

In the matter of St Michael the Archangel, Emley

Judgment

1. By a petition dated 18 August 2020, the incumbent and churchwarden of St Michael the Archangel, Emley seek a faculty for the following:

Repair of churchyard wall in two areas (adjoining houses 5 and 6 St Michaels Gardens), with traditional methods, reusing existing stone and to existing line, with localised excavation.
2. Some additional technical details are included in the Schedule of Works.
3. Due to the Covid-19 emergency, pursuant to rules 6.1 and 6.7 of the Faculty Jurisdiction Rules 2015, I dispensed with the giving of public notice on the basis that other steps were taken to bring the proposed works to the attention of parishioners.
4. The Registry has received one letter of objection, from Dr P J Calpin of 6 St Michaels Gardens. In accordance with rule 10.3 of the Faculty Jurisdiction Rules 2015, the Registry gave written notice to Dr Calpin of the options of either becoming a party opponent or of leaving her letter of objection to be taken into account in determining the petition. She chose the latter. On the face of it, Dr Calpin's objection is surprising since she would be the principal beneficiary of the proposed work in that a wall which has fallen onto her property would be rebuilt.
5. In the background there is some uncertainty as to whether the Parochial Church Council is responsible for the repair of the churchyard wall or whether that liability has passed to the local authority. I have not been provided with an Order in Council closing the churchyard nor any notice passing the repairing obligation to the local authority under section 215 of the Local Government Act 1972. For the purposes of this petition, therefore, the Court must proceed on the basis that liability for the churchyard wall remains with the PCC, a matter which the petitioners implicitly concede in seeking the faculty.
6. At first blush, therefore, this is a straightforward and uncontroversial matter, namely the repair of a wall which fell in or about 2014. The only surprising feature is the delay in issuing the petition. Ordinarily, the Court would direct the issuing of a faculty without further investigation.
7. So why does Dr Calpin object to the wall being repaired? The fallen part lies on property which has been in her ownership since 2018. Her neighbour's land is similarly affected. Her letter of objection refers to the fallen wall being 'a health and safety risk to the public and myself'. Why is she seeking to frustrate the granting of a faculty which would ameliorate this?
8. Her letter of objection states:

As the current application does not include any works to the trees, it is a deficient application [...] The state of the trees and the condition of the wall are inextricably linked, with the roots causing the bulging along the length of the wall and exponentially worsening the collapse of the wall. To repair/patch the wall, the roots will inevitably need attention and ergo will also require a Faculty. The failure to include dealing with the trees in the application, particularly as the stump and roots of the tree that was removed at the site of the collapsed wall in my garden area still has a TPO. Any attempt by the contractor to remove roots or the stump will be illegal and subject to fines. Without a faculty that includes permission to remove roots or the stump if necessary will inevitably cause delay of the wall repair patch if not approved before the work proceeds.

9. Had Dr Calpin elected to be a party to these proceedings she could have cross-petitioned for a faculty in relation to the trees but she has chosen not to do so. As a party she could have led evidence on the state of the trees which the Court could have considered, but again she has chosen not to do so. She has chosen simply to object to the grant of a faculty for the repair of the wall.
10. The function of the Consistory Court is modest, namely to determine whether or not to grant a faculty permitting the work specified in the petition. It is not its role to enter into neighbour disputes nor to determine matters, such as a claim in nuisance, which are properly the subject of proceedings in the civil courts.
11. A faculty is a permissive right. It allows something to be done but does not compel it. It will be a matter for the PCC to consider what further consents and permissions might also be necessary. They will need authority for workmen to enter Dr Calpin's land and that of her neighbour. If TPOs are in place, then work to those trees will require local authority consent, and the removal of trees in the churchyard (should this be required) may require a further faculty.
12. But the issue for the Court in the current proceedings is a short one, namely should a faculty be granted permitting the repair of the churchyard wall? Unquestionably it should. The case is overwhelming. Whether that faculty can be implemented and whether further permissions might also be needed are not matters on which this Court can or should express a view.
13. In the circumstances a faculty may pass the seal. The faculty will lapse if the works are not carried out within two years. The Court fees will be borne by the petitioners, payable within 21 days.
14. I hope that the PCC and Dr Calpin will find a way of resolving their apparent differences. In his poem, 'Mending Wall', Robert Frost reminds us that 'Good fences make good neighbours'. This matter cries out for a mediated resolution, but the Consistory Court is not the appropriate forum for achieving it.