

General Synod of the Church of England

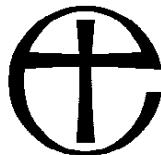
CATHEDRALS FABRIC COMMISSION FOR ENGLAND

PROCEDURAL GUIDANCE NOTE 1

**CATHEDRAL PRECINCTS:
THEIR DEFINITION, DESIGNATION & EFFECT UNDER
THE CARE OF CATHEDRALS MEASURE 1990
(as amended)**

Issued by the Commission

June 2008



Cathedrals Fabric Commission for England

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1 General

1.1 This Procedural Guidance Note is issued to provide information and guidance on the process of designating the Precinct of a cathedral church under section 13 of *the Care of Cathedrals Measure 1990*, as amended by *the Care of Cathedrals (Amendment) Measure 2005*. It also describes the procedure by which a Precinct boundary, once so designated, may be amended. In addition, it summarises the effects of designation and gives guidance on the operation of statutory controls in relation to the Precinct.

1.2 In this Note, the expression “*the 1990 Measure*” refers to the Care of Cathedrals Measure 1990, and except where stated otherwise it means that Measure as amended, as it stands at 1st January 2008, taking into account in particular the amendments made by the Care of Cathedrals (Amendment) Measure 2005¹ (“*the 2005 Measure*”). Except where stated otherwise, references to section numbers are to the relevant sections of the 1990 Measure, as amended.

References to “*the 2006 Rules*” are to *the Care of Cathedrals Rules 2006*, which deal principally with procedural matters under the 1990 Measure and have replaced the Care of Cathedrals Rules 1990 in their entirety. Throughout this Note, “the Commission” refers to the Cathedrals Fabric Commission for England. Other terms used in this Note are explained in the accompanying Glossary.

1.3 This Note replaces entirely Guidance Note 3 (January 1993) and Procedural Guide 7 (May 2001) on cathedral precincts.

1.4 The Note states the legal position as at 1st January 2008, when the 2005 Measure came fully into force.

2 DEFINITION & DESIGNATION OF THE PRECINCT OF A CATHEDRAL CHURCH

2.1 The definition and designation of the Precinct of a cathedral church is governed by section 13 of the 1990 Measure. That section places a duty on the Chapter of a cathedral to prepare a plan indicating the extent of the land surrounding the cathedral church of which the cathedral is the freehold owner² and to send this

¹ The Measure as originally enacted was also modified by *the Cathedrals Measure 1999* in order to reflect the new structure for the governance of cathedrals introduced by that Measure.

² Section 13 refers to land “the fee simple in which is vested in the corporate body” of the cathedral. It thus includes land let to a tenant of the cathedral. In this Note, unless indicated otherwise, references to ownership of land are to ownership in the sense provided for in section 13.

plan to the Commission.³ The Commission is then required to consult with the Chapter and to indicate the Precinct of the cathedral church for the purposes of the Measure⁴ on the plan.

2.2 The Commission has already designated the Precinct under section 13 for all forty-one cathedrals⁵ to which the 1990 Measure applies.⁶ In each case the Precinct boundary thus designated has been marked in green on the plan referred to in paragraph 2.1 above (which has become known informally and customarily as the “green line” plan). The Commission and the Chapter both hold copies of the plan.

2.3 The 2005 Measure added a further provision to the original section 13 of the 1990 Measure in order to explain the extent of the land which the Commission is to designate as lying within the cathedral’s Precinct. Under it the Precinct as designated by the Commission is to consist of so much of the land referred to in paragraph 2.1 above as, in the Commission’s opinion, is necessary to preserve or protect:

- i) the architectural, archaeological, artistic or historic character of:
 - the cathedral church;
 - any buildings of architectural, archaeological, artistic or historic interest associated with the cathedral church; and
 - any archaeological remains associated with or situated in, under or near to the cathedral church or any such other buildings; and
- ii) the setting of the cathedral church and any such other buildings and remains.

In designating the Precinct in accordance with this provision, the Commission is also required to have regard to the context in which the cathedral church and any such other buildings have developed over time.⁷ The area so designated may, but will not necessarily, coincide with the area of the cathedral church’s “Close” as it is traditionally understood.

2.4 Within the broader area of the Precinct designated by the Commission, a more restricted area has been designated within which secular listed building control does not apply to any ecclesiastical building for the time being used for

³ Section 13 (3).

⁴ Section 13 (4).

⁵ The 1990 Measure applies to all Church of England cathedrals in England except Christ Church, Oxford.

⁶ It did so in the light of an Opinion by the Legal Advisory Commission, given in 1992 at the request of the Commission and an individual cathedral. In the Legal Advisory Commission’s opinion, “the precinct of the cathedral church” in section 13 referred to “land in the immediate environs of the cathedral church and of which the cathedral itself (including its historical and archaeological context) is the focus”. The Legal Advisory Commission considered that the extent of this area would depend on the particular circumstances at each cathedral but might in practice be clarified by reference to artificial boundaries such as those constituted by buildings, walls and roads.

⁷ Section 13 (4).

ecclesiastical purposes.⁸ This more restricted area was marked with a red line on an official plan prepared for each cathedral by the then Department of National Heritage (“DNH”) and referred to in *the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994* (“*the Ecclesiastical Exemption Order 1994*”). This plan has thus become known informally and customarily as the “red line” plan. In practice, the “red line” usually encompasses the cathedral church, its side chapels and vestries and its cloisters and chapter house (if any).

The Department for Culture, Media and Sport (the successor body to the DNH), the Commission, the Chapter and the local planning authority each retain a copy of this plan. The “red line” plan, and the area which it designates, should not be confused with the cathedral Precinct and the “green line” plan on which it is marked. As at 1st January 2008 there is no mechanism for altering the “red line”.⁹

- 2.5 The 2005 Measure has also added some other new provisions to the existing law in relation to the designation of the Precinct. They require the Chapter to keep up to date the plan showing the extent of the land surrounding the cathedral church which is owned by the corporate body and to notify the Commission of any changes (thus formalising existing good practice), and they also introduce procedures by which the Commission can amend the Precinct boundary as designated on the plan (i.e. the “green line”).¹⁰ See Part 5 below.

3 THE APPLICATION OF STATUTORY CONTROLS TO THE PRECINCT

- 3.1 The land, buildings and archaeological remains within the Precinct, as designated by the Commission, are subject to the relevant provisions of the 1990 Measure.
- 3.2 The Chapter may not implement, or consent to the implementation of, certain categories of proposals for works on, above or below land owned by the cathedral’s corporate body without approval under the 1990 Measure. Those categories are set out in section 2 (1) of the 1990 Measure and are described in the paragraphs 3.3-3.5 below. In each case, “works” includes works of repair or maintenance.
- 3.3 Approval is required for any proposal for carrying out works which would materially affect the architectural, archaeological, artistic or historic character of the cathedral church or any building within the Precinct which is for the time being used for ecclesiastical purposes.¹¹ This includes those buildings that are exempted from listed building control and are within the red line on the plan under the Ecclesiastical Exemption Order 1994, and also includes buildings (such as a separate chapel) that lie outside the “red line” but within the Precinct and are used for worship or another use ancillary to that of the cathedral church.

⁸ See the Glossary at the end of this Note. Limited categories of ecclesiastical buildings in ecclesiastical use which lie outside the “red line” but within the Precinct are also exempted from listed building control – see the Glossary.

⁹ However, this is likely to change in due course if the Heritage Protection Bill and draft Ecclesiastical Exemption Order, published for consultation in April and May 2008 respectively, become law.

¹⁰ Sections 13 (5) and (6).

¹¹ Section 2 (1) (a) (i) of the 1990 Measure as amended by section 1 (c) of the 2005 Measure.

- 3.4 Approval is also required for any proposal for carrying out works which would materially affect the immediate setting of the cathedral church.¹²
- 3.5 Approval is also required for carrying out works that would materially affect any archaeological remains within the Precinct.¹³ “Archaeological remains” are defined as “the remains of any building, work or artefact, including any trace or sign of the previous existence of the building, work or artefact in question”.¹⁴
- 3.6 Paragraphs 3.4 and 3.5 above can include proposals affecting a house which, or part of which, is occupied or is to be occupied by a member of the clergy holding office in the cathedral church.¹⁵
- 3.7 Proposals for works by a tenant of the Chapter (domestic or otherwise) or another person or body other than the Chapter itself (such as a local authority or public utility) are also subject to control **if** they are of a type requiring approval under the 1990 Measure and **if** the tenant or other person or body requires the Chapter’s consent in order to implement the proposal. The Chapter must apply to and obtain approval for the proposal from the Commission or the Fabric Advisory Committee (“FAC”), as appropriate, in the usual way, before giving its consent.
- 3.8 Under section 6, approval for proposals of the types set out in paragraphs 3.3–3.7 above must be sought from the **Commission** if they would involve:
- i) works, including works of repair or maintenance, that would involve permanent alteration to the fabric of the cathedral church or of any building within the Precinct of the cathedral church which is for the time being used for ecclesiastical purposes;
 - ii) the demolition of any part of the cathedral church or any such other building; or
 - iii) the disturbance or destruction of any archaeological remains within the Precinct of the cathedral church. See Part 4 below for clarification.

Otherwise approval must normally be sought from the **FAC**.¹⁶

- 3.9 In addition, certain buildings, objects and structures with the Precinct are subject to listed building control or scheduled monument control. Where the Chapter proposes to make an application for Listed Building Consent or Scheduled Monument Consent in respect of any building or monument within the Precinct of the cathedral church, the Cathedral Administrator must send a notice to the Commission (using Form 15 in the 2006 Rules) informing it of this and stating that the Commission may send written representations with respect to the proposed application to him or her within 28 days.¹⁷

¹² Section 2 (1) (a) (ii) as amended by section 1(c) of the 2005 Measure.

¹³ Section 2 (1) (a) (iii) as amended by section 1(c) of the 2005 Measure.

¹⁴ Section 20 (1). Archaeological remains may, depending on the circumstances, also include human remains.

¹⁵ See the 2006 Rules, rule 10.

¹⁶ Section 6 (1) as amended by section 5 (1) (a) of the 2005 Measure. See Procedural Guide 2 *Proposals Requiring Approval & Making an Application* (January 2008).

¹⁷ Section 15 and the 2006 Rules, rule 11.

Some such works may fall within the categories set out in paragraphs 3.3–3.5 above, and thus require approval by the Commission or the cathedral’s FAC under the 1990 Measure in addition to requiring Listed Building Consent or Scheduled Monument Consent (i.e. “dual control”).¹⁸ The area of the Precinct is also subject to secular planning control, from which there is no form of ecclesiastical exemption.

3.10 The 2005 Measure introduced some degree of discretion into the 1990 Measure regarding the operation of “dual control” in certain circumstances. If, following a request in writing from the Chapter (using Form 2), the Commission is satisfied that:

- i) a proposal, or intended proposal, would fall within section 2 (1) of the 1990 Measure because the works involved would materially affect the cathedral’s immediate setting or archaeological remains within its Precinct, but
- ii) it does not relate to the cathedral church or a building in its Precinct which is for the time being used for ecclesiastical purposes, and
- iii) Planning Permission, Listed Building Consent or Scheduled Monument Consent is in any case required for **all** the works to which the proposal relates; and
- iv) any consideration relevant to preserving the immediate setting of the cathedral church or archaeological remains within its Precinct will be, or has been, adequately taken into account by the body responsible for granting that permission or consent;

the Commission may, after consultation with the local planning authority, the FAC and English Heritage, declare in writing that approval under the 1990 Measure is not required for that proposal.¹⁹

4 CLARIFICATION REGARDING ARCHAEOLOGICAL REMAINS WITHIN THE PRECINCT

4.1 In most cases it is reasonably clear which buildings, in addition to the cathedral church itself, are covered by the provisions referred to in paragraph 3.3 above, and what categories of works to them require approval under the 1990 Measure. This aspect is, therefore, not discussed further in the present section of this Note.

4.2 It is sometimes more difficult to discern whether the provisions referred to in paragraph 3.5 above apply, and the advice of the Cathedral Archaeologist should be sought. He or she can provide an appraisal of the likely archaeological impact of the works in question, and this will clarify whether an application to the Commission or to the FAC is required.

¹⁸ See the Glossary at the end of this Note.

¹⁹ Section 6 (2C). See also the 2006 Rules, rule 4.

4.3 It should be remembered that archaeological remains might be disturbed or destroyed not only by groundworks, but equally by works to standing buildings that are of ancient origin or have gone through many periods of development. It should also be borne in mind that the provisions referred to in paragraph 3.5 above apply anywhere in the designated Precinct, not just within the “red line”.

4.4 Typically the Chapter might have to apply for approval from the Commission where archaeological remains within the Precinct are likely to be disturbed or destroyed by reason of schemes involving:

- the construction of new buildings where, as is generally the case, this will impact on archaeological remains below ground (and sometimes above it);
- improvements to facilities or services (including work by utility providers) where these involve groundworks that will impact on archaeological remains below ground;
- the consolidation of any archaeological monument (whether or not it is a scheduled monument); or
- the refurbishment of domestic or other buildings, not already covered by paragraph 3.3 above, where the building works will impact on archaeological remains below ground or on above-ground archaeological remains deriving from previous stages in the structure’s development and now incorporated into the present fabric.

In all these cases, particularly the last, the advice of the Cathedral Archaeologist will be important in evaluating whether there are material archaeological issues involved.

4.5 In such cases, the Chapter will need to apply for approval under the 1990 Measure when it is proposing to carry out relevant works on its own account. In the case of works proposed to be carried out by some other person or body, such as a tenant, local authority or public utility company for which the Chapter’s consent is required, the Chapter will also need to seek approval before giving any such consent.

4.6 Even if the Chapter or some other party is required to obtain Planning Permission, building regulations approval, Scheduled Monument Consent or Listed Building Consent in respect of the same proposal (or of some aspect of it), that does not remove the parallel requirement for approval under the 1990 Measure. That is, certain works within the cathedral Precinct may require both secular consent (such as Listed Building Consent) and approval from the Commission or FAC under the Measure. See paragraphs 3.9 and 3.10 above on “dual control”.

4.7 However, as explained in paragraph 3.10 above, the 2005 Measure introduced provision for some degree of discretion about the operation of “dual control” in certain circumstances.

4.8 In relation to the handling of archaeological issues, attention is drawn to the Commission's Guidance Note 5 *Cathedrals and Archaeology: A Guide to Good Management* (November 1994).

5 KEEPING THE PRECINCT PLAN UP TO DATE, AMENDMENT OF THE PRECINCT BOUNDARY AND ADVISORY FUNCTIONS

5.1 The Commission has always encouraged the Chapter to keep up to date its plan indicating the extent of the land surrounding the cathedral church within the ownership of the corporate body of the cathedral, and to keep the Commission informed of any changes in land ownership (disposals or acquisitions of freehold land) that might affect the designated area of the Precinct. However, the 1990 Measure as originally enacted did not contain any provision for the Commission to amend the Precinct boundary once the original designation had been made.

5.2 One of the new provisions added to the 1990 Measure by the 2005 Measure has placed a legal obligation on the Chapter to keep up to date the plan of the land surrounding the cathedral church which is in the ownership of the corporate body, and to notify the Commission of any changes to it.²⁰

5.3 When the Commission is notified of such a change, the 1990 Measure now requires it, after consultation with the Chapter, to make any alterations to the Precinct boundary (i.e. the "green line"), as indicated on the plan, that it considers appropriate to take account of the change in land ownership, having regard to the provisions setting out the criteria for the extent of the Precinct explained in paragraph 2.3 above.²¹ Thus, in broad terms, it must be guided by what it considers necessary for the preservation and protection of:

- i) the character of the cathedral, any building of interest associated with it and archaeological remains associated with or under or near to any of them; and
- ii) the setting of the cathedral and those other buildings and remains;

having regard to the context in which the cathedral church and those other buildings have developed over time.

5.4 In addition, the 2005 Measure gives the Commission power, after consultation with the Chapter, to make any such alterations to the Precinct boundary (i.e. the "green line") as it considers appropriate, having regard to the provisions setting out the criteria for the extent of the Precinct (see paragraph 2.3 above). The Commission can exercise this power even without any changes to land ownership having been notified to it.²² The Commission may, therefore, revisit an existing Precinct designation made under the 1990 Measure as originally enacted and make amendments to it.

²⁰ Section 13 (5).

²¹ Section 13 (5).

²² Section 13 (6).

- 5.5 There are no standard forms for the notification of changes in land ownership by the Chapter or amendments to the Precinct boundary by the Commission. These matters will be dealt with by correspondence.
- 5.6 If land is not within the ownership of the corporate body of the cathedral it cannot, by definition, form part of the cathedral Precinct, even if it lies in close proximity to the cathedral church and would ordinarily be considered part of its setting or context. Works on, above or below such land are not subject to control under the 1990 Measure.²³
- 5.7 However, the 2005 Measure amended sections 3 and 4 of the 1990 Measure, which set out the functions of the Commission and of the FAC, and extended the existing advisory functions of those two bodies beyond the “care, conservation, repair or development of the cathedral church” itself to include in addition “any buildings or archaeological remains within its precinct [and] the landscape and environment in which the cathedral church is situated...”.²⁴ The Commission and the FAC may, therefore, now advise the Chapter, and the Commission may advise the FAC, on matters affecting the cathedral’s immediate and wider setting (including, for example, areas adjacent to, but not within, the Precinct boundary, i.e. outside the “green line”).

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²³ Section 2 (1) (a).

²⁴ Sections 3 (2) (a) and 4 (2) (a).

GLOSSARY & EXPLANATION OF TERMS USED IN THIS NOTE

Precinct

- The Precinct is the area of land surrounding a cathedral church which is owned by the corporate body of the cathedral and which is designated by the Commission as the “Precinct” of that cathedral church under, and for the purposes of, the 1990 Measure.
- Under the 1990 Measure, the Precinct is to consist of as much of the land surrounding the cathedral church and owned by the corporate body as is, in the Commission’s opinion, necessary to preserve or protect:
 - i) the architectural, archaeological, artistic or historic character of:
 - the cathedral church;
 - any buildings of architectural, archaeological, artistic or historic interest associated with the cathedral church; and
 - any archaeological remains associated with, or situated in, under or near to, the cathedral church or any such other buildings; and
 - ii) the setting of the cathedral church and any such other buildings or remains.

This area may, but will not necessarily, coincide with the area of the cathedral church’s “Close” as it is traditionally understood.

If land is not owned by the corporate body it cannot, by definition, form part of the Precinct, even if it lies in close proximity to the cathedral church and would ordinarily be considered part of its setting or context. Such land is not subject to control under the 1990 Measure.

- Works which would materially affect the character of the cathedral church or certain other buildings within the Precinct; archaeological remains within the Precinct; or the immediate setting of the cathedral church, are subject to the controls set out in the 1990 Measure as amended. Certain buildings and monuments within the Precinct are also subject to secular Listed Building Consent and Scheduled Monument Consent control in addition to the controls set out in the 1990 Measure. See the entry on “dual control” below. The area of the Precinct is also subject to secular planning control, from which there is no ecclesiastical exemption.
- The Precinct boundary is marked by the Commission with a green line on a plan prepared by the Chapter. The Commission and the Chapter both retain a copy of this plan.

“green line”

- This is the line used by the Commission to indicate, on the plan prepared by the Chapter, the boundary of the Precinct under, and for the purposes of, the 1990 Measure

- The 2005 Measure introduces provision for the Commission to amend the Precinct boundary / “green line”. See Part 5 of this Note.

Ecclesiastical Exemption

- Ecclesiastical exemption comprises the provisions, in section 60 of *the Planning (Listed Buildings and Conservation Areas) Act 1990* and the Ecclesiastical Exemption Order 1994 made under that Act, by which certain listed buildings, objects and structures that are, or form part of, ecclesiastical buildings for the time being used for ecclesiastical purposes are exempted from the need to obtain Listed Building Consent because they are subject to their denomination’s own system of control. For cathedrals of the Church of England,²⁵ that system of control is the 1990 Measure, which has been recognised as providing at least an equivalent level of protection.²⁶
- In the context of Church of England cathedrals, the exemption covers the following:²⁷
 - i) buildings used for ecclesiastical purposes which lie within the “red line” explained below (this would usually comprise the cathedral church, its side chapels and vestries and its cloisters and chapter house, if any);
 - ii) a building outside the “red line” but within the Precinct which is primarily used for worship (e.g. a separate chapel); and
 - iii) a monument (including a tomb, gravestone or other memorial) which is not separately listed and which lies outside the “red line” but within the Precinct in a churchyard, graveyard or other land which is or has been used for burials.

“red line”

- This is the line shown on an official plan referred to in the Ecclesiastical Exemption Order 1994 and produced for each cathedral by the then Department of National Heritage (“DNH”) which designates an area within which secular listed building control does not apply to any ecclesiastical building for the time being used for ecclesiastical purposes. (See Ecclesiastical Exemption above.) The Department for Culture, Media and Sport (the successor body to the DNH), the Commission, the Chapter and the local planning authority each retain a copy of this plan.
- In practice, the “red line” usually encompasses the cathedral church, its side chapels and vestries and its cloisters and chapter house (if any).
- The “red line” therefore lies within, and demarcates a substantially smaller area than, the “green line”. The two lines, and the plans that illustrate them, serve different purposes and should not be confused with one another.

²⁵ With the exception of Christ Church, Oxford.

²⁶ At the time of writing, the ecclesiastical exemption also relates to the controls over Conservation Areas.

²⁷ Ecclesiastical Exemption Order 1994, article 5 (2).

- There is, at the time of writing (June 2008) no mechanism for altering the “red line”. However, this may be subject to change in the future: see paragraph 2.4 of this Note and footnote 9.

“dual control”

- This refers to the circumstances in which works (or certain elements of those works) within a cathedral Precinct require approval under the 1990 Measure (because they affect the cathedral’s setting or archaeological remains in the Precinct), in addition to secular Listed Building Consent (“LBC”) or Scheduled Monument Consent (“SMC”). See paragraphs 3.9 and 3.10 of this Note.

Examples of this might be:

- Taking down and rebuilding a collapsed part of the fabric of a standing scheduled monument within the Precinct, which would need SMC (from the Secretary of State, advised by English Heritage) and approval (by the Commission) under section 2 and section 6 of the 1990 Measure (see paragraphs 3.5 and 3.8 (c) of this Note).
- Excavation of a trench for the laying of new services running through an area of the Precinct containing below-ground remains designated as a scheduled monument, which would need SMC (from the Secretary of State, advised by English Heritage) and approval (by the Commission or the cathedral’s FAC, depending on the detail and expected impact of the proposals) under section 2 of the 1990 Measure (see paragraph 3.5 of this Note).
- Alterations to the exterior of a listed house in the Precinct, standing adjacent to the cathedral church, which would need LBC (from the local planning authority) and approval (by the cathedral’s FAC under section 2 of the 1990 Measure (see paragraph 3.4 of this Note).

Listed Building Consent

- This is the statutory consent granted by the local planning authority for certain specified types of works to a listed building under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- Even though works require LBC, this does not automatically mean that they will also require approval by the Commission or the cathedral’s FAC under the 1990 Measure.
- However, under the 1990 Measure all proposed applications for LBC within the cathedral Precinct must be notified to the Commission using Form 15. See paragraph 3.9 of this Note.

Scheduled Monument Consent

- This is the statutory consent granted by the Secretary of State, advised by English Heritage, for certain specified types of work to a scheduled monument under section 2 (3) (a) of *the Ancient Monuments and Archaeological Areas Act 1979*.

- Even though works require SMC, this does not automatically mean that they will also require approval by the Commission or the cathedral's FAC under the 1990 Measure.
- However, under the 1990 Measure all proposed applications for SMC within the cathedral Precinct must be notified to the Commission using Form 15. See paragraph 3.9 of this Note.

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