub means, what is expected of them when running the pub, and to give the tenant the opportunity to put forward information to the community group that highlights their suitability to be the tenant.



I Recruitment process

(Example documents can be found in the resource pack)

- Send each applicant an application form to assess their suitability to be the tenant (application form in *Appendix 1* of this document)
- Each applicant must complete the application form in full. No exceptions. The reason for this is that each candidate should be treated equally. Just as important, how a candidate fills out the form gives the community group an indication as to their level of attention to detail, how organised they are, and how they may work with the group if they are asked for information in the future.
- The tenant must fill in the application in full leaving no questions unanswered or ambiguous
- Following on from the application form, for those applicants you want to interview send them the following documents,
 - What is a community owned pub?
 - Pub & Tenant profile
 - Business Plan proforma
- What is a community owned pub? Will give applicants a better understanding of what a community owned pub is.
- The prospective tenants should be encouraged to complete their business plan with reference to the community group's Pub & Tenant profile.
- Ensure that the business plan and the community pub profile marry up
- Failure to complete the application form and business plan should discount their application
- The tenant's business plan should address all areas of the group's pub profile. The profile and business plan should then be used as a basis of all future business meetings with the successful applicant to measure the success of the business in meeting the needs of the pub and the community.

- Applicants should be interviewed and if they already operate a business at least one member of the community group should visit the business before making the final decision.
- Any offer to take on an agreement at the pub should be subject to contract. This should be made clear to the successful applicant.

We recommend that you also read the More Than A Pub detailed guidance on recruiting tenants available from the Plunkett Foundation website (<https://plunkett.co.uk/>).

Example - Exelby Green Dragon, Bedale, North Yorkshire. Exelby is a small rural village situated in the lower dales of North Yorkshire about three miles from the historic market town of Bedale.

When recruiting a tenant, the Management Committee ensured they used a 3 way process involving themselves, the tenant and the wider community to bring together the three interest groups from the very beginning. They kept the process as open as possible and spread it over several days to allow the prospective tenants to attend a community meeting. They also required prospective tenants to present their ideas about which ideas from the community they thought would work in the pub. As John Walker from the Management Committee says **“It was an experiment for everyone involved. We made sure we defined our expectations from the pub and then used the recruitment process to explore ideas and develop a shared vision with the tenants.”**



Example - Red Lion, Northmoor, Oxfordshire.

Graham Shelton, Director of the Community Company that owns the Red Lion in Northmoor, Oxfordshire advises groups to invest in recruitment: **“We went through a comprehensive selection process and, as a result, 7 years on we have the same tenants. We made it clear we want them to run the business without interference, but we are also there to help them in times of difficulty.”**

Graham also stresses the importance of building a trusting relationship and he meets once a week with the Red Lion tenant **“You may not agree on everything but at heart the tenant and the community have the same shared interest”**.

“There can be a gulf of understanding between the community who wanted to save their local and the tenant who needs to run a business with long hours and small margins. This isn’t just a commercial transaction. As a community you need to be realistic about your expectations of the tenant. Understanding and kindness is important. If you just view this as a fiscal arrangement it may fail”





Example - The Lowther Arms at Mawbray in Cumbria used the process outlined above. Vivienne Coleman from the Management Committee said “We thought all the documents were excellent, very comprehensive, easy to read and understand, particularly for anyone not used to the licensed trade or buying and running a pub! It has saved us so much time. It provided a very good framework for us to plan the recruitment of a tenant and helped us to focus and think about everything that’s needed – all laid out in a very structured and logical way. Brilliant!”

I Putting together the heads of terms for the agreement

(A blank example of a heads of terms document is supplied in the resource pack)

With the applicant offered the opportunity to take on the agreement the following should be agreed

- The tenant agrees with the Pub & Tenant profile
- The tenant’s business plan is acceptable to the community group and meets all the criteria of the Pub & Tenant profile

With this information to hand your community group can fill in the Agreement heads of terms. Once completed this should be sent to the prospective tenant to agree, complete with their details and the details of their solicitor, sign and return.

All the information will now be on the Agreement heads of terms and your solicitor can be instructed.

There may well be some areas of the heads of terms that the prospective tenant is not happy with. The heads of terms will be drawn up with reference to the Pub & Tenant profile so your group should not sway from sticking to their original requirements. If the tenant’s request to change anything is justified and reasonable, the consequences of any change should be carefully considered before they are approved.

It is useful to provide your solicitor with additional information to the Heads of Terms that will assist them in the preparation of the agreement. An example of this can be found in *Appendix 1*.

I Help with preparing the Agreement heads of terms

If you require any assistance in completing the Agreement heads of terms we would advise consulting a Chartered Surveyor who has experience of community owned public houses. Further information can be found online from RICS (www.rics.org) who publish a Code For Leasing Premises.

[code-for-leasing_ps-version_feb-2020.pdf \(rics.org\)](#)

I Choosing a solicitor

With the Agreement heads of terms completed you will need a solicitor to prepare the final legal document. Your lease or tenancy may be quite different from a standard commercial agreement or even a standard public house agreement, but you will want it to contain everything you have included in the Agreement heads of terms and supplementary document. It is therefore useful to choose a solicitor who understands the importance of this information being included. It is no additional work for the solicitor. Any solicitor who questions these documents without good cause may not be the right solicitor for you. Plunkett members can access a list of recommended suppliers including solicitors, please contact membership@plunkett.co.uk to find out more.

I The finished agreement

Before finalising the agreement with your solicitor ensure it has everything you want in it. Ask the solicitor to go through it with you. Advise the prospective tenant that nothing will be changed in the agreement should their solicitor not agree with it, and there is nothing additional in the agreement to what has already been agreed in the Agreement heads of terms.

I Signing the Agreement and agreeing a commencement date

The Community group and tenant should remain in communication all the way through the agreement preparation. The two parties should work cooperatively to agree a commencement date. This should be the date the tenant moves into the pub.

On this date the tenant takes over the pub in accordance with the terms and conditions of the agreement. In effect the tenant takes over the responsibility of the pub and should be allowed 'quiet enjoyment'. It is the tenant's pub now, and they should be left to operate it under the terms of the agreement.

I How does the community group ensure the terms of the agreement are adhered to?

If the tenant is not helped, is left to their own devices, and not encouraged to follow the agreement then your community group can expect problems sooner rather than later. It is therefore important to follow the following good practice principles during the term of the agreement:

- Have a sub-committee who deal directly with the tenant. This sub-committee should be the only direct contact the community group have with the tenant. The reason for this is that the tenant will always know who to contact, the community group will have a voice directly and collectively to the tenant, and it avoids any misunderstandings. We would advise that this sub-committee is made up of 3 members of the main committee should a vote be needed on any decision.

- Regular meetings are held between the tenant and the sub-committee. This can be monthly or quarterly. Minutes are taken of the meeting and each party agrees the minutes as soon after the meeting as is practical.
- All communication outside of these meetings is in writing. Emails can be acceptable but only if there is a suitable and efficient method of these emails being filed.
- Any items in the agreement that require landlord consent must be done in writing. This includes the request from the tenant for consent and the consent given by the community group (Consent must be given for many things in an agreement – for example, change of opening times, small decorative changes, etc)
- The property should be formally inspected once a year. This is to confirm the condition of the property and to see if any repairs are needed. The results of the inspection should be provided in a report for both parties, and action taken where needed. This inspection may be completed by a surveyor, a builder etc who is a community group member, or if both parties agree as part of the quarterly/monthly meeting. Whoever carries out the inspection should be suitably experienced and it must be recorded formally.
- Request quarterly VAT returns from the tenant as soon as they have been filed. This should be a condition of the agreement. Ensure you receive these returns immediately they are due. This will provide turnover information for the pub and assist in rent review negotiations, and it will also give an indication as to how well the tenant's business is organised.

Example - Rudston Community Pub Limited in Yorkshire purchased The Bosville Arms.

“We established a recruitment panel, handing over the complete process to members of the committee experienced in recruitment, alongside an external advisor. This enabled us to proceed with confidence, knowing that our inexperience in the pub business would be offset by our advisor’s considerable knowledge and expertise in the hospitality industry.

We called two sets of candidates to interview based on their own application, whether they completed the application form in full with a comprehensive business plan, or supplied a more informal business plan alongside their personal details. Both interviews were conducted in the same professional manner, using the exact same questions, and giving both sets of candidates the same opportunities to ask questions at the end.

Sharon and Martin have now moved in, they have already become involved in the ongoing refurbishment work and will be the most important people in discussions about kitchen refurbishment, cellar refitting, and so on. When we eventually reopen, they will take on and run the business with only occasional input from the committee. We can’t wait!

As a community group, you are unlikely to have the relevant expertise within the group to successfully run a pub yourselves, so enlist the help of an expert in the hospitality industry for insider insight.”



Example - Ye Olde Cross, Old Ryton, Tyne Valley.

Tenant Abigail Bennett and the Society’s management committee work together on their joint vision of what a brilliant community pub should be. Very much intended as a centre for the local community with events and local activities, these include (pre-COVID): weekly quiz nights and street food pop-ups, regular open mic nights, monthly vegan street food market, book club, wool/yarn group, business networking, and dominoes.

To maintain the relationship, the Society have a nominated Director who holds a weekly catch up with the tenant, supplemented by a WhatsApp group for super-urgent issues. Once a quarter a joint meeting reviews each other’s cashflow and management reports. Regular contact ensures the tenant is confident that help is there if they need it and the Society is confident that the tenant is building a sustainable business.

Community events organised by the pub group may not bring in money directly but will lead to increased footfall and sales over the bar. Talking about the substantial function room at Ye Olde Cross, Ted Euers, Director of Ryton Community Society Limited stresses how important it was to nail down how community use and commercial based activities would work together. **“We have a clear mechanism and notice periods for use of the function room to avoid disputes.”**



I Additional Help

Assisting the tenant with their operation of the pub will be an ongoing role for your community group. Professional help will be needed on a regular basis from professionals such as a stock taker, accountant, and licensed trade specialists, and less frequently from a solicitor and chartered surveyor. Create a working group of these professionals and communicate regularly so that the community group and the tenant always have someone to ask advice from who can be trusted and understands the business at your community owned enterprise.

I Appendix 1

See the Resource pack for pro-forma documents:

- Application form
- 'What is a community owned pub?' guide for tenants
- Blank Community Pub Business Plan to give prospective tenants
- Heads of Terms for Lease proforma
- Heads of Terms Additional sheet



www.plunkett.co.uk

Wherever you are in the UK, if you are interested in starting or developing a community pub please contact the Plunkett Foundation - **01993 810730**, info@plunkett.co.uk or visit www.plunkett.co.uk to find out how we can support you.

The Plunkett Foundation helps rural communities UK-wide to tackle the issues they face by promoting and supporting community business. In addition to developing and safeguarding valuable assets and services, community businesses address a range of issues including isolation, loneliness, wellbeing, work and training.

If you share our vision for a vibrant rural economy with rural community business as its heart, why not join Plunkett as a member? Find out more about our membership packages [here](#).

This resource has been made possible through the More than a Pub programme, funded by Power to Change and the Ministry of Housing, Community and Local Government.



power to
change

business in
community
hands



Ministry of Housing,
Communities &
Local Government