

IN THE CONSISTORY COURT AT LINCOLN

In the matter of Between

Mrs Maxine Hill (Chair, Friskney Parish Council) Petitioner

And

Mr Edwin Hodgson Respondent

And

The Archdeacon of Boston

And

The PCC of All Saints, Friskney

Judgment

1. On 3 August 2019 the Petitioner, who is Chair of the Friskney Parish Council, applied for an injunction under FJR rule 16.2 to prevent Edwin Hodgson, publican, of The Anchor Inn, Church End, Friskney from (i) lopping or felling any further trees demarcating the boundary between the Anchor Inn and the churchyard of All Saints, Friskney other than normal tree maintenance and (ii) erecting a replacement boundary structure to demarcate the boundary with the churchyard that has not first been approved by this court and (iii) no further steps are taken to infill the dyke on the boundary of the curtilage of the Anchor Inn and the churchyard.
2. The Petitioner alleged that in 2018 the Respondent had cut down a line of trees along the boundary between The Anchor Inn and the churchyard and had carried out further work to the trees including a yew tree on the churchyard side of the boundary, depositing debris in the churchyard and filling in the boundary dyke.
3. The Registrar had written to the Respondent on 26 March 2019 requiring him to submit an application for a faculty and to desist from doing any further work along the boundary but had no reply.

4. Supporting witness statements for the application were lodged from the Petitioner dated 5/9/19, Dora Wilcox dated 22/2/20, Stephen Brennan dated 22/2/20.
5. The Respondent submitted 2 statements by email dated 28/4/20 and 20/5/20 in which he stated there was no definitive boundary between the churchyard and the Anchor Inn. He accepted that some trees had been removed. His final statement apologises for coming across as not very approachable in the past and explains that he is in a better place now and wanted to resolve any issues.
6. On 1/4/20 I granted an interim injunction in the terms of the injunction applied for which was renewed on 9/4/20 and then to 31/5/20 and then until further order. On 28/5/20 I stayed all the proceedings save for the interim injunction to permit the Archdeacon of Boston to explore a solution with the parties. The Archdeacon was made a party to these proceedings in 2020. She wrote a report dated 29th June 2020. It was further ordered that a plan be drawn up under the supervision of the Archdeacon setting out the relevant boundary features with both the Applicant and the Respondent to set out their contentions for the boundary on that plan. This was done and a directions hearing was convened over Zoom with the parties on 18/12/20.
7. All parties agreed that it was expedient for me to deal with this case on the papers.
8. At the hearing 18/12/20 there appeared to be a consensus about the line of the boundary. It was agreed that there should be a meeting on the ground with the Archdeacon and the parties to record the agreed line of the boundary recorded by photographs.
9. That meeting took place on Monday 25th January 2021 where the boundary was agreed and marked out by a cord. This was photographed (by DC Architectural Services Ltd).
10. On 13 March 2021 I ordered that the boundary set out by the cord should now be recorded accurately on a site plan which should be put to the parties for their agreement. This plan drawn up by a surveyor records the boundary line that was agreed between the parties (emails from the Petitioner 6/4/21 and from the Respondent 7/4/21).
11. I note that the Petitioner is concerned that there should be some privacy restored to the churchyard with a hedge.
12. I am pleased that the parties were able to reach an agreement about the boundary line notwithstanding the delays that were caused by the Covid lockdown just as these proceedings began. It is my understanding that

the PCC would have no representations to make about the boundary that has been agreed by the Applicant (who is the Chair of the Parish Council) and the Respondent. However, I will make the PCC a party to the proceedings as they are an 'interested person', so that they can make any representations, should they so wish.

13. The Archdeacon's report dated 18/11/20 states that the dyke does not appear to be within the churchyard. On this basis I will not continue the injunction in respect of the dyke. It is clear that there is debris on either side of the boundary but it must be for the Parish Council who maintain the churchyard to remove the debris in the churchyard (with the agreement of the PCC I would hope) and it is for the Respondent to remove any debris from his side of the boundary. Notwithstanding that trees were cut down on the church side of the boundary when they should not have been, given that the parties have reached an agreement and must live together I consider that this is the most expedient arrangement.
14. It may well be that the PCC of the Church will want to erect its own boundary on its land to give privacy to the churchyard now that the trees have been removed. This will be a matter for the PCC and if they intend to erect any form of fence then this will require a Faculty. I will give until 17/12/21 for the PCC to serve a Petition for a Faculty if so advised. If they intend to plant something on their side of the boundary then they would be well advised to obtain a Faculty before doing so given the history with this boundary.
15. I am not going to make any further order against the Respondent in respect of the trees he cut down which he should not have done because they were on the churchyard side of the boundary. From the final words of his May statement and from what he said to me in the Zoom hearing I held in December 2020, together with the tone of the meetings held on the ground under the auspices of the Archdeacon, I am confident that no further order is required, and there will be no repeat of this behaviour. I note that the PCC have not sought to urge such action upon me. I propose to make the injunctions permanent save in respect of the dyke, so there is clarity about the consequences of a breach.
16. The PCC have until 5/11/21 to make any representations about (i) being made a party and/or (ii) whether they object to the boundary line drawn on plan 'A' (iii) whether they disagree that the dyke is not on churchyard land.

17. Additionally, I further direct that this judgment should be served on the Secretary of the DAC pursuant to FJR 7.2 so that the DAC may give me advice should they so wish before a final determination and a final order is made. It would be helpful to have any such advice, or confirmation that they do not intend to offer any advice, by 5/11/21.
18. Having considered the PCC representations, if any, and the DAC advice, if any, I will then issue the final Order. I have set out the proposed draft Order at paragraph 20 below.
19. I have reserved costs throughout these proceedings, and these will have to be dealt with. If there are costs incurred by the Registry, as there will be, then these proposed costs must be served on the parties within 14 days of the issue of the final Order. Any written submissions in respect of the quantum of those costs and who should pay them should also be received the Registry within 14 days thereafter. I will then deal with the question of costs on paper in response to those submissions. I refer the parties to the Guidance on the Award of Costs in Faculty Proceedings produced by the Ecclesiastical Judges Association, a copy of which the Registry can make available to the parties.
20. The proposed final order to be issued under FJR 16.5 is as set out below being terms as appear to me to be just.

DRAFT ORDER

Upon the Petitioner and the Respondent, the Archdeacon of Boston and the PCC of All Saints Church Friskney agreeing that the boundary line between the churchyard and the Anchor Inn, Friskney is accurately delineated on the plan marked 'A' and attached hereto

It is ORDERED that

- (i) The boundary between the churchyard of All Saints Churchyard and The Anchor Inn Friskney is DECLARED to be the red line drawn on the plan marked 'A' and attached hereto
- (ii) The Respondent is forbidden whether by himself or by instructing or encouraging or permitting any other person to act on his behalf, from lopping or felling any trees within the churchyard of All Saints, Friskney or from erecting any fence or boundary demarcation within the churchyard of All Saints, Friskney.

- (iii) Costs are reserved. The Registry will serve the Registry costs on all parties within 14 days of this Order and the parties may have 14 days thereafter to make any written submissions on costs, which will be determined thereafter.

21. I repeat my thanks to Archdeacon Justine for her assistance in this case.

22. I waive my fees in this case.

The Revd and Worshipful Chancellor HH Judge Mark Bishop

16th October 2021