

In the Consistory Court of the Diocese of Leeds
In the matter of Holy Trinity & St Jude, Halifax

Between:

- (1) Revd Stuart Stobart
- (2) Nick Page
- (3) Angela Greenwood

Petitioners

And

- (1) Meristem Arboriculture and Forestry Limited

Additional Party

Judgment

1. This case concerns the unauthorised felling and removal of two trees in the churchyard of Holy Trinity and St Jude, Halifax. The incumbent and churchwardens are the petitioners, and the contractor is the additional party.
2. The gathering of information and evidence has been sporadic and piecemeal. The Court has had to make several sets of directions requiring specific matters to be addressed.
3. Having first invited comment from the parties, I determined to deal with this matter on the papers under r 14.1 of the Faculty Jurisdiction Rules 2015 (as amended), rather than at a hearing. Having regard to the overriding objective in Part 1, I considered it expedient to do so: the additional costs of a hearing in this instance would have been disproportionate.

The background

4. An Arboricultural Safety Assessment, dated 25 November 2022, and carried out by Woodside Consulting Limited, recommended various works in the churchyard, including the felling of three trees identified as T19 (sycamore), T21 (elm) and T24 (wild cherry). A faculty authorising the felling was issued on 13 June 2023. The faculty also made provision for what is called compensation planting, with details on location and species to be agreed with the Archdeacon.
5. On 30 June 2023, the Additional Party was informed by email from the second petitioner that the faculty had been granted for the removal of the three trees and, by email dated 5 July 2023, quoted £1,250.00 to perform the work.

6. It would appear that the additional party carried out work at the churchyard on Thursday 13 July in the course of which their workers felled trees T20 and T22 which were not covered by the faculty.
7. Mr Luke Naylor, who describes himself as the 'owner' of the additional party (a limited company) apparently admitted to his error immediately and offered to plant replacement trees for those removed unlawfully.

The current proceedings

8. A petition was issued seeking a confirmatory faculty, authorising retroactively the removal of the two trees felled in error, namely T20 and T22.
9. The contractor was not a co-petitioner nor was any material from the contractor (or Mr Naylor personally) lodged with the petition. Accordingly, the Court directed that Meristem Arboriculture and Forestry Limited be made an additional party and file evidence. The process of lodging evidence proved more complex and took somewhat longer than expected.
10. Mr Naylor took responsibility for the error, concluding his email: "we are sorry for this happening and hope it won't reflect badly on future works we may do for the church".

Duties and obligations of contractors

11. The Court cannot help but be concerned at Mr Naylor's candid response to one of the questions posed in the Court's Directions. Asked whether the additional party is familiar with the faculty jurisdiction, Mr Naylor replied: "we are not familiar". This was a surprising response from someone who elsewhere in his reply had expressed the hope that his company's unlawful activity would not reflect badly on any future church-related work it might do.
12. It cannot be restated often enough that those whose business includes work on church buildings or in churchyards of the Church of England must be familiar with the process and procedures of the faculty jurisdiction and have a firm grasp of the principle that unless a faculty (or other authorisation) has been obtained, any work done will be unlawful. As I observed in *Re All Saints, Buncton* [2018] ECC Chi 1, at paragraph 80:

"... contractors should always, invariably and without fail obtain a copy of the relevant faculty (or other authorisation) before they commence any works ..."

13. That statement is as pertinent today as it was in 2018, and applies in the Diocese of Leeds just as much as it does in that of Chichester. Those who embark upon works on church property without reading and digesting the content of the relevant faculty do so at their own peril, and must live with the consequences, sometimes draconian, that can follow.

Disposal

14. Whilst Mr Naylor's engagement with the Court was slow at first, I have regard to his contrition and the acceptance that a significant oversight was made. I note that he has introduced additional procedures to eliminate a repetition of this unfortunate occurrence. I remain troubled by his self-confessed lack of familiarity with the faculty jurisdiction. I gave some thought to adding a condition to the faculty that neither he nor his company be approved for work in the diocese for a specified period. I have decided not to do so in this instance. I take into account his contrition, and the fact that the felling of the wrong trees was an accidental oversight rather than a deliberate disregard of the jurisdiction. These proceedings for a confirmatory faculty will doubtless have proved salutary, and (as I shall come to hereafter) a costs liability will inevitably fall upon him.

15. I therefore order that a faculty pass the seal on condition that compensatory planting is undertaken at the expense of the additional party in such manner as may be approved by the archdeacon.

16. The costs of and occasioned by these proceedings must be borne by the additional party and paid within 14 days. This liability for costs was conceded by Mr Naylor in his representations to the Court. The quantum will be assessed by the registrar.

17. This judgment does not affect any separate civil law claim which the parish may have against the additional party, whether under contract or otherwise.

The Worshipful Mark Hill KC
Chancellor

30 November 2023