

Rupert Allen
DAC Secretary & Database Manager
Direct Line: 0116 261 5332 (with voicemail)
Applications: <https://facultyonline.churchofengland.org/>
Architect submissions: dac@lecportal.org
Email: rupert.allen@leccofe.org
Website: www.leicester.anglican.org/dac



Diocesan Advisory Committee
for the Care of Churches

The Care of the fabric, items (fixed and unfixed) and furniture in Churches and Churchyards

1. In determining whether permission is required for anything (**regardless** of whether it / they are / are not in the Church Log Book, Terrier or Inventory), the starting point is **always** the Minor Works List that is available on the DAC section of the Diocesan website or from the DAC Secretary. The rule is that unless Lists A and B in Schedule 1 of the Faculty Jurisdiction Rules 2015 clearly and unambiguously state that either: -

- No permission

or

- Minor Works permission from the Archdeacon

is required, then the D/PCC will need to obtain a Notification of Advice from the DAC and Faculty from the Chancellor.

2. The arguments

- “it’s like-for-like”
- “it was recommended by the Quinquennial Inspection Report”
- “it’s not in the ...”
- “it’s not fixed to the church”
- “It’s temporary”

are mythical and do not determine whether permission is required. The Minor Works List alone sets out what does and does not require Minor Works / Faculty permission

3. If there is any doubt as to whether permission is required, assume it is and contact either the Archdeacon and/or DAC Secretary immediately to check and find out how to obtain it.

4. In any regard, any action and/or expensive should be sanctioned by the D/PCC. If a Churchwarden, or any other person for that matter, undertakes works and/or incurs expense that is not formally sanctioned, they would find themselves to be personally liable for their actions and that expenditure. The D/PCC would have no obligation to subsequently authorize the action taken or the expenditure incurred supposedly in their name.

5. If the D/PCC fails to seek the appropriate permission **in advance** the D/PCC may find itself in a very difficult position that could lead, at the very least, to censure by the Consistory Court (and even a financial penalty) or, at the worst, being required by the Chancellor for the Diocese to undo that which has been done at the D/PCC’s expense.

St Martins House
7 Peacock Lane
Leicester
LE1 5PZ

6. The responsibility of care for churches and churchyards is set out in the Canons of the Church of England. Canon F 13 says
 2. The like care shall be taken that the churchyards be duly fenced, and that the said fences be maintained at the charge of those to whom by law or custom the liability belongs, and that the churchyards be kept in such an orderly and decent manner as becomes consecrated ground.
 3. It shall be the duty of the minister and churchwardens, if any alterations, additions, removals, or repairs are proposed to be made in the fabric, ornaments, or furniture of the church, to obtain the faculty or licence of the Ordinary before proceeding to execute the same.
 4. In the case of every parochial church and chapel, a record of all alterations, additions, removals, or repairs so executed shall be kept in a book to be provided for the purpose and the record shall indicate where specifications and plans may be inspected if not deposited with the book.

N.B. In this context, reference to the Ordinary should be interpreted as meaning the Chancellor of the Diocese.

7. With regard to Churchyards, the responsibility is as follows: -

Every Parochial Church Council has a responsibility of caring for trees in the churchyard, whether the churchyard is open or closed, unless, in the case of a closed churchyard, the Parochial Church Council has passed on its responsibility for maintenance to the local authority. This is because a PCC succeeded to what, in earlier years, were the obligations of the Churchwardens in relation to the churchyard. The Burial Act of 1855 required that the Churchwardens “shall maintain such churchyard in decent order and also do the necessary repair of the walls and other fences thereof.” It is generally relatively easy to determine what is involved in the repair of walls and fences but it is sometimes difficult to determining what is involved in maintaining the churchyard “in decent order.” It was written many years ago that the duty of the churchwardens (and therefore the same duty passed in due time to a PCC from the Churchwardens with the creation of PCCs) is, “to see that the churchyard be kept in a decent and fitting manner, that it shall be cleared of all rubbish, muck, thorns, briars, shrubs and anything else that may annoy parishioners when they come into it.”

Maintaining the churchyard in decent order will generally involve dealing with trees and bushes. Under pre-Reformation canon law, timber growing in a churchyard was owned by the Incumbent who was required not to fell it other than for the purpose of using it for the purpose of repairing the chancel or the buildings of the benefice. Currently, the law applicable to trees in churchyards is in section 6 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 as amended by the Church of England Miscellaneous Provisions Measure 1995. In brief, this provides that

- (1) The powers duties and liabilities of a PCC with respect to the care and maintenance of a Churchyard which the Council is liable to maintain shall extend to the trees therein including those proposed to be planted.
- (2) Where a tree in a churchyard.....is felled lopped or topped the PCC may sell or otherwise dispose of the timber and the net proceeds of any sale shall be paid to the PCC and applied for the maintenance of the Church or Churchyard.

The PCC will not have responsibility for trees or the rest of the churchyard where the churchyard has been closed by Order in Council and where the responsibility for maintenance has passed by notice from the PCC either to the Parish Council or District Council.