

## GUIDANCE NOTES

### INSTALLATION OF TELECOMMUNICATION EQUIPMENT IN CHURCHES

1. A Faculty is required and the normal procedure must be followed.
2. As soon as an approach is received, the parish should obtain the agreement in writing of the telecom company to pay all costs incurred by the Parish - whether or not an agreement is reached. These costs will include (inter alia) the professional fees and expenses of the church architect, structural engineer, surveyor, solicitors and lightning conductor consultant.
3. The Parish should consult its architect - in particular for advice as to whether the Church tower (or wherever the equipment is to be installed) will take the weight of the equipment. If there is any doubt, a structural engineer must be consulted. The architect will be required to supervise the installation. The architect should be provided with a copy of these guidance notes.
4. The Parish should instruct a surveyor to negotiate the financial terms for the agreement - usually an annual fee. The fee should be assessed having regard to the Surveyor's Regulations for Trust Property. The surveyor should be experienced in dealing with this type of matter. An estate agent is not suitable. The surveyor will be required to provide a certificate that the financial terms which he agrees, subject to contract and faculty, represent the current open market value of the licence sought by the telecom company. The surveyor should be provided with a copy of these guidance notes. It is important that the Parish should not simply accept the first offer it receives from the telecom company.
5. The Parish may need to instruct a solicitor to negotiate the form of Licence Agreement with the telecom company. A precedent form of licence is available from the Registry,
6. Where the church is a listed building or situate in a conservation area, English Heritage should be consulted and provided with a specification and drawing of what is proposed - both inside and outside of the church.

7. Planning permission will be necessary - but will be obtained by the telecom company.
8. The Parish should consult its insurers regarding the installation.
9. If the Church has a lightning conductor or similar protection, the Parish must seek the advice of a specialist lightning conductor consultant to ensure that the proposed installation does not adversely affect the existing protection. If there is no existing protection, the advice of such a consultant must be obtained -eg to see whether the proposed installation increases the lightning hazard. The insurers are likely to require this information.
10. The telecom company must provide to the Parish sufficient copies - for the church architect, the Diocesan Advisory Committee and the Diocesan Registry - of the detailed drawings and specification of the installation including:
  - the size, type, shape and colour of the aerials/antennae
  - the location of all equipment
  - the cable runs
  - any work affecting the church fabric - including drilling and cutting through the church walls
  - any work affecting the church, fixtures, fittings, furniture and furnishings.
11. The Church architect should advise the Parish whether the organ or other items in the Church require protection during the installation.
12. The agreement with the telecom company must be submitted for approval with the Faculty Application and MUST NOT BE SIGNED before a Faculty is granted.
13. There follows specimen clauses for inclusion in the Licence Agreement with the telecom company ( and as referred to in paragraph 5 above a precedent form of licence is available from the Registry):

- the Incumbent (or the Consistory Court during a vacancy) will be a party to the Agreement to grant the Licence to the telecom company. The PCC will also be party to the Agreement for the purposes of receiving the licence fee. The obligations undertaken by the telecom company will be owed to the Incumbent and PCC. The Agreement will contain a statement that no personal liability shall attach to the Incumbent and churchwardens and that neither party will be liable for economic loss.
- a statement that the Licence Agreement does not grant the telecom company a tenancy or exclusive possession of any part of the Church or churchyard.
- an undertaking by the telecom company to carry out the installation and all associated work (including the laying of cables) to the satisfaction of the Church architect, in accordance with the requirements of the Church insurers and with HSE regulations and the conditions of the planning permission and any other requirements of the local authority.
- an undertaking by the telecom company not to install any additional equipment, or to make any alterations to the equipment affecting the external appearance of the Church or churchyard, without a further faculty.
- if any cables are to be laid in any part of the churchyard which has been used as a burial ground or garden of remembrance an undertaking not to disturb or interfere with any burial of human remains or interment of cremated remains including any grave, monument or memorial and in the event of any remains being discovered to stop work and notify the Incumbent who should then seek directions of the Registrar.
- an undertaking by the telecom company to pay all rates and outgoings which become payable as a result of the installation or operation of the equipment.

- an undertaking by the telecom company to pay any additional insurance premium incurred by the Parish in respect of the Church and churchyard as a result of the installation and/or operation of the equipment.
- an undertaking by the telecom company to pay any additional costs of maintaining the Church and churchyard incurred by the Parish as a result of the installation and/or operation of the equipment.
- an undertaking by the telecom company to install a separate meter to measure the electricity consumption of its equipment and to pay all electricity accounts, including standing charges, direct to the electricity supply company, and not to the Parish.
- the equipment is to be protected by circuit breakers or other approved method of isolating the equipment from the mains electricity supply in the event of any fault so as not to interrupt the electricity supply to the Church
  - an emergency isolator switch should be provided in a position accessible to the Incumbent and Churchwardens.
- an undertaking by the telecom company that its equipment will not generate any noise or vibration at a level which is unacceptable to the Incumbent and PCC. If there is unacceptable noise or vibration, the telecom company must cease to operate the equipment.
- the equipment must not interfere with any existing electrical installations ( eg sound reinforcement or induction loop systems ) in the Church or in neighbouring properties
- the equipment must be operated in accordance with the requirements and recommendations of the National Radiological Protection Board, the Radiocommunications Agency of the Department of Trade and Industry and of any other competent authority
- access to the equipment whether for inspection repair or maintenance

must be by prior arrangement with the Incumbent and churchwardens. There is to be no interruption with Church services. No work is to be carried out on Sundays save in an emergency. Arrangements for immediate access in the event of an emergency must be made. The telecom company must not be given a church key. It will be necessary to provide the telecom company with the names addresses and telephone numbers of at least two persons (preferably the Incumbent and churchwardens) who can be contacted at short notice to arrange emergency access. The telecom company should provide the Parish ( eg the Incumbent and churchwardens) with the name address and telephone number ( and extension number) of personnel to contact when necessary including a 24 hour emergency contact arrangement

- during the carrying out of the installation and any later work (including inspection) the employees and any contractors of the telecom company will behave in a manner appropriate to a Church of God
- the equipment is to be used for purposes in connection with the operation of a personal communication or mobile telephone network only
- an undertaking by the telecom company ( so far as technology allows) to prevent the equipment being used for unlawful or immoral purposes or for any purposes referred to in section 43 of the Telecommunications Act 1984
- an undertaking by the telecom company to make good any damage to the Church ( Church fabric fixtures fittings furniture and furnishings) caused during the installation, the carrying out of any later work or resulting from the operation of the equipment
- an undertaking by the telecom company to indemnify the Parish in respect of all claims by third parties arising from the installation or operation of the equipment

- an undertaking by the telecom company to maintain insurance cover of not less than £5 million against liability for damage to the Church (fabric fixtures fittings furniture and furnishings) and public and third party liability in respect of personal injury (including death) and damage to property arising out of the installation of or carrying out of any repairs or other works to and the operation of the equipment
- the benefit of the Agreement is personal to and cannot be assigned by the telecom company to another operator. Where the telecom company wishes to permit another operator to share the use of the equipment, the consent of the Archdeacon will be required and an increased licence fee will be payable
- the Agreement may be terminated by the Parish during the initial fixed term in the event of any breach by the telecom company of its obligations including non-payment of the licence fee
- the Agreement may be terminated by the telecom company during the initial fixed term on not less than 3 month's prior notice
- on termination a faculty will be required to authorise the removal of the equipment and the reinstatement of the Church

14. The application to the DAC for its recommendation in respect of the proposed installation should be accompanied by:-

- plans drawings and specifications of the proposed work
- certified PCC resolution approving the installation and the proposed financial terms, and instructing the named Church architect to supervise/inspect the work during the course of the installation
- a letter from the Church Architect confirming that he/she has inspected and approves the plans drawings and specifications and that he/she is willing to supervise/inspect the work during the course of the installation

- a copy of the lightning conductor consultant's report
- a copy of the Church insurer's letter confirming that the Church insurance will not be affected by the installation and operation of the equipment
- the surveyor's certificate that the financial terms represent the current open market value of the permissions to be licensed in respect of the installation and operation of the equipment

15. The subsequent application for faculty should include among the submissions the draft Licence Agreement

NB References in these notes to the Incumbent are to be read as references during a vacancy to any Priest in Charge or if none the Rural Dean - except as regards the granting of the Licence

November 1997

Amended January 1999

## **ADDENDUM FOR BATH AND WELLS DIOCESE**

In November 1998 the Chancellor gave preliminary directions in connection with a petition for faculty for a telecommunications aerial on a church tower as follows:-

"Before deciding whether to grant this petition, even if it is unopposed, I need to be satisfied that there are "rare and exceptional" circumstances which justify it (See Re All Saints, Harborough Magna). To this end I shall need a letter from the parish specifying the grounds upon which they rely in support of the installation, and satisfying me that they deliberated upon the proposal with sufficient care before giving it their approval. A letter from the Archdeacon setting out his views will also be of value to me"

The application to which the Chancellor was referring in his judgement was for the erection of an aerial for a 10 year term. The Chancellor commented "The ten year term is far longer than that contemplated in the Harborough Magna case. I do not proposed to impose a different term, but the Petitioners and the parish must understand that the faculty will be granted until further order (if it is right to allow the installation in the first place) and with the result that the Court has a residual power at any time to terminate the arrangement and override the licence"

The Harborough Magna case was reported in the All England Law Reports [1992] 4 All ER on pages 950 and 951 and the relevant extracts are:-

"I should just add that in general it is my view that a faculty for use of a church for secular purposes only should be granted in rare and exceptional circumstances. In cases such as this each one must be considered on its merits.....I recommend that each parish looks at any individual case very carefully before deciding whether or not to present such a petition."

"As did Chancellor Judge Goodman, I believe that long-term licences ought not at this stage to be granted. It seems .....the proper term should be no longer than 5 years. In addition there should be, to start with, a period of 2 years where either party has the

right, on 6 months' notice, to end the licence. At the expiry of the 5 year period there ought to be provision for an extension year by year with each party having the right to give 12 months' notice to determine the licence, to expire on the anniversary of the granting of the licence"

February 1999