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Our Ref: GRM/ps

May 2007

CIRCULAR NO. 4

To: All Churchwardens

cc: Archdeacons

Dear Colleague

Rights of Way

The Diocesan Registrar has now advised on the question of rights of way over church land as follows:

The basic position is that rights over consecrated church land can normally only be granted under faculty issued by the Chancellor of the Diocese. Easements are, for example, granted for laying gas mains by way of Licence under Faculty, or in exceptional circumstances, by way of a private right of way to an individual if there is no other access to property except over churchyard.

It is generally considered that prescriptive rights in favour of the public cannot be acquired over churchyard but some local authorities have exercised statutory rights to designate footpaths across churchyard as public rights of way. Unless it is clear that a local authority has acted in this way, parishes should operate on the basis that there is no general public right of way and, if appropriate, measures should be taken to prevent any presumption of dedication which might encourage a local authority to exercise its statutory power.

This can be done either by closing the footpath on at least one day a year, recording this perhaps with an appropriate notice on any gates and keeping a register. Alternatively, a permanent notice or notices can be erected in a prominent place in the churchyard to make clear that use of the footpath is by consent and not by way of right. An appropriate wording might read:

"This is private property and whilst there is normally no restriction on access to the Churchyard, any access is exercised with the consent of the [Incumbent/Parochial

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Church Council] and there is no general right to enter the Churchyard for any purpose.”

Or a wording similar to this. Perhaps a more basic wording might say:

“The Churchyard is private property and any access is with the consent of the [Incumbent/Parochial Church Council].”

If any particular claims are being made either by an individual or generally, then specific advice should be sought from the Diocesan Registrar on the circumstances.

Yours sincerely

G R Marsh
Assistant Diocesan Secretary