

15 MAR 2016

Neutral citation number: [2016] ECC Swk 4

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

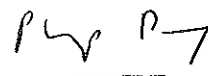
IN THE MATTER OF THE CHURCHYARD OF ST BARTHOLOMEW'S CHURCH,
LEIGH

AND IN THE MATTER OF A PETITION FOR FELLING A WELLINGTONIA TREE
AND OTHER TREE WORKS

JUDGMENT

1. This matter concerns a petition received in the Registry on 17 August 2015 by the Reverend Jonathan Willans, Christine Shearing and Tim Shearing seeking permission to fell a Wellingtonia or Giant Redwood tree and to carry out other tree works in the churchyard of St Bartholomew's Church, Leigh. Mr Willans is the Vicar of St Bartholomew's, Mrs Shearing is a churchwarden and Mr Shearing a member of the PCC. Apart from the proposal to fell the Wellingtonia, the other tree works are uncontroversial and I need not mention them further. The proposal to fell the Wellingtonia is objected to Dr R Anthony Vere Hodge, who lives in Leigh and is on the church electoral roll. However Dr Hodge has decided not to become a party opponent, simply asking me to take his objection into account in reaching a decision on the petition.
2. The Wellingtonia is a large tree, about 60 feet (18m) in height. However its condition has been giving cause for concern and, accordingly, the PCC has been monitoring it over many years, obtaining reports from a number of tree specialists in that period. Its condition was noted as deteriorating from 2007 onwards. In 2009 it was noted that the tree was in poor condition with 60% of the lower crown dead. In February 2014 there was a recommendation that dead, dying and dangerous branches be removed. In February 2015 the PCC obtained a quotation from Dave Ford Tree Care for it to be felled. The tree is not subject to a tree preservation order but is in the Leigh Conservation Area. Accordingly the consent (or strictly "non objection") of the planning authority, Mole Valley District Council, was required before the tree could be felled. This was given on 14 May 2015, the Council commenting that *[t]he Redwood is ... dying back and in a significantly poor condition therefore its removal is entirely agreeable*. By its Notification of Advice dated 9 July 2015, the DAC recommended the works. The Notification is silent about the matter but it is my understanding that the DAC did not, in the circumstances, consider it necessary for itself (or a representative) to inspect the tree.
3. The petition was advertised in the usual way and this led to the objection by Dr Hodge. Apart from being a church member (and, as he tells me, Master of the Ringers), for many years he was Secretary of the Leigh & District Cottage Garden Society. His points are twofold. As to procedure, he says that a report from a tree expert should have been obtained to support the application to fell; as to substance of the matter, he was hopeful that the removal of the ivy from the tree might lead to its restoration to health.

4. Mrs Shearing responded by explaining the background to the petition but it was not in dispute that a report from a tree expert had not been obtained. In these circumstances, it seemed to me appropriate to request the petitioners to obtain an expert report. Before reaching this conclusion I had considered whether this was indeed necessary and whether it would be appropriate for me to defer, in effect, to the view of Mole Valley District Council. Although I was attracted to this course, I reminded myself of two things. First, that the Faculty Review Group had recently rejected an argument put to them that trees should be taken out of the faculty jurisdiction altogether. Second, that tree felling in churchyards is, in my experience, a very sensitive matter. I can understand why Dr Hodge was concerned; and there may have been others who shared his concerns, although not writing to the Registrar to object.
5. The PCC obtained a report from Mr Andrew Phelps, of Phelps Associates, Arboricultural and Landscape Consultants, dated 5 November 2015. Mr Phelps is a professional member of the Consulting Arborist Society.
6. Mr Phelps considers the tree to be in severe decline and to be two thirds dead; in his opinion it would be completely dead in less than 10 years. He thinks that in its current state its amenity value is low. He has also undertaken a hazard assessment and concludes that, although not apparently presenting an immediate danger, it does present such a degree of hazard as to require action.
7. This all points to the need to fell the tree. However, instead of felling, Mr Phelps encourages reducing the tree to 10m in height in order to provide a deadwood habitat.
8. The PCC considered Mr Phelps' Report at a meeting on 29 February 2016. It considered that, in a churchyard containing numerous trees, hedges, shrubs and stockpiles of old wood, there was plenty of deadwood habitat. On the other hand, it took the view that, even if it were reduced to 10m, there would be a risk of the tree falling on outbuildings adjoining the churchyard and even, conceivably, on a person. In the light of the PCC's views, the Petitioners decided not to seek to amend the petition in the light of Mr Phelps's Report.
9. I am grateful to the Petitioners and the PCC for considering this matter so carefully. Trees in churchyards are important and decisions to fell trees are not lightly made. Obviously the case for at least reducing the tree to 10m has been made out. It seems to me that the PCC's pragmatic decision that it would prefer to fell the tree completely is justifiable and furnishes proper grounds for me to authorise felling of the tree as sought.
10. I direct that a faculty should issue. The DAC point out that there some discrepancies between the quotation that the PCC have obtained and the works authorised by Mole Valley District Council. The works authorised under the faculty shall be the latter.



PHILIP PETCHEY
Chancellor
14 March 2016