



Faculty – Grade II listed village church – Felling and removal of a healthy, mature, western red cedar overhanging a neighbouring property –DAC recommending the proposal for approval – Local authority tree officer content for the tree to be felled – Faculty granted subject to conditions*

Application Ref: 2025-117176

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Wednesday, 22 October 2025

Before:

THE WORSHIPFUL CHANCELLOR HODGE KC

In the matter of:

All Saints, Emberton

THE PETITION OF:

Mrs Sheila Watts and
Ms Madeline Forrester
(Churchwardens)

This is an unopposed petition determined on the papers and without a hearing.

The following case is referred to in the judgment:

Re St Nicholas, Kingsey [2023] ECC Oxf 5, (2024) 26 Ecc LJ 118

JUDGMENT

Introduction and background

1. This is an unopposed, online faculty application, dated 11 August 2025, by the churchwardens to fell a healthy, mature, western red cedar in the churchyard of this Grade II* listed, medieval village church which is situated within a conservation area, lies within the Archdeaconry of Buckingham, and forms one of the Lamp Group of churches.

2. The only reason for setting out my reasons for granting this petition in a formal judgment is because of the need to demonstrate the careful scrutiny which this court must bring to bear on any proposal to fell any mature and healthy tree as a part of God's creation, and in light of the Fifth Mark of Mission, which requires all of us *"to strive to safeguard the integrity of creation and sustain and renew the life of the earth"*.

The petition

3. According to the petition, there is a healthy, mature, western red cedar tree on the north-eastern boundary of the churchyard, very close to the churchyard wall, which significantly overhangs the neighbouring buildings fronting on to Church Lane. The tree is 17 metres high and towers over the neighbouring property. This causes enormous problems for the church's neighbours, who constantly complain about the tree overshadowing their property and garden, causing a mess in their garden, and touching the structure and the stone boundary wall of the neighbouring property. The tree is very close to the fine avenue of yew trees which lines the path to the church.

4. A tree assessment report on the churchyard has recently been obtained from Andrew Belson, who is registered as a consultant by the Arboricultural Association. He advises that the tree is too close to the stone boundary wall. Reference is made to paragraph 5.4 (on page 8) of his report, which was written following an inspection of the trees in the churchyard on 29 April 2025.

5. The PCC strongly want to fell the tree, which is too close to neighbouring properties and the avenue of yews, having grown too large for its position. It is intended to fell the tree within one and two months, depending on contractor availability.

6. The parish have applied to the local planning authority for conservation area consent. On 16 September 2025, Milton Keynes City Council issued a decision notice (under application reference: PLN/2025/1651) consenting to the felling of the western red cedar.

7. The usual public notices were duly displayed between 13 August and 12 September 2025. No objections have been received.

8. The proposal has the full support of the Parochial Church Council (the **PCC**).

The DAC's notification of advice

9. The Diocesan Advisory Committee (the **DAC**) have recommended the proposal for approval by the court. They advise that this is not likely to affect the character of the church as a building of special architectural or historic interest. In the opinion of the DAC, the parish's explanation of how they have had due regard to net zero guidance in formulating their proposal

is adequate. The DAC have drawn the attention of the parish to the need for the felling or major pruning of trees and shrubs generally to take place outside the nesting season (which starts in February and ends in September). They point out that is an offence under the Wildlife and Countryside Act 1981 to disturb birds whilst they are nesting, building a nest, or in or near a nest containing their young. When tree or vegetation clearance work needs to be undertaken during the nesting season, a pre-works survey needs to be carried out by a suitably competent person. As a general rule, it should be assumed that birds will be nesting in trees; and any contractor should assess, record, and confirm that any works carried out in the management of trees and other vegetation has not disturbed actively nesting birds. Ground vegetation, and therefore ground nesting birds, can often be overlooked by tree workers, so additional care and controls should be taken when access and egress to the work site may also cause disturbance or damage to a nesting site. This is also true for retained trees on site, as the removal of adjacent trees, or remedial works to a tree, may lead to an established nest being abandoned, or exposed to the elements or predation. The DAC also point to the fact that many bat species also roost in trees. If there is any suspicion, or likelihood, that bats will be disturbed by the proposed works, an ecological consultant should be appointed to carry out a survey, and to advise on appropriate mitigation measures, well in advance of the start of any works.

The parish's justification for the felling

10. On first reviewing this petition, I noted that paragraph 6.1 (on page 10) of the tree assessment report (headed *Removal of Western Red Cedar 2756*) reads:

“With reference to Table A.1 of British Standard 5837, it appears that it would be prudent to remove Western Red Cedar 2756, although the immediate issues of parts of the tree’s crown coming into contact with buildings could easily be addressed. This is not an urgent issue.”

11. In light of this statement, I directed the Registry to contact the petitioners, and to inquire of them why, in light of the Fifth Mark of Mission (*‘To strive to safeguard the integrity of creation and sustain and renew the life of the earth’*), they were seeking to fell this healthy, mature, western red cedar tree rather than simply pruning it. I also directed the Registry to inform the petitioners that I considered, having regard to the overriding objective in Part 1 of the Faculty Jurisdiction Rules, that it was expedient to determine this petition on consideration of written representations, rather than at a hearing. I inquired whether they had any views on that course of action.

12. On 17 October 2025, I received a response from the PCC, as follows:

“The Parochial Church Council of All Saints’ church is, and always has been, an enthusiastic adherent to the principles of conservation as set out in the Fifth Mark of Mission. All Saints is a registered Eco-Church working towards the bronze award with A Rocha UK. Plans are already under way to create wild areas of the churchyard, planting a herb garden, and is completing an Open University Citizen Science resource survey called Treezilla.

Nevertheless, the PCC is not only wholly supportive of ecological matters, it also has a responsibility for the welfare of the adjacent properties of its parishioners, which includes the conservation of the churchyard, mitigating the overshadowing of neighbours’ properties, and general safety of the area. The tree encroaches on all these issues; therefore, it is submitted that its

removal is necessary rather than pruning as it causes distress to our neighbours.

We are very aware of the Fifth Mark of Mission, but we should also consider our neighbours' feelings and safety, which could come loosely under the Third Mark of Mission - *'To respond to human need by loving service'* - but probably more under the second commandment: *'To love our neighbours as ourselves'*.

Milton Keynes City Council's tree officer, on 20 August, commented on the PCC's planning application to fell the Western Red Cedar (PLN/2025/1651):

'I have found that the tree has developed about five leaders from the 6 metre point with junctions of reduced structural integrity due to their narrow angles of confluence. It is also very close to a dwelling and its small garden, is growing on a mound and has a crown bias towards the property. For these reasons I do not think the tree should be considered for a tree preservation order and the works may therefore go ahead. I note that a replacement tree is proposed for the cherry tree and I request that the applicant includes an appropriate conifer species as a replacement for the felling of the W.R. Cedar. I suggest the West Lane frontage would be a good location to replant.'

With these comments in mind, the PCC intends to plant a replacement conifer in a more appropriate area of the churchyard.

Churchyard maintenance needs to be both sensitive and practical. It is a shared environment between all wildlife species but also serves the needs of the parishioners. The PCC submits the removal of this tree is necessary, and its proposed replacement presents an opportunity to provide further wildlife habitat."

Previous authority

13. In *Re St Nicholas, Kingsey* [2023] ECC Oxf 5, (2024) 26 Ecc LJ 118 the rector and churchwardens of a Grade II listed village church applied for a faculty for the removal from the churchyard of a healthy, mature lime tree, due to a risk of subsidence damage to an adjoining property, as advised by their retained arboriculturist. The parish were reluctant to fell a healthy tree which formed a cherished part of the churchyard landscape and wildlife habitat; but they were prepared to do so in that case out of good neighbourliness, and in order to mitigate any future risk to the neighbouring property. The DAC were equally reluctant, but it did not object to the felling. With some reservations, I granted a faculty, subject to conditions which included a requirement that at least one replacement tree of a species, and at a location in the churchyard, to be approved by the archdeacon must be planted during the current, or the following, growing season after the felling of the lime tree. Since the felling of the lime tree would result in no harm to the significance of the church as a Grade II listed church building of special architectural or historic interest, the answer to the first of the *Duffield* questions was in the negative. It followed that the question for the court was whether the petitioners had shown a sufficiently good reason for the felling of the lime tree to overcome the ordinary presumption, in faculty proceedings, that, in the absence of good reason, any changes to a church, or to a churchyard, should not be permitted. In determining that question, the court must give due weight both to the aesthetic, and the environmental, impacts of the loss of the tree; and it must do so against the background that the world is facing a climate emergency. The court considered

that it should not question the expert advice received by the church's insurers, or stand in the way of the view taken by the PCC.

Analysis and conclusion

14. The felling of this mature, and healthy, western red cedar will result in no harm to the significance of the church of All Saints, Emberton as a Grade II* listed church building of special architectural or historic interest. It follows that the question for the court is whether the petitioners have shown a sufficiently good reason for the felling of a healthy tree to overcome the ordinary presumption, in faculty proceedings, that, in the absence of good reason, change to a church, or to a churchyard, should not be permitted. In determining that question, the court must give due weight both to the aesthetic, and the environmental, impacts of the loss of the tree; and it must do so against the background that the tree is a part of God's noble creation, and that the world is facing a climate emergency.

15. With reluctance, I am satisfied that the petitioners have shown a sufficiently clear and convincing justification for the felling of this tree. I have seen photographic images of the tree. It is clearly massively overgrown, and is in the wrong location. I can readily understand how the church's neighbours must feel at the way it overshadows, and dominates, their property. I must bear in mind the reasons the PCC have given for wishing to fell this tree, notwithstanding their expressed enthusiastic adherence to the principles of conservation, as set out in the Fifth Mark of Mission. The court should show appropriate deference to their wish to be good neighbours, and recognise that they are better placed than this court to consider how this can best be achieved. The court should also be prepared to defer to the views of the local planning authority's tree officer, and to the advice of the DAC. Following the felling of the cedar, at least one replacement species of conifer must be planted, in a more appropriate area of the churchyard, during the current, or the following, growing season. This tree must be appropriately nurtured, and replaced should it fail to prosper or die.

16. For these reasons, I grant a faculty permitting the felling of this western red cedar, subject to the following conditions:

- (1) The tree felling shall be carried under the direction of the churchwardens; and shall be undertaken by a suitably qualified, and experienced, tree feller, who holds appropriate insurance for the works
- (2) The tree felling shall be completed within three (3) months of the grant of the faculty, or such further time as the court may allow.
- (3) The tree felling shall take place outside the bird nesting season, which officially starts in February and ends in September.
- (4) Care is to be taken not to disturb any birds whilst they are nesting, building a nest, or in or near a nest containing their young.
- (5) The parish are to comply with the requirements in the decision notice dated 16 September 2025 (under application reference: PLN/2025/1651) consenting to the felling of the western red cedar.
- (6) Before felling the tree, the parish are to notify their own insurers; and they are to comply with any recommendations or requirements they may make or impose.

(7) Following the felling of the cedar, at least one replacement species of conifer must be planted in a more appropriate area of the churchyard during the current, or the following, growing season. This must be appropriately nurtured, and replaced should it fail to prosper or die.

I give the petitioners permission to apply to the court, by letter to the Registry, for any further directions as to the carrying out of this faculty.

17. In the usual way, I charge no fee for this written judgment. The petitioners must pay the costs of this petition, including any additional fees incurred by the Registry in dealing with this application.

David R. Hodge

The Worshipful Chancellor Hodge KC

22 October 2025