

Work to Trees in Churchyards – the consents you need, and how to get them!

Background

The PCC and the Local Authority where it maintains a churchyard closed for burial are responsible for keeping people safe in the churchyard including through the safe management of any churchyard trees. The Mapledurwell case in the Diocese of Winchester highlighted the need for Faculty consent before works to trees in churchyards can be carried out whatever their purpose. In that case, the Churchwarden, having obtained consent from the local authority, mistook the DAC's advice for actual Faculty consent and went ahead with the works (see [St.-Mary-Mapledurwell-2019-ECC-Win-1](#)).

Undertaking works without appropriate faculty consent is unlawful and there can be considerable penalties for doing so. Advice is available from the Church Buildings Team at DAC@elydiocese.org and, if you are planning any works to trees in your churchyard including planting, there are checklists to help you prepare your application (see Appendices below and available as separate documents).

Consents for tree works

Tree works may require consents from the Archdeacon (List B) or in the case of major works including felling, a full Faculty consent from the Chancellor in addition to Local authority consent in some cases.

Archdeacon (List B) Consent

Archdeacons are able to authorise certain works to trees under List B subject to taking appropriate advice from the DAC. Broadly, this includes all works of pruning, short of complete felling, which will almost always require a full Faculty unless the tree is dead or clearly dying. The Church Buildings Team handles these applications on behalf of the Archdeacons, so contact DAC@elydiocese.org in the first instance.

Faculty Consent

Full Faculty consent, including a DAC review and a 28-day public for notice, is required to fell an otherwise healthy tree, or to undertake any landscaping works that require excavations. There is guidance on the faculty process here: [A Guide to Faculty Applications and the Registry](#) and the Church Buildings Team will help with applications. In case of an emergency, an interim Faculty can be sought either via the Church Buildings team or directly through the Ely Diocesan Registry ([Ely Diocesan Registry](#)).

Local Authority Consent

If the trees are the subject of Tree Preservation Orders (TPOs) or if the churchyard is in a Conservation Area and the trunk diameter of more than 75mm (measured 1.5m above ground), consent from the local authority will also be required. This consent will be **in addition to** List B or Faculty consent, not instead of.

Closed Churchyards

In closed churchyards the works will often be carried out by the local authority under their obligations to maintain closed churchyards; but consent will still be required just as if the churchyard was managed by the

incumbent and PCC. In these cases, the PCC, who remain the owners of the churchyard, should be party to any List B or Faculty application and support for the works should be recorded by the PCC.

Keeping People Safe (adapted from the CBC Guidance on trees: [Trees | The Church of England](#))

Trees or branches can fall and kill people (and damage property). About six people die each year in this way and the courts treat each case very seriously. PCC members, as trustees, and the incumbent and churchwardens in particular, and/or the Local Authority responsible for the maintenance of a closed churchyard, may be held liable. After an accident, courts generally ask: was the tree inspected at an appropriate interval and competence? Was a risk of failure reasonably obvious and spotted? Was timely and appropriate action taken? If the answer to any of these questions is 'no', then there may have been negligence. Among sources of advice is the Forest Research Practice Guide, Hazards from Trees ([Hazards from trees: a general guide - Forest Research](#)) and the website of the National Tree Safety Group ([The National Tree Safety Group \(NTSG\)](#)).

Regular inspection and the undertaking of standard remedial work, such as the removal of split and hanging limbs and deadwood, will help prevent accidents and may be carried out as advised by an arboriculturist. Even a completely dead tree may be full of life – supporting a range of flora and fauna – and can sometimes be made safe and retained as a standing ‘monolith’.

A PCC should record its approach to trees in its general Risk Management Policy. This should include an assessment of the public’s frequency of proximity to trees. For example, people are more exposed to trees on a highway or public footpath than to those at the back of a churchyard. A PCC should also check that its own insurance for public liability and for legal cover is adequate.

Quinquennial Inspections of the churches should include a report on any TPO trees. This may be a good opportunity to arrange an inspection of all the trees by an arboriculturist – especially designated, ancient and veteran specimens and any others highlighted in your SoS – so the tree report can be annexed to the quinquennial report and the status of the protected trees can be monitored. For some trees, more frequent surveying might be recommended. In between formal inspections, the PCC and members of the congregation need to keep an eye out for any deterioration in the trees or the development of other problems, especially after storms. If there are concerns, an arboriculturist needs to be consulted.

Do keep records. These should include maps of the churchyard showing tree locations and species, photographs, and sketches, and should provide proof of reasonable tree management. In particular, keep notes of any arboriculturist’s inspection and a record of any works arising as a consequence. It is wise to use a proforma, listing every tree in the churchyard, and learn the basics of how to spot signs which might suggest a problem (for example, die-back in the crown, fungal growths on or around a tree, or ‘bleeding’ from a trunk) and keep a very simple record of what you see. Thus, the PCC can be assured that it can demonstrate that it has met a key component of its duty of care.

If the churchyard trees are maintained by a Local Authority, much of this responsibility falls to them. Nevertheless, the PCC – the ‘owner’ – retains a responsibility for reporting any concerns about the health and safety of the trees (particularly after storms) and for avoiding any actions that might compromise tree safety.

Appendix A: Getting consents – a checklist of what you will need

Also available as a separate Word document from DAC@elydiocese.org.

Works to trees are managed under British Standard BS 3998:2010 and the information needed, and the standard of work required *should* be the same for both diocesan and local authority consents.

1. Map of the churchyard showing its important features, including trees, and with the trees marked that are the subject of the application.
2. Photographs of the trees in question, <ol style="list-style-type: none">to show how they fit into the landscape of the churchyard andto show any specific features, e.g. broken branches, that are relevant. Please avoid taking these against a bright sky so that they are mere silhouettes.
3. A report from an arboriculturalist (tree surgeon) setting out what work is being proposed, the reasons for it and, if it is tricky, how they propose to undertake the work.
4. It is important for several reasons that your arboriculturalist is a true professional, so please also provide evidence that you have checked their status, their insurance and their health and safety competence . Their specification should be to BS 3998:2010. You are encouraged to use an Arboricultural Association Approved Contractor https://www.trees.org.uk/ARB-Approved-Contractor-Directory .
5. You must also check that the local planning authority approves the work if the tree is in a Conservation Area or has a Tree Preservation Order and provide a copy of their reply. Alternatively, you may be applying for this at the same time as applying to the diocese, if so please explain this and submit the local authority reply when you receive it.
6. Please explain or ask your arboriculturalist explain how birds and bats will be protected during the work.
7. If major work is proposed, please report how significant the tree is , e.g. its age, size, local knowledge, or contribution to landscape design. Also check if it is listed in the major national lists of significant trees at: https://ati.woodlandtrust.org.uk/tree-search/ ; http://www.ancient-yew.org/gazetteer.php ; http://www.ancient-tree-hunt.org.uk/ ; http://www.ancienttreeforum.co.uk/
8. If work is proposed because of the tree's impact on the building , please supply evidence of this from your architect or surveyor. It may be necessary to instigate seasonal level monitoring to provide evidence that a tree is the cause of building subsidence.
9. If you are planning to plant trees , <ol style="list-style-type: none">has enough room been left for future burials, potential extensions, and sufficient distance from buildings and walls?Please explain how the proposal enhances the landscape design of the churchyard. Please also see the separate New Planting Checklist (Appendix B) for additional guidance.
10. Please read also the guidance published by the Church Buildings Council , which alerts parishes to the many issues they need to consider to work safely and within the law, and provide any further information in the light of this: http://www.churchcare.co.uk/images/Guidance_Notes/PCC_Trees.pdf

Appendix B: Guidance and checklist for planting New Trees

Also available as a separate Word document from DAC@elydiocese.org.

Before undertaking any planting it may be helpful to prepare a churchyard plan on which the church, churchyard buildings and monuments, the position of each tree, the girth of its trunk at 1.4m above ground level and the span of its branches can be plotted. Putting the right trees in the right place will help generations to come. A churchyard is different to a domestic garden.

Consider carefully before adding more trees to the churchyard. Parishes are often asked by relatives of deceased parishioners if they can plant a memorial tree. Before agreeing to such a request, parishes need to think carefully about the type of tree it is proposed to plant. Trees must not be planted as memorials on graves as their canopy might overshadow the graves and their root system might undermine tombstones.

When considering the planting of any new tree, you should think ahead about what its growth and spread are likely to be when mature. Bear in mind that currently mature trees will, in time, age and decay. Consider the visual effect any tree planted now is likely to have on the church and its surroundings in years to come.

In general, seek expert advice before deciding to plant any tree in any particular part of a churchyard, for example (<http://www.trees.org.uk/>).

Checklist to consider before planting a tree:

1. Is there an historic planting scheme or churchyard design?
2. Does the species proposed suit the site? (Flowering specimen trees are sometimes appealing but may be better suited to a domestic garden and may look out of place in a churchyard).
3. Does the site suit the species? (e.g. soil, exposure, shade).
4. Are there existing trees for free, e.g. naturally regenerating species that would thrive better than a planted one?
5. What will be the height and span of a tree in its maturity?
6. Will it be near anything, e.g. church, other trees, (especially valuable, mature or veteran specimens) existing or proposed burial plots, neighbouring property, roofs, overhead or underground services, highways or rivers (there are regulations concerning the last two)?
7. What about future development e.g. proposed future extensions, or buildings?
8. Will it impact on archaeological evidence?
9. Will it significantly reduce the area for future burials?
10. Will it enhance the churchyard for wildlife? (If you decide to use your churchyard as a local nature reserve, wildlife prefers to live among a mixture of evergreen and deciduous trees and shrubs with a variety of flowers and fruit)
11. Is it a species that will cause problems from roots, poisonous fruit etc.?
12. Will good planting practice and after care be followed? (There is no point in planting the tree and then watching it die).

Planting and Maintenance after Planting

Too many trees die after planting. Gardening and tree-care books set out the full details, but here is a list of the common faults and how to avoid them. More advice is available from the Royal Horticultural Society website: www.rhs.org.uk.

- Small specimens are usually more successfully planted out than large.
- Inspect the quality of the delivered plants.
- Choose good planting conditions. For bare rooted trees generally choose late autumn or early winter but avoid frosts. The roots should be kept in a plastic bag and the tree in a cool place right up to the moment of planting to keep them moist. There is more flexibility with container trees.
- Dig a wide enough hole twice as large at the root ball and fork the bottom of the hole.
- Don't plant the tree lower than it was growing in the nursery.
- Maintain a weed free area of a square metre around the newly planted tree.
- Water often after planting to prevent wilting – it may be necessary to water daily during hot spells until the tree is established.
- If necessary prune to ensure a good shape after the tree is established.
- Stakes and ties should only be used for trees over 1 metre in height. Fit stakes and ties properly, adjust them regularly; remove them when no longer necessary (often within 3 years).
- Tree shelters and spiral guards may be necessary especially for smaller trees. These must be adjusted occasionally to ensure they expand properly and can be removed when the bark is strong.
- Keep strimmers well away from the trunk of the tree.
- In later years maintain regular pruning to strengthen the tree and ensure healthy growth.

In all cases the DAC Secretary should be contacted at DAC@elydiocese.org before any planting or pruning works are carried out.