

building work to church premises – some legal and regulatory issues

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stewardship[®]

PO Box 99, Loughton, Essex, IG10 3QJ

t: 08452 26 26 27

e: enquiries@stewardship.org.uk

w: www.stewardship.org.uk

CONTACT DETAILS

Stewardship

PO Box 99, Loughton, Essex IG10 3QJ

t 08452 26 26 27

f 020 8502 5333

e enquiries@stewardship.org.uk

w www.stewardship.org.uk

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1 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 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 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 Stewardship (UKET) in cases where we are the sole trustee or one of the trustees’ 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 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. Amongst the many areas they regulate are those relating to disability access (which are also, more extensively, covered by 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.

4 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.

5 The Construction (Design and Management) Regulations 1994

The Construction (Design and Management) Regulations 1994, 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 a "designer" has a duty under the Regulations to alert clients to their duties. For all but the smallest jobs, and certainly for any work involving demolition, a key client responsibility will be to appoint a Planning Supervisor, who will act on their behalf to 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 "CDM Regulations. How the Regulations affect you" or two leaflets "Having Construction Work Done?" (<http://www.hse.gov.uk/pubns/cis39.pdf>) and "CDM Regulations 1994: The Role of the Client" (<http://www.hse.gov.uk/pubns/misc193.pdf>) and "Clients & The CDM Regs - What you need to do (2002)" published by the Association For Project Safety.

6 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 annex to such a building may be exempt from VAT or "zero-rated". Limited other building works may also qualify for zero rating. Consultancy services cannot be zero-rated whatever the nature of the building work to which they relate.

It can not 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 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 £8.00. We are also able to refer churches and Christian agencies to a suitable specialist if required.

7 Further advice

These brief notes can only outline some basic issues. The relevant local authority departments, HSE and HM Customs and Excise 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 Planning Supervisor should be appointed first or, at least, very early in the process.

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 and Customs publish various Guidance Notices, including Notice 701/1 (Charities).

8 Useful contact details

organisation	telephone number	website address
Royal Institution of Chartered Surveyors	0870 333 1600	www.rics.org.uk
Royal Institute of British Architects	0207 580 5533	www.riba.org
Association of Planning Supervisors	0131 221 9959	www.aps.org.uk
Association For Project Safety		www.associationforprojectsafety.co.uk
HM Customs & Excise	0845 010 9000	www.hmce.gov.uk
Health & Safety Executive	0870 154 5500	www.hse.gov.uk
Deputy Prime Minister’s Office	0207 944 4400	www.odpm.gov.uk

additional information

If you found this briefing paper useful, you may also be interested in these other property-related papers produced by Stewardship:

Disability Discrimination Act: important aspects affecting churches which came into effect in October 2004

Responsibilities of managing asbestos in buildings

VAT for churches – a guide to the issues (there is a charge of £8 for this publication)

Copies of the above papers can be obtained by phoning Stewardship on 08452 26 26 27 or e-mail enquiries@stewardship.org.uk The first two are also available as downloads on our website www.stewardship.org.uk/briefing_papers.htm

If you have any queries relating to property matters please contact Giles Arnold, Property Services Manager on 020 8502 8589 or e-mail giles.arnold@stewardship.org.uk.

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