

Trees in our churchyards

This guidance is given by the Church Buildings Council to all parochial church councils under section 6(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

From 1st January 2016, it will be possible to carry out a range of works to trees in a churchyard without a faculty: see List A and List B in Schedule 1 to the Faculty Jurisdiction Rules 2015. Carrying out works in List A or List B is subject to conditions set out in the list. It is a condition of carrying out any works to trees under List A or List B that regard is had to this guidance. Additionally, in the case of List B works, the approval of the Archdeacon must be obtained before they are carried out.

The felling of tree that is neither dead nor dying and which has not become dangerous cannot be carried out under List A or List B and requires a faculty.

Trees and hedges which play a particularly important role in the churchyard should be identified and incorporated into in a church's Statement of Significance including size, antiquity, landscape importance and biodiversity. Ancient yews and other trees are particularly significant and may even be older than the church building (<http://www.ancient-yew.org/gazetteer.php> and <http://www.ancient-tree-hunt.org.uk/>). It is also useful to keep a plan of the churchyard indicating the trees present in relation to the church and gravestones so that any records of inspection or proposals of work can be easily outlined.

It is essential that parishes always use a professional arboriculturist for work on trees in the church because:

- It should ensure that health and safety and other legislative requirements are complied with.
- All the necessary equipment including harnesses, ropes, helmets etc are provided.
- Knowledge – the work will be done to the higher standards by those who value trees and understand how to manage them.
- Insurance liabilities appropriate to the work are fully covered.
- Trees are a valuable feature of most churchyards. The oldest pre-date the church building, even by many hundreds of years.
- The waste products from the trees will removed as appropriate and not left for the PCC to clear up.

Directories of Arboricultural Consultants and of Contractors (Tree Surgeons) are maintained by the Arboricultural Association (<http://www.trees.org.uk>) which is a registered charity concerned with tree care. It is wise to ask any contractor to carry out work in accordance with best practice guidance found in BS 3998:2010 & BS 5837:2012. Some Local Authorities employ an Arboricultural Officer, who may be able to give advice as to the safety of a tree in a churchyard and as to the type of maintenance work required.

Emergency work

All trees are capable of shedding deadwood and can consequently be hazardous to people using the churchyard. 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 Arboricultural Contractor.

If a tree suddenly poses an immediate and substantial risk of harm to people or property, such as after a storm:

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- Compile evidence (photographs) of the risk of harm posed by the tree before any work is done and whatever advice that can be obtained.
- Do whatever is judged to be the minimum necessary to make it safe, including the options of fencing off the area. This is not *carte blanche* to go ahead without consent: felling a safe tree without the necessary consent would be unlawful.
- Do not clear away on-the-spot evidence of the risk of harm posed by the tree (or failure, if after an event), such as rotten parts of the tree, but leave this safely on site until the relevant people have had a chance to examine them.
- If the tree is subject to a TPO or the churchyard is in a conservation area the local authority should be contacted before any works are carried out.
- If your churchyard forms part of a registered park or garden, or if the trees in the curtilage form part of the setting of the listed building, or if it is in the Gazetteer of ancient yews you should consult the local authority (conservation planning officer) about what to do next.

Works (other than felling) to trees in respect of which a TPO is in force or which is in a conservation area

If you are carrying out major pruning, eg removal of large branches or pollarding, the first step should be to ascertain from your Local Authority whether the tree in question is subject to a TPO, is in a Conservation Area, a Scheduled Ancient Monument, a Registered Historic Park or Garden, or, in the case of a hedge, is over 30 years old. If any of these apply, the Local Authority will advise you.

Depending on the extent of the proposed work you are likely to need a written report from a professional arboriculturist. Major work on trees is best left to a specialist. For more information see the guidance note on Tree Inspection. Do also consider the role trees play as a habitat for birds and bats. If you discover roosting bats in a tree you will legally require further advice.

It is helpful to produce a sketch plan and photographs identifying the tree/s affected.

Where regular major work needs to be undertaken, for example pollarding which once begun requires on-going attention to prevent splitting as the tree grows, the Archdeacon's authorisation could be for a programme of work over a number of years.

Planting new trees

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.

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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:

- Is there an historic planting scheme or churchyard design?
- 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).
- Are there existing trees for free, e.g. naturally regenerating species that would thrive better than a planted one?
- What will be the height and span of a tree in its maturity? - 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)?
- What about future development e.g. proposed future extensions, or buildings? - Will it impact on archaeological evidence?
- Will it significantly reduce the area for future burials?
- 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)
- Is it a species that will cause problems from roots, poisonous fruit etc.?
- Will good planting practice and after care be followed? (There is no point in planting the tree and then watching it die).

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 but note:

- 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 with a fork and 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.
- If necessary prune to ensure a good shape. - 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.
- In later years maintain regular pruning to strengthen the tree and ensure healthy growth.

In all cases the DAC Secretary and Archdeacon should be contacted before works are carried out. They will advise you if you need to apply for a faculty.

More extensive works

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If the PCC wishes to fell a tree which is sound but is occupying a space in the churchyard required for some other use the advice of the DAC should be sought and a faculty must also be obtained.

Do not forget that an old tree may decline very slowly and that an ancient or veteran tree is historically significant and more biodiverse than a young or middle-aged tree (for example bats, owls, woodpeckers and many invertebrates thrive on, and in, old trees). Appropriate arboricultural management can extend the life of an ancient tree for many decades and more, and planting a new tree anywhere near an old one is one of the most common ways of threatening and killing a veteran specimen.

One common scenario is where an extension is planned to the building. The impact of the extension on existing trees should be assessed and significant ones protected by the design details (e.g. foundation methods) and during work (e.g. Root Protection Areas).

Where there is concern about hazards from significant trees, the balance of risks and benefits should be assessed and alternative mitigation strategies considered. Options analysis of mitigation and partial retention as well as felling should be provided. For instance, in the case of safety, careful pruning, combined with keeping people and property out of range and an inspection plan may control the risk while retaining the tree and much of its significance.

Where there is concern that trees are threatening the fabric of the church, good evidence should be provided for this. There is a tendency to presume trees are the cause when several other sources can be involved, e.g. leaking drains. Rather than felling trees it may be possible to retain them with, for example, the use of root barriers. Removing a mature tree which has long been growing close to a building can cause more problems than if the tree were to be retained. Much will depend on soil conditions, so it is important to take proper advice. In general, government advice for TPO cases should be followed for any significant trees.

If trees have been felled the stump might be removed. This is best done by a tree surgeon using a portable stump grinding machine to take the bole down below ground level.

Before undertaking tree work the following points must be considered:

Bats

The possible existence of bats has to be considered when undertaking work on trees in a churchyard. Under the terms of the EC Directive 92/43/EEC damage or destruction of a bat roost damage or destruction of a bat roost is termed an 'absolute' offence, that is to say it does not matter how the damage or destruction took place, if it occurred then it is an offence. This has implications when it comes to dealing with bats in trees because if a tree limb is pruned from a tree which is later shown to contain a bat roost, or a roost is damaged or destroyed in the process of pruning, then the person who undertook the pruning will have committed an offence, for which there is (in theory) no defence.

It is notoriously difficult and time consuming to survey trees for bats and even when surveys have been undertaken, it is no guarantee that bats will not be present since bats often use trees in a very transitory nature, i.e. a single bat might roost under a loose flap of bark one night and then never return. Sometimes larger populations of bats use trees and in these instances there may be obvious signs but quite often the signs are hard to spot in difficult and out of reach locations.

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Given the difficulties with surveying trees for bat use and the way the legislation is worded around damage or destruction of bats roosts, it is not possible to recommend one single approach. Instead a risk based approach should be taken with more care given to trees which are known to, or have a high potential of, supporting bats.

We therefore recommend that the best source of advice is your professional arboriculturist who will know which trees can be pruned or felled without worrying about bats or if they are uncertain we will recommend seeking further advice from an ecologist. Bear in mind that there if a bat roost in a tree in a churchyard this is to be welcomed because it will cause far fewer problems than if the bats move into the church.

Threats to trees from other works

Care should be taken when undertaking work adjacent to trees in the Churchyard to prevent damage. Particular threats include: parking over roots, bonfires, compost heaps under trees and weed killing on nearby paths. Building work (associated with extensions, new services, new paths etc.) or burials close to trees should be avoided wherever possible. Any application for a Faculty for building work should consider if trees might be affected.

Threats to the public

It is important to remember that a PCC has a duty of care to those who might be injured by churchyard trees. This simply requires a common sense approach and a demonstration that reasonable and regular attention in proportion to the risk, has been taken to avoid foreseeable risk of injury to people or property. This also applies when work to trees is being undertaken by a contractor who would be fully insured to third party liabilities. Trees should be the subject of visual inspection during QIs and this should be included in the diocesan scheme of inspection.

Tree Inspections

The overall risk to the public is extremely low, there is about a 1 in 10 million chance of being killed by a falling tree (or part of a tree) in any given year.

Nevertheless, considerable concern and uncertainty about managing trees for safety has arisen in the last few years.

After an accident, courts generally ask: was the tree inspected at an appropriate interval? Was a risk of failure reasonably obvious and spotted? Was action taken? If the answer to any one of these questions is 'no', then the individual officers of the PCC could be found guilty of negligence.

Guidance relating to inspection frequency varies greatly; there is no uniformly accepted frequency appropriate to all situations. The decision is a common sense judgment for the PCC. However it is recommended that regular inspections by a professional arboriculturist of all mature trees in the churchyard should take place every 5 years at the time of the quinquennial inspection under the Inspection of Churches Measure 1995 with the tree report annexed to the quinquennial report. The arboriculturist will need the guidance of the PCC in identifying areas in the churchyard with varying degrees of public presence and those trees which might, if they fell, pose a risk to people or property. Between the formal inspections, congregation members need to keep an eye out for any deterioration in the trees or other problems developing, especially after storms. If there are concerns, an arboriculturist needs to be consulted. Further action may include monitoring of the defect, excluding the public from the vicinity of the tree, pruning the tree, or, in extreme cases, the felling of the tree.

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Remember that no tree can be guaranteed to be safe. A disproportionate response to the actual risks posed by trees leads to unnecessary intervention and can diminish the churchyard, depriving the whole community of the enjoyment of trees and their wider benefits.

Keeping Records

Keeping Records, including maps, can, in the extremely rare event of an accident, be important as proof of reasonable tree management and notes of any inspection should be kept. Should any tree be identified as posing a potential risk, the PCC should ensure that a written record of an arboriculturist's inspection is retained. It is not necessary to keep detailed notes for every tree inspected; but it is wise to employ a proforma, listing every tree in the churchyard, 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. Include on your record any sign of bats, owls or other significant flora and fauna associated with your trees. Should it be necessary to call in an arboriculturist, whose inspection might include climbing surveys, ensure that any advice is then documented, together with a record of any associated tree works.

When inspections are carried out, records can demonstrate that the PCC has met a key component of their duty of care.

Hedges

Hedges help keep a churchyard secure, contribute to the landscape value of churchyards, and may be evidence of the history of, for example, the expansion of the churchyard. The removal of a hedge should not be undertaken without careful thought. Because of the complexity of the Hedgerow Regulations (1997) early consultation with the local authority is strongly recommended, if the possible removal of the whole or part of a hedge in a churchyard is under consideration.

Sale of timber

Where a tree in a churchyard is felled, topped or lopped, the PCC may sell the timber or dispose of it in some other way. The net proceeds of any sale must be used for the maintenance of the church or churchyard.

Checklists:

- The PCC has a duty of care to select contractors who can safely undertake the level of complexity of work that is planned and have a professional arboriculturist in their team.
- These websites make some checks on those who advertise with them: TreeCare.info (www.treecare.info) Trustmark (www.trustmark.org.uk).
- The International Society of Arboriculture maintains a list of individuals who are Certified Arborists (www.isa-arbor.com).
- The Arboricultural Association (www.trees.org.uk) has a directory of Approved Contractors who have been thoroughly checked. Always check that a company's membership is still current.
- In all cases, PCCs, in their own interests, should require contractors to provide evidence of their: (i) public, employers', and professional liabilities insurances, (ii) a risk assessment and (iii) a method statement.

The public liability should be no less than £3 million and £5 million is the industry's best practice. Contractors should provide a proper contract and should be asked to work to the British Standard (BS3998:2010 Recommendations for Tree Work). It is helpful to obtain

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references and assess the reputation of the company. In addition to covering its duty of care, making these checks on a contractor also assures a PCC that the work will be undertaken well and fairly.

It is important to notify the contractor of any known churchyard hazards and work closely with them to ensure safety on site. The contract or agreement should cover safety provisions and the PCC should keep an eye on work to make sure these are being followed. If in doubt you can contact the local authority officer responsible for enforcing the Health and Safety at Work Act in respect of religious organisations.

Historic England's Register of Parks & Gardens of Special Historic Interest can be found on <http://www.english-heritage.org.uk/caring/listing/registered-parks-and-gardens/>.

(This information is taken from 'guidance to parochial church councils on the planting, felling, lopping and topping of trees in churchyards by the Church Building Council 2018).

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