

## **Trees in Churchyards**

Under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 the responsibilities of the PCC for the care of its churchyards extends to trees, including those to be planted. The Diocesan Chancellor is required by the Measure, after consultation with the Diocesan Advisory Committee for the Care of Churches (DAC), to issue guidance to parishes.

The PCC is responsible for all expenditure on trees. Proceeds from the sale of timber may be applied towards the maintenance of any church or churchyard for which the PCC is responsible.

## **General Principles**

There are four golden rules:

1. All proposals to top, fell, plant or replace should have the prior approval of the PCC by formal resolution except where the felling or lopping of a dangerous tree has to take place in an emergency. A faculty is required for felling trees (unless the tree is dead or obviously almost dead), multiple planting, the planting of a tree which will grow to a height of above five metres, or where the planting (other than of a small bush) is to commemorate some event or person. A faculty will always be required when it is proposed to fell a sound tree (except for small self sown saplings which are less than 7.5cm in diameter at 1.5m from the ground, or 10cm if the felling is to help the growth of other trees). If there is any doubt about whether a faculty is required consult the DAC.
2. Surgery to substantial trees must only be done on professional advice. See below in relation to suitable professionals who may be able to give advice.
3. Where there is a Tree Preservation Order or where the churchyard stands within a conservation area, quite apart from the need for a faculty the formal consent of the local Planning Authority (normally the district or borough council) will be required for all proposals to fell or lop trees except in the case of dying, dead or dangerous trees where five days notice has to be given to the Authority except in an emergency.
4. Contractors should be asked to demonstrate adequate public liability insurance cover (normally two million pounds) before being engaged. If felling is to be carried out by volunteer labour under the auspices of the PCC, the adequacy of the PCC's own insurance cover should be established.

## **Felling and Maintenance**

In cases where trees are known to be dying or are obviously dangerous, the need to fell may be self-evident. In other cases, such as those prompted by complaints from neighbours, the matter may be more contentious, especially where attractive, mature specimen trees are concerned. Impartial advice should normally be obtained and is available from the Arboricultural Office of the District or County Council. This official will in any event need to be consulted where the tree is statutorily protected. Qualified forestry or landscape consultants and tree surgeons or other timber contractors complying with BS 3998 (1989) can also provide sound advice, as can rural practice chartered surveyors.

The Local Authority will usually supply a list of recognised forestry consultants and tree surgeons in the area.

In order to reduce the crisis through neglect it is sound practice to list all trees and every so often to review (with appropriate advice) the short and long term requirements for each major specimen. Useful questions to ask are whether there are too many trees, whether the churchyard is unnecessarily overcast and whether any trees are becoming dangerous, causing damp or damaging walls, buildings, graves or memorials.

The law requires that every five years as part of the quinquennial survey there must be an inspection by the surveying architect of any tree subject to a preservation order. At the same time there should also be an inspection of all trees. Any concern about any tree expressed by the architect must be referred to an expert.

### **Planting**

A regular review of trees should include early planning for replacement when existing trees have reach the end of their natural lives. It is often possible to plant a young tree near an old one in order to maintain the tree line when the old one needs to be felled. Scale is an important factor in the choice and positioning of new trees in relation to their mature height and spread, to their proximity to the church, the boundary wall or adjoining buildings, and to the effect of root systems on existing memorials and land for future burials. Planting proposals will need to conform to the PCC's wider policy for the conservation of the churchyard. Advice can be obtained from those bodies listed below.

Suitable species of larger trees will include yew (the spreading form *taxus baccata*), Scots pine, cedar of Lebanon, small leaved lime, beech, horse chestnut and field maple. Hedging species such as hawthorn, blackthorn, guelder rose, hazel and the wayfaring tree can form useful screening.

The various varieties of cypresses are not recommended for churchyards.

### **References And Useful Addresses**

Archdeacon of Sarum ([adsarum@salisbury.anglican.org](mailto:adsarum@salisbury.anglican.org))

Archdeacon of Wilts ([adwilts@salisbury.anglican.org](mailto:adwilts@salisbury.anglican.org))

Archdeacon of Dorset ([addorset@salisbury.anglican.org](mailto:addorset@salisbury.anglican.org))

Archdeacon of Sherborne ([adsherborne@salisbury.anglican.org](mailto:adsherborne@salisbury.anglican.org))

### **English Nature**

(The Devon Team)

Old Mill House

37 North Street

OKEHAMPTON

Devon

EX20 1AR

**English Nature**

(The Dorset Team)  
Slepe Farm  
WAREHAM  
Dorset  
BH20 5BN

**English Nature**

(The Wiltshire Team)  
Prince Maurice Court  
Hambleton Avenue  
DEVIZES  
SN10 2RT

**English Nature**

(The Hampshire Team)  
1 Southampton Road  
LYNDHURST  
Hampshire  
SO43 7BU

The Parochial Church Council has responsibility to ensure that any churchyard, open or closed\*, in their care is a safe place, and that this responsibility extends to the checking of upright monuments for stability. In every instance where testing of headstones is proposed, the church's inspecting architect and its insurers should be consulted.

If a parish is aware of an unsafe monument and feels that urgent action is needed, the monument may be laid flat without a faculty, provided that one is applied for as soon as is reasonably possible. (This will not be treated as a confirmatory faculty for the purposes of fees payable.) If stones are laid flat, measures, such as clear marking, should be taken to reduce the likelihood of their becoming a trip hazard. Other methods of dealing with unstable memorials include driving in a special metal stake and binding the stone to the stake with strong tape. This is specialist work and a warning/explanatory sign should be left on the stone. Alternatively, an unsafe stone or area could be temporarily fenced off, and warning notices displayed.

There are various methods of testing headstones, and the use of a calibrated instrument called a "Topple Tester"\*\*\* is one of them. These instruments are expensive, but can be hired. Testing can be carried out by hand, but no attempt should be made to rock a stone in order to discover whether it or not it is stable.

Any parish which thinks that it is possible that one or more monuments may have to be laid flat must apply for a faculty before testing. The faculty will be a standard form and will allow for the laying flat of any monument found to be unsafe, without limit of time. The following conditions will apply to each faculty:

- Whenever it is reasonably practicable to do so the Petitioner shall give any person known to have an interest in a monument notice that it has been found

unstable on testing and afford that person reasonable opportunity to remedy the defect.

- The Petitioner shall abide by any further direction which the Court may give in relation to any monument affected by the faculty.
- Any person having an interest in a monument so affected may make application to the Registry by letter for directions under the faculty.
- A list of monuments displaced under the faculty shall be maintained by the Petitioner and a copy of such list, updated annually, shall be lodged at the Registry.
- A photographic record shall be kept of each monument displaced pursuant to the faculty.
- A leaflet on safety in burial grounds and further information is available from the Diocesan Registry on request.

*\* In the case of a churchyard which has been formally closed by Order in Council and for the maintenance of which the local authority has taken over responsibility, the responsibility for safety is shared between the incumbent and PCC as "landowners" and the local authority. It will be a matter for negotiation between the two bodies as to who carries out any testing of upright monuments and how it is paid for. This is an area where there are arguments currently about the law and careful advice should be taken before taking any action on matters of safety in closed churchyards.*

*\*\* This does not indicate that the Chancellor has recommended the use of Topple Testers in churchyards in the diocese. Before you decide to use a Topple Tester, you should contact your insurance company, as it is known that the Ecclesiastical Insurance Group does not recommend the use of these instruments. Details of the Topple Tester are available on [www.pearsonpanke.co.uk](http://www.pearsonpanke.co.uk). In 2005 a Topple Tester costs £860 including postage and packing. The minimum hire charge is £130.*

### **Reservation of grave spaces**

It is possible for a grave space to be legally reserved by authority of a faculty, the jurisdiction to do so resting wholly in the judicial discretion of the Consistory Court. A petition for faculty must be lodged by sending it to the Diocesan Registrar, Diocesan Registry, Minster Chambers, 42/44 Castle Street, Salisbury, Wilts SP1 3TX.

The following details must be included in a petition:

1. Full name, address and age of each petitioner and if more than one petitioner, their relationship, e.g. husband and wife
2. The full name and other personal details of any other person or persons for whom the grave space is also desired and that person's relationship to petitioner. Normally each person desiring to be buried in the plot asked for should be a petitioner and if not for some special reason, then his written consent to the petition or copy of any Power of Attorney, if applicable, should be attached to the petition.
3. The area of space to be reserved, given in square feet.
4. Whether the space(s) to be reserved is to be used for a double depth grave or single side by side graves, for full burials or burial of cremated remains.

5. The amount of money the petitioner undertakes to pay to the Parochial Church Council towards the upkeep and maintenance of the churchyard. This has to be agreed before a petition is lodged although it becomes payable only when a faculty is issued. The Incumbent and PCC can advise on the amounts usually paid.

The following documents must accompany a petition:

- A plan of the churchyard (or a portion of it) showing the exact position of the space to be appropriated and giving measurements and distances from the boundaries of the churchyard or some permanent conspicuous point, and ideally the row and grave number. The plan need not be elaborate but it must be sufficient to enable the plot to be identified at the time the petition is lodged and in the future.
- The written consent of the Incumbent and Churchwardens to the proposed reservation.
- A copy Resolution of the PCC, signed by the Chairman or Secretary, supporting the petitioner's request, naming the applicant and identifying the grave space.
- Any other document or statement the petitioner may consider to be relevant to his/her request and may assist the Court.

A faculty is limited to the number of years decided by the Court partly out of consideration of the age of each applicant. (Under Section 8 of the Faculty Jurisdiction Measure 1964 no such faculty can exceed the maximum term of 100 years.)

The faculty fee payable by cheque to Batt Broadbent does change at the beginning of each new year. For the year 2009 it is £156.85.