

Diocese of London



TREES IN CHURCHYARDS

Chancellor's Guidance to all Parochial Church Councils in the Diocese, made under Section 6 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991

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1. SUMMARY

(a) Most churchyards are home to trees. Trees are valuable as an amenity, and for environmental reasons.

(b) Parochial Church Councils (PCCs) have responsibilities in churchyards, whether or not the Local Authority is responsible for maintenance. Every PCC should appoint a Trees Officer, to keep an eye on its trees.

(c) Trees may be at risk, or may cause a risk to structures or persons – in which case immediate action may be needed. They should be inspected regularly, informally by the Trees Officer, and on a routine basis every 5 years. Every 10 years there should be a professional inspection.

(d) A scheme should be prepared for any planting, in relation to species and locations, and the care of young trees. Occasionally a tree may need to be removed e.g. if diseased or dangerous. All trees should be maintained. Any substantial works should be carried out professionally.

(e) If a tree appears to be causing subsidence, specialist advice may be needed, then investigations and possible works. The Church's insurers, and the Inspecting Architect or Surveyor (QI), should be consulted.

(f) Assistance on trees is available from arboriculturalists (to inspect and advise) and arborists (to undertake works). Most local authorities have their own trees officers. Landscape architects can also advise.

(g) Permissions are required for many tree works, from the Local Authority and/or by faculty. In this case the Diocesan Advisory Committee (DAC) should be applied to. Guidance may also be obtained from the Archdeacon, the Diocesan Registry and the Arboricultural Association. The law and regulations applicable are listed below.

2. GENERAL

(a) Many churches in the Diocese of London stand in churchyards, which are home to a wide variety of trees. It is not necessary for burials to have taken place on the land for it to be a churchyard. All land surrounding a church, which was part of the demise for the building of the church and associated purposes, and/or is part of the living ('freehold'), is the churchyard whether or not burials have taken place on the land or whether or not the land has been separately consecrated and is therefore subject to the faculty jurisdiction and this guidance.

(b) Trees should be looked after diligently. They are valued as an amenity and for their aesthetic merits. Many are among the finest in the locality. Some, particularly yews, have significance as traditional churchyard features. The environmental contribution from trees is thought more and more significant in preserving the habitat of human beings and other species.

(c) The Care of Churches and Ecclesiastical Jurisdiction Measure (Section 11.1) applies the ecclesiastical jurisdiction to churchyards and church curtilage, as well as parish churches. Under Section 6.3:-

The Chancellor of a diocese shall, after consultation with the (Diocesan) Advisory Committee, give written guidance to all parochial church councils in the diocese as to the planting, felling, lopping and topping of trees in churchyards. ... In this section "churchyard" includes a closed churchyard.

(d) Therefore this guidance applies to trees in all churchyards in the Diocese, whether open or closed. It primarily concerns planting, felling, lopping and topping. To assist in these duties, it also includes guidance on inspecting trees, limiting any risks, and where to seek advice.

The guidance may also be read as a statement of:-

- Policies on faculties for tree works within the grounds of chapels-of-ease or licensed place of worship, under the ecclesiastical jurisdiction;
- Good practice in regard to trees in the grounds of Church of England places of worship not under the ecclesiastical jurisdiction, and -

- Disused burial grounds and local authority burial grounds (not under any PCC).

3. RESPONSIBILITY

(a) The laws of England applying to trees in general mostly apply also to church land. In addition there are specific church laws relating to trees. Every PCC has the responsibility of caring for its trees, under:-

- The PCC Powers Measure;
- Section 6 of the Care of Churches Measure.

(b) When the churchyard is open for burials and maintained by the PCC, its responsibility extends to felling trees where necessary. Any proposal for planting should be made under the auspices of the PCC.

(c) Where a churchyard is closed and handed over for maintenance to the Local Authority, the PCC still retains a general duty of care as Occupier. It should consider the safety of the public or contractors. The PCC may need to take action to make a tree safe.

(d) Every PCC should appoint a church member as Trees Officer. This does not need to be a specialist or a professionally qualified person: the PCC should seek professional advice on any major action. It is sufficient if he or she is:-

- A competent and responsible adult;
- Concerned for the care of the Church and its fauna and flora;
- Willing to give time to necessary routines.

(e) A PCC's Trees Officer should never personally carry out significant works. This should always be undertaken by a qualified professional, observing good practice including health and safety precautions.

(f) Where any land is not subject to a PCC as occupier, it may be under the ownership or occupancy of trustees, or a local authority. Examples are a non-parochial place of worship or a local authority cemetery. In this case, reference to a PCC above should be taken as generally applicable to the Trustees, or to the Local Authority's Parks Department.

4. RISKS

(a) Some uses of churchyards can inadvertently cause damage to trees. For example, a parking area can damage roots close to the ground, as can spillage from a fuel tank.

(b) Conversely, the root growth of trees planted in poorly chosen positions can cause:-

- Damage to foundations and walls, tombstones and other structures;
- Lifting and cracking of paths and roadways;
- Trip hazards to passers-by.

(c) A tree in poor condition may shed branches or even collapse (perhaps in a storm). This may present a safety risk.

5. INSPECTIONS

(a) The PCC is responsible for ensuring that every churchyard tree is regularly inspected. The inspecting person should list any work needed in order of priority. Inspections are needed to:-

- Care for the trees themselves;
- Identify problems early and avoid accidents;
- Plan expenditure.

(b) In general terms, inspections may be at three levels:-

- Informal, by the Trees Officer, at least once a year;
- Routine, by an Architect or Surveyor, or the Local Authority's Trees Officer, every 5 years;
- Detailed, by an arboriculturalist (who may be the Local Authority's Trees Officer), every ten years.

Informal inspections

(c) Informal inspections should be carried out:-

- Regularly, in between routine and detailed inspections;
- When a major storm has been forecasted;
- After a major storm has taken place.

(d) An informal inspection involves walking round and noting any trees which seem damaged or weak, and arranging for these to be temporarily roped off and/or warning signs posted.

Routine inspections

(e) Routine inspections may be included in the Quinquennial Inspection (QI) of the Church. Trees and their condition should be noted in every QI report in general terms; whether they have to be inspected individually depends on their status.

(f) Any tree with a Tree Preservation Order (TPO) has to be inspected individually in the QI. This is a requirement of the Inspection of Churches Measure 1955. Trees not subject to a TPO do not have to be included individually. But they need a separate routine inspection every 5 years maximum. Therefore it would make sense for a PCC to include them in the QI (for an extra fee payable by the PCC).

Detailed inspections

(g) The Quinquennial Inspector should be a competent architect or surveyor (and must be approved by the DAC), but is unlikely to be an expert in trees. The QI report should state from general observation if any tree needs a detailed inspection.

(h) The PCC should arrange for a professional inspection of the trees in the churchyard after any major storm which may have caused damage.

6. PLANTING

(a) A well considered scheme is needed for any new tree planting. In choosing species, consideration should be given to their mature height, span and root growth. Deciduous trees express the passing of the seasons (but need a lot of work in autumn). If possible, indigenous species should be planted. Recent weather trends may suggest choosing more drought resistant species, but they may have to tolerate periodic downpours as well.

(b) Deciduous trees and shrubs help other wildlife to flourish. Yew trees eventually grow very large, needing lots of space to develop their form. Flowering trees are more appropriate to a garden setting, but can be used sparingly.

(c) An appropriate location should take account of the minimum distance from structures, and also any effect on wildlife.

(d) After planting, the young tree will need protection and cherishing, to ensure security and healthy growth. This may include staking and protective barriers. These should remain long enough but not too long, to avoid restricting the girth of the trunk.

7. FELLING AND UPROOTING

(a) A tree may need to be removed because it is:-

- Dead or dying;
- Diseased or malformed;
- Causing damage to nearby structures;
- Leaning excessively and liable to collapse;
- Otherwise causing a hazard;
- Obstructing access;
- Cutting out daylight or shrouding views of a church;
- In the way of a new building or re-landscaping scheme.

(b) Removal should be a last resort. Alternatives should be sought first, e.g. crown reduction may be sufficient to limit the growth of a tree.

(c) There is no call indiscriminately to root out all specimens which have not been placed there by human art. After all, self-seeding is Nature's way of propagating any species. Consideration should be given to retaining new trees

and helping them flourish, so long as they cause no harm. There may be the opportunity to allow a designated area to grow semi-wild, with only occasional maintenance.

(d) Trees may need to be removed to clear the site of a new building or extension. Or they may be unsuitable as part of a proposed re-landscaping intended to improve the churchyard as a whole. Such schemes will be the subject of proposals in their own right - and will need to be justified, taking account of the effect on trees.

(e) A photograph of any tree to be removed, in its setting, should be kept in the parish records.

(f) A tree may be removed by felling and/or uprooting. The stump should usually be removed:-

- By tractor and chain;
- Using a portable stump grinder, to cut it down below ground level – easier to avoid damage by tearing up roots, or if space between graves is limited.

(g) When a mature tree is removed, it should be replaced with at least one new specimen of the same or an alternative species. In choosing a new species, bear in mind how fast it will grow before it makes an equivalent contribution to the removal of CO₂ from the atmosphere. If it is not feasible to re-plant in the churchyard, a contribution should be made to the Woodland Trust or another reputable organisation, to plant elsewhere.

8. PRUNING, LOPPING AND TOPPING

(a) Routine maintenance should be carried out regularly, including:-

- Pruning in the spring;
- Sweeping up leaves in autumn;
- Clearance of brushwood at any time and especially after storms.

This work may be carried out by volunteers, gardening contractors, or local authority employees when the Council is responsible for maintenance.

(b) All trees may shed dead wood; beech, ash and sycamore especially. Remedial work may be needed, such as removal of loose limbs or deadwood. Lopping or topping may be required for a tree's health, or to reduce its impact on other trees, on the churchyard or buildings.

(c) More major works of tree surgery may include:-

- Cable bracing;
- Crown reduction;
- Removal of major limbs.

(d) In addition to caring for trees, shrubs should be restrained from growing wild, by cutting back or removal. Weeds including ivy and other creepers should be regularly cut back, especially to prevent tombs from being engulfed.

9. TREE WORKS GENERALLY

(a) Other than routine maintenance, all tree works must be the subject of a professional report, and carried out by an arborist.

(b) Section 6(2) of the Care of Churches Measure states that:-

Where a tree in a churchyard maintainable by a parochial church council is felled, lopped or topped the council may sell or otherwise dispose of the timber and the net proceeds of any sale thereof shall be paid to the council and applied for the maintenance of any church or churchyard maintainable by the council.

(c) This means that the proceeds from churchyard trees should normally be paid to the PCC. If maintenance is by the Local Authority, the timber may still be sold, and the money divided between the Local Authority and the PCC by negotiation, depending on who is paying for the works.

(d) All churchyard tree works are to be recorded in the Church Log Book.

10. TREES AND SUBSIDENCE

(a) Most of the Diocese of London is situated on clay soil, which shrinks during long dry periods. This shrinkage is aggravated by tree roots taking moisture from the soil. Clay shrinkage causes buildings to sink and crack, in severe cases impairing their stability. Subsidence may be worse on hills than level ground. Churchyard trees may affect the Church itself in this way, and also neighbouring properties outside church land.

(b) When any owner notices his property is suffering from subsidence it is tempting to blame any trees in the vicinity. This should not be accepted without evidence. Before reducing, far less removing, the tree, professional advice should be sought, as follows:-

- The opinion of an arboriculturalist;
- The advice of a soil engineer, so as to ascertain the layout of root systems and their effect on soils. The engineer may wish to carry out investigations.

(c) When planning remedial works, including underpinning, before applying to the DAC, further advice will be needed from:-

- A structural engineer;
- The Quinquennial Inspecting Architect or Surveyor, if the works are to any church buildings.

(d) If a church is on the receiving end of a claim by a neighbour, the PCC should consult the Diocesan Registry. The Church's insurers should be informed of any damage or claim, whether the alleged damage is to the Church, or to a neighbour's property.

11. PROFESSIONAL ADVICE AND ASSISTANCE

(a) Advice should be sought from qualified and registered professionals. Appropriate professionals include:-

Arboriculturalists and arborists

(b) An arboriculturalist inspects and reports on the condition of trees and any necessary works. An arborist (popularly a 'tree surgeon') undertakes the works themselves. A directory is maintained by the Arboricultural Association, a registered charity concerned with tree care.

(c) An arborist will undertake work to a specification prepared by an arboriculturalist, or if qualified to his/her own recommendations. Some arboriculturalists may also be arborists. Most local authorities employ a trees officer belonging to one of these professions.

(d) Independent arborists and arboriculturalists will charge for their work. The Local Authority may be willing to give advice without charge; if it is responsible for maintenance, and employs its own contractor, this service ought to be free of charge to a PCC.

Architects and surveyors, landscape architects

(e) An architect advises on designs and specifications, and supervises construction. A chartered building surveyor advises on construction and fabric, defects and remedies. A quinquennial inspecting architect or surveyor may be an architect or qualified building surveyor, appointed with the consent of the DAC, to inspect and report on the condition of churches.

(f) A landscape architect is qualified to design and specify works to landscapes and gardens including trees and planting, also any structures. When tree works are part of more general landscaping, it may be best for a landscape architect to give advice on trees at the same time as preparing the scheme generally.

Engineers

(g) A structural engineer investigates and advises on building and engineering structures, a soil engineer on the condition and content of soils.

Archaeology

(h) An archaeological consultant should advise on any research or investigations needed in respect of a project which may have archaeological

implications – principally this involves those projects where excavation is required.

12. PERMISSIONS

(a) Consent is required for most tree works, from the Consistory Court of the Diocese (under the Care of Churches etc Measure), or from the Local Authority (under the Town and Country Planning Act).

Care of Churches and Ecclesiastical Jurisdiction Measure 1991

(b) The operation of this Measure comes under the Consistory Court, administered by the Diocesan Registrar. The Court is advised by the DAC, and determines whether to grant permission for works or other proposals, usually by faculty. The Judge of the Court, who determines most applications, is the Diocesan Chancellor. Some cases may be allocated to the Archdeacon of the archdeaconry concerned.

Minor Works

(c) Certain minor works may be undertaken without permission, including:-

- Sweeping of leaves and clearing of ground lying dead wood;
- Routine hand pruning of small trees and shrubs, clearance of weeds;
- The removal of split and hanging limbs and other deadwood;
- Temporary notices or barriers to protect from any unsafe tree.

(d) If a small tree is not subject to a tree preservation order (TPO) or in a conservation area, it may be lopped or topped without permission, or removed:-

- In order to improve the growth of other trees standing close to it, or
- Where it is a self-seeded sapling.

'Small' means that its trunk is less than 75mm (3 inches) in diameter, measured 1.5 m (5 feet) above ground. Individually, a young tree is unlikely to be under a TPO, unless it is a rare species - though it may be if all the trees in a churchyard are subject to a blanket TPO.

(e) For the following works, it is sufficient to receive permission direct from the Archdeacon, who may consult the DAC:-

- Planting of one to three trees only;
- Lopping or topping not allowed by para (d) above.

Faculty works

(f) The following works require a faculty:-

- Any scheme to plant more than three trees;
- The removal of any tree not permitted under (d) above;

- Major works of surgery, eg bracing, crown reduction, removal of major limbs;
- Works to trees subject to a TPO and/or in a conservation area.

(g) A separate faculty or interim permission may be required for site explorations such as trial holes.

(h) Any faculty is required whether or not consent is also needed from the Local Authority under the Town and Country Planning Act.

Applying to the Diocesan Advisory Committee for the Care of Churches (The DAC)

(i) Tree works requiring a Faculty will also need to be notified to – and considered by – the DAC. The following information should be sent to the DAC via the Care of Churches Team (see contact details below):

- A covering letter summarising the scheme and explaining the need for it;
- A key plan identifying the tree(s) affected;
- An arboriculturalist's report with a survey of condition, photographs and a summary of recommendations;
- A specification of work,

and, for trial works –

- Professional report(s) by an arboriculturalist and/or a soil engineer, recommending these explorations.

(j) When the DAC has reached a view at the next available DAC meeting (see current dates on the Buildings section of the Diocese's website), the DAC Secretary will issue a certificate together with the Form 16 and all the papers concerning the proposal, stamped to indicate that they were seen by the DAC; the certificate will be copied to the PCC and the Archdeacon.

Applying for a faculty

(k) A faculty is applied for by Form 16 (under the Faculty Jurisdiction Rules); blank forms may be obtained from the DAC Secretary or the Diocesan Registrar. The completed form should be submitted to the DAC Secretary, signed by:-

- The Incumbent, and/or
- A churchwarden, and/or
- The PCC Secretary, and -

if the applicant is the Local Authority and/or it is maintaining the churchyard:-

- A representative of the Local Authority.

Emergencies

(l) In emergency, under the Care of Churches Measure, Section 15(1), the Chancellor may grant a faculty summarily, with or without the advice of the DAC. This might, for example, include the removal of a hazardous tree. The following procedure will apply:-

- The PCC is to apply in writing to the Diocesan Registrar for permission to carry out the works, enclosing a professional report;
- The Registrar will direct this request to the Diocesan Chancellor;
- Copies are to be sent to the Archdeacon and DAC Secretary.

(m) Under Rule 8(3)(a) of the Faculty Jurisdiction Rules, the Archdeacon should immediately notify the Diocesan Registrar if he or she:-

- Has received notice of the need for any works requiring a faculty, and
- Considers that they are sufficiently urgent for permission to be granted without first seeking the DAC's advice.

The Registrar will then refer the matter to the Diocesan Chancellor.

(n) If granting permission in emergency, the Chancellor may direct that Form 16 be completed after permission is given, and submitted either to the DAC, or direct to the Registry. If works have been started without permission, a confirmatory faculty may be granted under Rule 10(1)(a). Acute emergency would need to be shown, and that the PCC acted reasonably. It is strongly advised that the Diocesan Registrar be written to in advance.

Town and Country Planning Act 1990

(o) The administration of the Town and Country Planning Act is a matter for the Local Authority. Churches are not exempt. The PCC must check with the Council whether permission is required. The following is for informal guidance only.

Tree Preservation Areas Orders and Conservation Areas

(p) Lopping, topping, felling or uprooting of any tree covered by a Tree Preservation Order (TPO) requires TPO consent from the Local Authority under Section 211 of the Town and Country Planning Act. In addition, a minimum of 6 weeks notice must be given to the Local Authority of any such work to a tree, where:-

- The tree is not subject to a TPO, but
- It does stand in a conservation area (as many churchyards do), and
- It is more than 75 mm in diameter at a height of 1.5 m from the ground.

It is open to the Council to impose a TPO on a tree before it is removed, upon which TPO consent will then be required before removal.

(q) Under Section 198 of the Act, local authorities may apply TPOs to individual trees, or collectively to all the trees in a churchyard. The Council is required to follow up a blanket TPO with a survey, with a view to lifting the TPO on any less valuable trees.

(r) TPO Consent may not be required to remove a tree where it is dying, dead or has become dangerous (Section 198(6)(a)). However, to avoid dispute as to

the state of the tree - after it is gone - it is advisable to obtain a report first from the Local Authority's own Trees Officer, and only then remove the tree if agreed.

Felling Licences

(s) A felling licence from the Local Authority may be required in the case of non-church premises, but is not required for works to churchyard trees.

Electricity Act 1989

(t) Paragraph 9 of Schedule 4 of the Electricity Act 1989 provides for trees to be reduced to prevent interference with power stations or power lines. A notice has to be served by a licence holder under the Act. This might occur, for example, if a churchyard tree was overhanging a substation on neighbouring land. Such works should not require permission. If in doubt, or if the notice calls for a tree to be felled, consult the Registry.

13. CONTACTS

(a) Care of Churches Team and DAC Secretary
London Diocesan House, 36 Causton Street, London SW1P 4AU
Tel: 020 7932 1230; email: Geoffrey.Hunter@london.anglican.org
www.london.anglican.org/buildings (includes meeting dates)

(b) The Diocesan Registry
Minerva House, 5 Montague Close, London SE1 9BB
Tel: 020 7593 5110; Email: registry@wslaw.co.uk

(c) Arboricultural Association
Ampfield House, Romsey, Hampshire SO51 9PA
Tel: 01794 368717; email: admin@trees.org.uk
<http://www.trees.org.uk/index.php>

(d) The Woodland Trust
Autumn Park, Dysart Road, Grantham, Lincolnshire, NG31 6LL.
Tel: 01476 581111
<http://www.woodland-trust.co.uk>

14. LEGISLATION

The following apply to trees in churchyards in the London Diocese:-

- Inspection of Churches Measure 1955
- Parochial Church Councils (Powers) Measure 1956
- Local Government Act 1972
- Town and Country Planning Act 1990
- Care of Churches and Ecclesiastical Jurisdiction Measure 1991
- Church of England (Miscellaneous Provisions) Measure 1995
- Town and Country Planning (Trees) Regulations 1999

- Faculty Jurisdiction Rules 2000
- Diocese of London, Scheme for Quinquennial Inspection of Churches 2002.

**The Worshipful Nigel Seed QC, Diocesan Chancellor
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