

In the Consistory Court of the Diocese of Worcester

Archdeaconry of Dudley: Parish of Hadzor [etc]: Church of St Peter-ad-Vincula, Tibberton:

Faculty petition 13-54 relating to conifers in the churchyard

Judgment

The proposed works

1. This is a petition seeking a faculty for the removal of the row of trees (conifers) growing along the southern boundary of the churchyard, along the north side of the wall running along that boundary, and to plant a hedge along the boundary, in the same style as the section to the east.

2. The wall is partly a retaining wall supporting the churchyard, and is along the top of a modest embankment. Immediately to the south of the embankment is a shared driveway, serving Church Barn and Two Trees Barn; the gateway from the highway to the driveway is immediately to the south of the pedestrian entrance to the church. The garden of Church Barn is immediately to the south of the driveway.

3. The reason for the works is that the trees are said to be causing damage to the wall, and possibly to drains. It is also suggested that a branch from one of the trees has fallen onto the driveway.

4. The trees are not within a conservation area, and are not the subject of a tree preservation order.

The representations

5. The petition has been opposed by Mr Lane, the owner of Church Barn, on the grounds that
 - 1) the removal of the trees would afford an uninterrupted view from the churchyard into his garden, and from the garden into the churchyard;
 - 2) the removal of the trees would not alleviate the problem of the collapsing wall, which is due to inadequate foundations;
 - 3) the trees provide a windbreak to the west part of the church, which would take some years to recreate with new planting; and
 - 4) although some branches do fall from time to time, there has never been a safety issue.

6. In response, the parish has accepted that the trees do provide some screening towards the western end, but has pointed out that the garden of Church Barn is already overlooked from the path leading to the church. The proposed hedge would provide some screening in future. The removal of the trees may not entirely solve the problem of the wall being damaged, but it will help to alleviate it. The PCC does not consider the role of the trees as a windbreak to be particularly important. And as for the safety issue, one branch fell when Mrs Francis, the owner of Two Trees Barn, was walking her dog along the driveway, narrowly missing her.

7. Mr Lane has not chosen to become a formal objector, and has taken no further part in the proceedings.

8. The diocesan advisory committee has recommended the proposed works, without any provisos.

Findings

9. I have now had a chance to inspect the site, in the company of Mr Alexander. I should record that, whilst we were there, we happened to meet Mrs Francis. She permitted

us to gain access to the shared driveway. I was therefore able to inspect the row of trees that are the subject of this petition, and the wall running along the boundary at the base of those trees, from both sides – and to confirm in more detail the impression conveyed by the photographs accompanying the petition.

10. I consider that there is very limited inter-visibility between the churchyard and the garden of Church Barn. But this is largely the result of the hedge between the garden and the driveway. I therefore consider that there will actually be only a very limited (if any) increase in overlooking as a result of the felling of the trees – either by those in the churchyard into the garden of Church Farm, or vice versa.
11. I have not seen any technical evidence as to the effect of the trees on the stability of the wall. I am therefore not in a position to reach any firm conclusion on that matter. However, I note that the photographs show that the eastern section the wall, topped by the hedge, is being damaged just as much as the western section, topped by the trees. I am therefore inclined to give some credence to Mr Lane’s view that the problems with the wall are not due solely to the presence of the trees; indeed, if the trees are to be felled, the work will have to be done very carefully, as it may be that their roots are intertwined with the foundations of the wall. Nevertheless, the retention of the trees will certainly not help the problem with the wall; and their removal, if carried out carefully, may well assist. It may be that, in the longer term, the wall will have to be taken down and rebuilt, on better foundations – and the hedge may also need to be removed at that stage – but that is a major job, for another day.
12. As for whether the trees provide a windbreak to the churchyard, they probably do, at least to some extent; but whether their removal will be a problem on that account must be a matter for the parish.
13. There clearly is a potential safety issue, as demonstrated by the incident where a branch nearly fell on Mrs Francis. To some extent that is an inherent problem with all

boundary trees; although it is more acute in this case because of the proximity of the driveway to the boundary. I would not think that this issue on its own would justify the removal of the trees; but I can see that it is a source of concern to those living in and visiting the neighbouring properties.

14. The last point, not mentioned either by the church or by the neighbours, is that the conifers are not particularly attractive; and it may well be that, if they were to be removed, a single replacement tree (or possibly a pair), of a more appropriate species, could be planted at an appropriate distance from the wall, which would be aesthetically preferable. But the desirability or otherwise of that will be much easier to judge once the existing ones have gone.

Conclusion

15. Taking all those points together, I see no reason why the proposal should not go ahead, and a number of reasons why it should. A faculty should therefore issue to authorise the proposed works, subject to a condition that they should be carried out by a suitably qualified and experienced contractor, in accordance with BS 3998, and paying special attention to ensuring the continuing stability of the wall.

DR CHARLES MYNORS

Chancellor

11 September 2013