

TREES IN CHURCHYARDS

Chancellor's Guidance to all Parochial Church Councils in the Diocese pursuant to Section 6(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991

1. GENERAL

- 1.1 Every Parochial Church Council has the responsibility of caring for trees in the churchyard, whether the churchyard is open or closed (but see below para. 8 in relation to a closed churchyard where responsibility for maintenance has been transferred to the Local Authority). The responsibility extends to the planting of trees as well as to every aspect of the maintenance of trees and, ultimately, their felling.
- 1.2 Trees are a traditional feature of churchyards and are to be valued for their aesthetic and environmental advantages. Some modern uses of churchyards can inadvertently cause damage to established trees, for example a parking area close to trees can damage roots near the surface of the ground, as can spillage from a fuel heating tank. Conversely, ill-advised tree planting can give risk to damage from roots spreading to a wall of the church, tombstones, a churchyard path, or the nearby highway.
- 1.3 All this points to the need for the Parochial Church Council to see and follow expert advice as to the planting, felling, lopping and topping of trees in churchyards. The Parochial Church Council would be well advised to appoint one of its members as its trees officer.

2. EXPERT ADVICE

- 2.1 There are a number of different experts who may be involved.
- 2.2 Many Local Authorities employ an Arboricultural Officer, who should be able to give advice as to the safety of a tree in a churchyard and as to the type of maintenance work required.
- 2.3 An Arboricultural Consultant, is a person with special experience in the management and assessment of trees, able to give advice on what work should be undertaken. A report from such a Consultant will be evidence that the Parochial Church Council has acted in a prudent manner, as is expected generally by the law and by insurance companies. A Consultant will, however, charge for this advisory work.
- 2.4 An Arboricultural Contractor is more often known as a tree surgeon and it is he who will undertake work to a specification prepared by a Consultant or on the basis of his own recommendations.
- 2.5 A Directory of Arboricultural Consultants and Contractors (Tree Surgeons) is maintained by the Arboricultural Association which is a registered charity concerned with tree care. Listing within the Directory is an assurance that the Consultant or Contractor has been examined and found to have satisfied a number of standards such as technical knowledge and provision of insurance cover. The address is: the Arboricultural Association, Ampfield House, Ampfield, Nr. Romsey, Hants. SO51 9PA.

- 2.6 Parishes which have a significant number of trees are likely to need the services either of the Local Authority Consultant or an Independent Consultant.

3. INSPECTION OF TREES

- 3.1 The need for a full and regular inspection of trees increases with their age. In order to start on the right footing every churchyard (open or closed) with any trees more than 10 years old should be inspected and a report made within 12 months from the date of issue of this Guidance. The inspection should be carried out by the Parish's Consultant. S/he should be asked to list the trees, to state what work needs to be done to them and to categorise work in order of priority (so that it can be undertaken as funds permit).
- 3.2 Thereafter good practice requires that regular inspections of all mature trees in the churchyard should take place every five years at the time of the Quinquennial Inspection under the Inspection of Churches Measure 1955 with the tree report annexed to the quinquennial report. This is obligatory in the case of a tree which is subject to a Tree Preservation Order (Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Schedule 3 para. 3). Any concern expressed by the inspecting architect or surveyor should be referred to an expert, as identified in para. 2 above.
- 3.3 Any specification of work is to be sent to the Diocesan Advisory Committee for its advice and comments before a Faculty is granted and the work is undertaken.
- 3.4 In the case of an emergency the Archdeacon may authorise work, in which case he should notify the DAC.

4. PLANTING

- 4.1 Before planting any trees the Parochial Church Council should consult one of the experts referred to in paras. 2.2 and 2.3 above as to the suitability of any proposed species for the churchyard in question and as to the appropriate location in the churchyard. The Parochial Church Council must also obtain the consent of the Archdeacon. In any case where a major scheme of planting is proposed the Parochial Church Council must seek the advice of the DAC and obtain a Faculty from the Chancellor.
- 4.2 No tree, rose bush or other shrub may be planted to mark a place of interment without the authority of a Faculty. A Faculty will only be granted in an exceptional case.

5. FELLING

- 5.1 Where the Parochial Church Council is advised by its expert that a tree or trees should be felled because of disease or for safety reasons (relating to either buildings or people) a copy of the written report of such expert must be supplied to the Archdeacon who may authorise the felling. A photograph of the churchyard with the tree or trees concerned should be taken and retained, together with the expert's advice, with the parish records.
- 5.2 If the Parochial Church Council wishes to fell a tree which is sound but is occupying a space in the churchyard required for some other use the Parochial Church Council must seek the advice of the DAC and obtain a Faculty from the Chancellor.

6. LOPPING AND TOPPING

- 6.1 All trees are capable of shedding deadwood and can consequently be hazardous to persons using the churchyard. Beech, ash and sycamore are especially prone to this. Standard remedial work such as the removal of split and hanging limbs and major deadwood may be carried out as advised by an Arboricultural Contractor.
- 6.2 Other works of tree surgery, for example, cable bracing, crown reduction and removal of major limbs should be recommended in a written report by an expert. The report should be submitted to the Archdeacon who may authorise the work or part of it, but in any case of doubt or difficulty the Archdeacon should refer the matter to the DAC and the Chancellor.

7. TOWN AND COUNTRY PLANNING ACT 1990

- 7.1 Where any tree is subject to a Tree Preservation Order made under Section 193 of this Act, or is in a Conservation Area in respect of which no Tree Preservation Order is for the time being in force, restrictions are imposed by the Act upon cutting down, topping, lopping and other works to trees in question (see Sections 198 and 211). These restrictions do not apply where the tree is dying, dead or has become dangerous (Sections 198 (6)(a)). In any case the consent of the Local Planning Authority, as well as any other authorisation mentioned above, will have to be obtained before anything is done to the tree.

8. CHURCHYARDS TRANSFERRED TO THE LOCAL AUTHORITY

- 8.1 If a churchyard has been closed for further burials by Order in Council, the Parochial Church Council remains responsible for the churchyard, including its trees, unless and until the Parochial Church Council has formally transferred the responsibility for maintenance of the churchyard to the Parish Council or District Council under the provisions of Section 215 of the Local Government Act 1972. Under section 215, the Parochial Church Council may serve notice on the Parish Council, requiring the Parish Council to take over maintenance of the closed churchyard. The Parish Council may in turn give notice to the District Council to take over the liability, but if the Parish Council does not do so within three months, then the Parish Council becomes responsible for the churchyard, including the trees, to the same extent that the Parochial Church Council would have remained liable if it had not given notice to transfer the responsibility.
- 8.2 When responsibility for a churchyard has been transferred to a Parish or District Council, it is important to remember that the churchyard is still within the Faculty Jurisdiction, and therefore where this guidance document requires that a Faculty is obtained before work relating to trees is carried out, the Parish Council must apply for a Faculty in the same way as the Parochial Church Council would have had to apply for a Faculty if it had not transferred the responsibility for maintenance.
- 8.3 Even though responsibility for a closed churchyard may be transferred to a Parish or District Council, it is recommended that Parochial Church Councils should still ensure that they are adequately insured against liability to members of the public for injury caused by trees (or indeed anything else) in the churchyard, since it is likely that any claim may be made in the first instance against the Parochial Church Council as “occupier” (in law) of the churchyard, and there is always a possibility that there may be difficulties in getting the Parish or District Council to accept responsibility for a claim.

9. DISPOSAL OF TREES

- 9.1 Where a tree in a churchyard maintainable by the Parochial Church Council is felled, lopped or topped, or falls naturally, the Parochial Church Council may sell or otherwise dispose of the timber. The net proceeds of sale must be paid to the parochial Church Council and applied for the maintenance of any church or churchyard maintainable by the Parochial Church Council. (Section 6, Care of Churches & Ecclesiastical Jurisdiction Measure 1991)
- 9.2 Where a tree in a closed churchyard maintainable by the Parish or District Council is felled, lopped or topped, the Parish or District Council may sell or otherwise dispose of the timber. In the absence of any other direction in a Faculty relating to the felling, lopping or topping of trees, the net proceeds of sale of the timber must be used by the Parish or District Council towards meeting the expense of the work, and any surplus proceeds must be used towards the cost of maintenance of the closed churchyard.
- 9.3 If a tree has fallen by act of nature in a closed churchyard for which a local authority is responsible, the authority should remove it unless the owner of the tree (normally the incumbent or the lay rector, if there is one) wishes to do so.

7th November 1995