

**DIOCESE OF LICHFIELD
GUIDANCE ON INSTALLATION OF
COMMERCIAL TELECOMMUNICATIONS/COMMUNICATION EQUIPMENT
(INCLUDING WIRELESS BROADBAND)
IN/ON CHURCHES.**

1. A number of Churches across the Church of England are used to host telecommunications equipment, such as a mobile telephone base station or a wireless broadband relay. The mobile phone operators have been licensed by the government to provide coverage, and have done so under Codes of Practice. The first Code was introduced in 1984, (long before mobile phones) and it was updated in particular in 2003; many forms of electronic communication are now covered by the Code including mobile phones and broadband. Churches are often regarded as good places for masts and equipment because of their height. In 2002, QS4 and the Archbishops' Council agreed a National Aerials Agreement. A new Code of Practice was introduced in 2017.
2. Such proposals may be an attractive prospect for a parish. The use of an otherwise unused or underused part of the Church, for purposes which may be thought to be beneficial to the local community, and producing an income stream for the parish, might well be considered as good stewardship by a Parochial Church Council ("PCC"). In certain parishes, such installations have produced a significant and secure annual income.
3. It is hoped that this note will be of assistance to all PCCs approached by telecommunications operators. Compliance with this guidance is likely significantly to assist with a Petition's progress through the Faculty process.
4. There are a number of important things for a Parish to consider before entering into agreements with telecommunications operators: the Parish should consider whether NET Coverage Solutions Limited would be suitable, since they are experienced in dealing with church sites and have an understanding of these matters.
5. A Faculty is required for all such installations. Permission is required under Faculty for the introduction of the equipment. The Licence terms for the installation are likely to seek to create rights to retain and renew the facilities within the Church building as well; since those terms purport to create legal rights over the premises, the authorisation of the Consistory Court is always required. (In early cases Licences were granted because of the difficulty of granting leases over church property, but that difficulty is no longer an absolute rule). A faculty should be sought for any variation to the terms as well, since the variation may impact on the original rights. There have been some significant judgments on the subject in past cases. As yet there has been no case on the subject of the secular rights to renew leases or licences via the secular courts, and the interaction of that system with the Faculty Jurisdiction.
6. As soon as an approach is received, the PCC should obtain the agreement in writing of the telecommunications company to pay all costs incurred on behalf of the parish, whether or not an agreement is reached and the installation proceeds. These costs are likely to include the professional fees and expenses of the church architect, a valuation surveyor, solicitors and the fees of the Consistory Court. (In Lichfield, the DBF usually pays the Consistory Court lodgement fees on behalf of Parishes, but there may be further Court costs as the matter progresses.) There may also be a need for other expert involvement for example a lightning conductor consultant, structural engineer and/or bells specialist.
7. The telecommunications company must be asked to provide to the Parish electronic copies of all documents required (and sufficient copies - for the PCC, the church architect, the Diocesan Advisory Committee and the Diocesan Registry) of the detailed drawings and specification of the installation including:
 - a. the size, type, shape and colour of the aerials/antennae
 - b. the location of all equipment
 - c. the cable runs
 - d. any work affecting the church fabric including drilling and cutting through the church walls

- e. any work affecting the church, or any of its fixtures, fittings, furniture and furnishings
 - f. identifying in particular anything that would affect the external appearance
8. The drawings will need to be updated if they change during the process, but it is usually simplest to consult on them if they are in electronic form. The initial stages of the process are the same as for any other Faculty involving works to a church.
 9. The Parish should consult its inspecting 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 and to advise on any disturbance to the fabric of the building. If there is any doubt, a structural engineer must be consulted.
 10. Whether or not the Church has a lightning conductor or similar protection, the Parish must (if so advised by the inspecting architect) seek the advice of a specialist lightning conductor consultant to ensure that the proposed installation does not adversely affect the existing protection or increase the risks from lightning strike.
 11. The inspecting architect should also advise the Parish whether the organ or other items in the Church require protection during the installation. It is likely that the inspecting architect will be required by the Consistory Court to supervise the installation. S/he should be provided with a copy of these guidance notes.
 12. If the installation has a material effect on the exterior of the building, (including for example anything visible from ground level, but not limited to such matters) planning permission will be required. The Church architect should give advice on this, if necessary seeking confirmation from the local planning authority. Particular care is needed if the building is in a conservation area. If planning permission is required the Chancellor will not grant a Faculty without it already having been granted, save in exceptional circumstances. In most cases, the telecommunications company will arrange to obtain any necessary planning permission, but it is the PCC's responsibility to ensure that it is in place (if required) before petitioning for faculty.
 13. The Parish should consult its insurers regarding the installation and act in accordance with any advice received.
 14. The Parish should instruct a surveyor to negotiate the financial terms for the agreement. This will usually be an annual licence fee, but might contain some sort of 'per subscriber' element too. Depending on the length of agreement, a periodic licence fee review mechanism (to inflation, or to market levels) is likely to be appropriate. Whilst not directly applicable, the licence fee should be assessed having regard to the matters and principles set out in the *Charities (Qualified Surveyors' Reports) Regulations 1992*. A surveyor with the necessary experience in this type of matter will be familiar with these regulations. The Code of Practice is complex and is geared towards the objective of simple and fast roll out of electronic communications. There are some difficult valuation assumptions, and provisions about rights to add new equipment which have to be thought through. An estate agent (unless s/he is also a qualified surveyor) is not suitable. The surveyor will be required to provide written confirmation that the financial terms which s/he agrees, subject to contract and faculty, represent the current market value of the licence sought by the telecommunications company and are the best terms reasonably obtainable for the PCC in the circumstances.
 15. The valuation assumptions under the Code are no longer based on the market value of the rights granted, but on compensation for the diminution in value of the premises being used. Technically these assumptions assume that there is no planned or existing equipment on the site, and that there is another hypothetical and equally convenient site available for the equipment (so that the market value is avoided). Any mast or site sharing restrictions will now be void, so that there is no additional income for the site owner from such matters. There is an automatic right to enter onto the land to upgrade the equipment.
 16. The operator will need planning permission: this is readily secured through permitted development rights. But with a listed church there is no permitted development right for any alterations involved. Since a Faculty is required for any installation in addition rather than listed building consent, it may therefore be that in some situations, there is an ability to overcome some of the disadvantages of the

new 2017 Code. The surveyor will need to consider this carefully with the operator and potentially after taking legal advice.

17. 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 telecommunications company. As with all charities, the trustees (PCC members) are under a legal duty to obtain best value in their negotiations with commercial third parties. There may, exceptionally, be circumstances where the telecommunications provider is a non-profit body (perhaps in isolated rural areas).
18. PCCs should seek legal advice at an early stage in such cases as to their duties to obtain best value, and should instruct a solicitor to negotiate the form of Licence Agreement with the telecommunications company. **It is strongly advised that, before a PCC appoint a solicitor, the PCC satisfies itself that the solicitor has the requisite knowledge and expertise to advise on telecommunication matters, including the particular requirements of the Faculty Jurisdiction.** The Lichfield Diocesan Registrar and the members of his firm are unable to act for the PCC in such matters, because of the potential conflict in relation to their work as Registrar to the Consistory Court.
19. Under the Faculty petition the Consistory Court is asked to approve the terms of the Licence and any works that are carried out.
20. The Petition should be prepared in the name of the Incumbent and PCC in the usual way, using the On-Line Faculty System. The draft Licence, and the reports recommended above, including the solicitor's and surveyor's advice on the terms of the Licence should be lodged. The Chancellor will need to be satisfied that the Licence terms and Licence Fee are acceptable
21. The DAC should be asked for its advice on all matters concerned with the proposed Petition including whether consultation with Historic England and/or other amenity societies (e.g. the Victorian Society) is required. These bodies are experienced in considering proposals of this nature and their observations should be considered carefully by the Parish.

Niall Blackie

Lichfield Diocesan Registrar

Telford

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This note is partly based on guidance notes from the Consistory Courts of the Dioceses of Bath & Wells, of St Albans, and of Chelmsford, whose permission to reuse that material is gratefully acknowledged