

PRACTICAL GUIDE

Building work to church premises – some legal and regulatory issues

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1.0 Introduction

Anyone who is responsible for the use and upkeep of church premises will eventually have to make arrangements for some form of building work – be it the replacement of a handful of slipped slates or the erection of a new building.

Some fellowships may be able to call on construction professionals within their fellowship, or known to them, for basic advice and to avoid legal pitfalls. For others, these notes are offered as a guide to some of the legal and regulatory issues surrounding construction work today.

2.0 Planning Permission

Most of us are aware that Planning Permission is required if we wish to erect a new building. It is also required for all but the smallest extensions, for some building alterations and for “change of use” of premises. The last of these may apply even where there is no physical change to the building.

Planning applications are dealt with by District or Borough Councils. While a fee is charged for making a planning application, most Planning Departments operate a Pre-Application Advice service, where they charge for discussion prior to receiving applications. Beware as this may be expensive! Some Councils still operate a Duty Officer system enabling you to obtain informal and free advice on the need for and the likelihood of obtaining Planning Permission.

When someone who is not the freeholder (owner) of the property makes a planning application, the application process involves service of notice on the freeholder. That notice should be sent to Church Growth Trust in cases where we are the owner, sole trustee or custodian trustee for church premises.

Where the building is Listed or within a Conservation Area, the requirements for obtaining planning consent (Listed Building Consent or Conservation Area Consent) are increased. Changes to the appearance of the building and any demolition is likely to require consent.

3.0 Building Regulations Approval

The Building Regulations set technical standards, governing a wide range of building work that now includes the installation of replacement windows and doors and insulation where ceilings are replaced. Amongst the many areas they regulate are those relating to disability access (which are also, more extensively, covered by the Equality Act 2010 and were previously under the Disability Discrimination Act 1995).

As for Planning Permission, it is the District or Borough Council that deals with Building Regulations. Building Control Officers will usually be available for initial advice prior to a formal application. Fees for Building Control services are usually charged in instalments, the first of which is due when applying for approval and the second when work begins and the Building Control Officer commences his inspections. For larger projects it may be more helpful for churches to consider Approved Inspectors, who are independent of the Council, but are often more helpful in the planning and early development stages.

4.0 The Party Wall etc. Act 1996

The Party Wall etc Act 1996 extended to the whole of England and Wales a system of regulation long practised in inner London. It sets out procedures to be followed where building work affects either a party wall (the wall separating two properties) or where foundations are being dug within specified distances of a neighbour's property.

It safeguards both the property of adjacent owners and the right of building owners to carry out work that may affect their neighbours.

The level of formality in the processes laid down by the Act may vary – a good relationship with neighbours can simplify matters enormously – but failure to serve required notices could be grounds for court action.

In some cases it will be necessary to appoint a Party Wall Surveyor to administer the provisions of the Act.

A publication "The Party Wall etc Act 1996: explanatory booklet" which outlines the Act's requirements is published by the Office of the Deputy Prime Minister: - <https://www.gov.uk/party-wall-etc-act-1996-guidance>. See also Church Growth Trust's practical guide on the Party Wall etc Act.

5.0 The Construction (Design and Management) Regulations 2015

The Construction (Design and Management) Regulations 2015, often abbreviated to CDM, govern health and safety in construction. They introduced a new principle of imposing specific duties in respect of health and safety on clients (the people who commission building work) as well as on consultants and contractors. Non-compliance with the CDM Regulations can lead to criminal charges.

Any construction professional employed as the "principal designer" should be appointed by the client in writing. This is normally the architect. The "principal designer" has a duty under the Regulations to alert clients to their duties. The principal designer will co-ordinate health and safety aspects of the project design and the inception and proper completion of the building process.

Publications giving advice on the subject include the Health and Safety Executive booklet "Want construction work done safely?":- <http://www.hse.gov.uk/pubns/indg411.pdf>, <http://www.hse.gov.uk/pubns/misc193.pdf> booklets published by the Association For Project Safety:- <https://www.aps.org.uk/publications> and "CDM 2015 Industry Guidance for Clients" ISBN 978-1-85751-389-9. It is 22 pages and an in-depth guide specifically regarding the responsibilities and duties of clients under the Regulations. Published by CITB (Construction Industry Training Board) and available as a free download from <http://www.citb.co.uk/documents/cdm%20regs/2015/cdm-2015-clients-interactive.pdf>. See also CGT's practical guide on CDM Regulations.

6.0 Value Added Tax

The general rule is that VAT is payable on any building work or consultancy services provided by VAT registered businesses. However, a new building for use as a "relevant charitable building" or the erection of an independent annex to such a building may be exempt from VAT or "zero-rated". Limited other building works (e.g. disabled access) may also qualify for zero-rating. Consultancy services cannot be zero-rated whatever the nature of the building work to which they relate.

It cannot be assumed that a builder will automatically apply zero-rating and, indeed, he is not allowed to unless he receives from his customer a “Certificate for Developers and Building Contractors in respect of Relevant Residential and Relevant Charitable Buildings”.

Guidance on whether VAT applies to specific building work can be obtained from local VAT Advice Centres although their specialist knowledge may be limited and will be framed from a Revenue & Customs’ perspective. You are strongly advised to obtain independent specialist advice where any major projects are contemplated. Significant savings can be made where early advice is taken. Stewardship have produced a paper on VAT and Churches, which can be purchased for £24.50 (see www.stewardship.oxatis.com/PBSCCatalog.asp). We are also able to refer churches and Christian agencies to a suitable specialist if required.

7.0 Further Advice

These brief notes can only outline some basic issues. The relevant local authority departments, Health & Safety Executive and HM Revenue & Customs all provide some advice without charge. For major building projects, and some smaller ones, professional advice specific to your particular needs should be sought.

For most “building” issues the first contact is likely to be with an Architect or Building Surveyor or, possibly, an Architectural Technologist. Where CDM applies a principal designer should be appointed first or, at least, very early in the process. This is normally the architect.

Other consultants - Quantity Surveyors, Structural Engineers, Mechanical or Electrical Services Engineers, Professional Accountants or Tax Advisors – may be approached as their specific skills are required.

Membership of relevant professional bodies is an indication of the consultants’ qualifications and, in most cases, will require that a substantial level of Professional Indemnity Insurance be maintained.

Although these are no substitute for proper professional advice, HM Revenue & Customs publish various Guidance Notices, including Notice 701/1 (Charities).

8.0 Useful Contact Details

Organisation	Telephone Number	Website Address
Royal Institution of Chartered Surveyors	0870 333 1600	www.rics.org
Royal Institute of British Architects	0207 580 5533	http://www.architecture.com
Association for Project Safety	08456 121 290	www.aps.org.uk
HM Revenue & Customs	0845 010 9000	www.hmrc.gov.uk
Health & Safety Executive	0870 154 5500	www.hse.gov.uk