

In the Consistory Court of the Diocese of Worcester:

Archdeaconry of Worcester

Stoulton with Drakes Broughton – Church of Drakes Broughton, St. Barnabas

Faculty petition 12/18

Proposed felling of two yew trees in the churchyard

Judgment

Introduction

1. This Judgment concerns a Petition dated 28th December 2011 seeking the authority of the Court for the felling of two yew trees in the Churchyard of St. Barnabas, Drakes Broughton.
2. The Petition is opposed by Mr. Derek Pickering who lives at 4, Stonebow Road, Drakes Broughton, Pershore, Worcestershire WR10 2AP.
3. On 20th November 2012 I conducted an inspection of the Churchyard and of Mr Pickering's house and garden. A meeting was then held in the Church, attended by Mr Brian Wardle, Churchwarden and one of the Petitioners; by Mr Pickering; and by Mr. Robert Alexander, the Assistant Diocesan Registrar.
4. At the meeting reference was made to a report dated 4th November 2011 by Roy Finch F. Arbor.A, the DAC Tree Advisor at the time. I asked that a copy of this report be supplied to Mr Pickering and that he should respond to me in writing, within two weeks, with any comments he might wish to make, arising from it.

The facts

5. There are two trees the subject of this petition. Their dimensions are taken from Mr Finch's report:

T1 An Irish Yew located on the southern boundary of the churchyard between the Church porch and the lawn of No. 4. Stonebow Road. It has a stem diameter at ground level of approximately 60cms; a height of 10m; and a spread of 4m.

T2 An English Yew located in the south-east corner of the churchyard. It is about 13m in height and is located on a raised bank adjoining the car park of the Village Hall. It is twin stemmed and has a diameter at ground level of 70cms; a height of 13m; and a spread of 10m.

6. Both trees are close to the southern wall of the vestry. They are within approximately 4m of the wall. The churchyard is small and along the southern boundary there is no more than 4m between the wall of the church and the boundary. In places there is considerably less.

7. The south wall of the vestry is showing signs of recent re-pointing and additional movement of stonework. There is some crumbling mortar in the adjacent joints.

Discussion

8. Mr Finch indicates that the cracking does not indicate which tree is responsible and he considers that an internal inspection 'may' confirm responsibility. He concludes that if the movements in the stonework are confirmed as being seasonal, both trees will need to be removed to prevent further damage.

9. Monitoring of the damage to the wall nearest to T1 is being undertaken. Damage nearest T2 is more difficult to monitor as there has been recent re-pointing and further movement would only be likely to be detectable when that fresh pointing falls out.

10. The discussion at the meeting proved very helpful and it emerged that, unfortunate as it is that any mature tree should have to be removed, there was no real disagreement that the larger T2 had caused the damage that had led to the re-pointing. Furthermore, there would be certain additional advantages in its removal as it would create a visual link between the Church and the Village Hall and that if the stump was ground down, a pathway connecting the two directly could be created. At present it is necessary to walk out of the churchyard, along two roads and into the Village Hall car park to make this journey. That is roughly the longest journey possible between the main doors of the Church and Hall.

11. T1 presents a greater difficulty. Mr Pickering would not wish to see this tree removed for very good reason. It is on the boundary between his lawn and house and the Church. The space is confined and there would be no residual landscaping if it were to be removed. There would be no direct views from his house but there would be from his lawn. The lawn is at present both attractive and secluded but it is not extensive. Mr Pickering fears that the greenery of his outlook will be replaced at close quarters by the more austere view of the southern wall of the Church. Conversely, it seems to me that those entering or, more particularly, those leaving the church will find themselves inadvertently looking straight into Mr Pickering's garden.

12. Mr Finch has no objection to the removal of either tree. The trees are not in a Conservation Area and are not subject to Tree Preservation Orders. The Local Planning Authority has been notified of the proposals by Mr Pickering but has not responded. However, Mr Finch places a proviso on his assent and requires their replacement at a suitable location within the churchyard. This is rejected in the petition on the ground that there is insufficient space within the churchyard to plant new trees. I agree.

Decision

13. I have no hesitation in deciding that a faculty should issue for the felling of T2. It appears to have caused sufficient damage already and it would be unwise and unnecessary to wait for the re-pointing to fall out. It is too large for its location and I agree with Mr Finch that a crown reduction would not assist. I do not consider that a replacement tree is necessary.
14. I am not authorising a faculty for the felling of T1 at this stage. Before such a faculty is likely to issue the following are likely to be required:
- i) the results of the monitoring of movement on the south west corner buttress of the vestry (and elsewhere) over the recent and next few months;
 - ii) a report from a Tree Adviser and/or the Church Architect recommending that its removal is necessary;
 - iii) a scheme for providing some landscaping to maintain privacy between Mr Pickering's lawn and the site of the tree/south porch.
15. I am very grateful to Mr Pickering for showing me and explaining the problem at first hand. Although I am not authorising the felling of T1 at this stage, I fear that there may be an inevitability about its future and that the Court may soon be faced with an application for a petition for its felling that will be impossible for it to refuse. I would hope that Mr Pickering and the Church could together consider what planting or other landscaping might be undertaken now, on either side of the boundary, to protect each other's privacy against what may prove to be inevitable.

Robert Fookes
Deputy Chancellor

4th December 2012