

Neutral Citation Number: [2019] ECC Wor 6

In the Worcester Consistory Court

Archdeaconry of Worcester: Parish of Drakes Broughton: Church of St Barnabas

Faculty petition (2019-031330) relating to works to trees

Judgment

Introduction

1. St Barnabas Church in Drakes Broughton is a small church set in a small churchyard, bounded on two sides by local roads. It has a simple rectangular plan, with a vestry to the south, and a slender tower at the south-west corner. I am told that the village is earmarked for considerable expansion in coming years, and the church is accordingly gearing itself up to welcome further new members.
2. This is a petition for a faculty to carry out works to five trees in the churchyard. The trees in question are as follows:
 - T1 Irish Yew, adjacent to porch entrance;
 - T2 Irish Yew, adjacent to south-west corner of church;
 - T3 Irish Yew, situated in front of church;
 - T4 Previously reduced English Yew, situated in corner adjacent to roadside boundary; and
 - T5 English Yew, adjacent to gate entrance.
3. The descriptions are taken from the quotation (14274), dated 6 February 2019, from Adrian Hope Tree Services; and the location of the five trees is shown on a hand-drawn plan dated 16 April 2019.
4. The original proposal was that T1 and T2 were to be felled; T3 was to be reduced to 2 metres; T4 reduced in width by approx. 1 metre; and T5 reduced to approximately 6 metres, with lower crown lightly trimmed. Subsequently, it was proposed that T3 should be felled, rather than reduced – and it was that amended proposal that was considered by the DAC, and recommended, with no proviso.
5. The church is not listed, and the churchyard is not within a conservation area. None of the trees concerned are subject to tree preservation orders. The planning authority has been consulted, but has raised no objection to the proposed works.

6. The proposal to fell T1 was the subject of an objection by Mr Derek Pickering, who lives in the house immediately to the south of the church. He was invited to state whether he wished to become a party opponent to the petition, but he declined to do so. However, he did send in a further letter, the contents of which I have taken into account.
7. I have decided that it is expedient to determine the petition on the basis of written representations. I have visited the church and churchyard on a previous occasion, and I have been assisted by the photographs submitted with the petition, the images publicly available on Google, and the material submitted by Mr Pickering.

History

8. In 2005, the Parish obtained planning permission and a faculty for the construction of an extension on the south side of the church. That would have inevitably involved the loss of T1. That project was not carried out, due to the lack of funds.
9. In 2012, a faculty was sought for the removal of two trees: T1, the Irish Yew referred to above, and an English Yew, to which I shall refer as T6, that then stood at the south-east corner of the churchyard. No objection was raised by the planning authority.
10. It was said that the presence of T1 and T6 were causing damage to the vestry. That petition was strongly opposed by Mr Pickering, on the grounds that the removal of T1, in particular, would open a clear view from the churchyard into his garden, and adversely affect the view from within it.
11. The Deputy Chancellor carried out a site inspection, at which it was agreed that T6 was certainly causing damage to the vestry, and was in any event too large for its location. Its removal would also enable a pathway to be created to the church door from the adjacent car park. A faculty was accordingly granted for the removal of T6.
12. But a faculty was refused for the felling of T1, in view of the harm that it would be likely to cause to the amenity of Mr Pickering's property, and the lack of any clear evidence as to damage to the vestry being caused by that tree. However, the Deputy Chancellor stated that "I fear there may be an inevitability about its future, and that the Court may soon be faced with a petition for a faculty that will be impossible to refuse."
13. Tree T6 was duly felled, and the path from the car park constructed.

The present petition

14. The PCC states that it is focussing on making the church more open and accessible for the community. It is accordingly seeking to remove two yew trees and to considerably reduce in size the other yew trees. They have now grown out of proportion to the building, and tend to overshadow it.

15. Further, an extension similar to or possibly larger than the one proposed in 2005 is now being considered again, and this would again necessitate the loss of T1, and also T2. The parish therefore wishes to have the two trees removed in anticipation of building an extension. Nothing has been mentioned as to T1 causing any damage to the vestry.
16. Mr Pickering became aware of the notice publicising the faculty petition, and again objected to the felling of T1, for much the same reasons as in 2012 – as he put it, this tree provides considerable greenery screening, between what would be an austere view of the side of the church and his back garden. He also pointed out that the privacy of his property had already suffered as a result of the opening up of a new footway that now runs, in effect, from the Hall Car Park through to Stonebow Road; and the loss of Tree T1 would make the situation worse.
17. A meeting apparently took place between Mr Pickering and Mr Wardle, the churchwarden, in an attempt to agree a compromise, but that failed to resolve the disagreement. Mr Wardle explained that the proposed felling would be necessary in order to enable the extension to be built; Mr Pickering questioned the need for additional space, in view of the nearby hall. Mr Wardle apparently suggested that a new boundary fence could be erected, to improve Mr Pickering's privacy, but on Mr Pickering's land; that suggestion was, unsurprisingly, not well received.

Discussion

18. I agree that the three Yews T3 to T5 along the road frontages of the churchyard are too large, and would benefit from being reduced or, in the case of T3, felled. I do not see that this will cause any significant loss of amenity, or any other problem. A faculty should accordingly issue to authorise those works, as described in detail in the revised quotation, without further ado.
19. As for the removal of the two English yews, there appears to be no suggestion that this is necessary because they are causing damage to the building. The proposed felling is to be carried out solely "in anticipation of building an extension". It seems to me that this is not a sufficient basis on which to justify felling two healthy trees, especially in view of the understandable concern raised by the neighbouring owner.
20. It may well be that a proposal is submitted at some time in the future for an extension. And that may or may not generate objections – either on the grounds that it will lead inevitably to the loss of the two trees, or on other grounds. The Court will consider any such proposal in due course; and in doing so will of course take into account, among other factors, any loss of trees. But there has already been one such proposal that was approved but never implemented; and to fell the trees before the next scheme has even been put forward, far less implemented, would be premature.
21. I therefore refuse a faculty for the felling of T1 and T2.

22. On the other hand, I realise that, if those two trees are to remain, at least for the moment, it may still be necessary to reduce them, if they are too large, at the same time as the authorised works to T3 to T5 are carried out. That would need to be the subject of a further faculty petition, and I would wish to see the views of the DAC and Mr Pickering on any such proposal.

CHARLES MYNORS

Chancellor

10 December 2019

(revised)