

Neutral Citation: [2019] ECC Win 1

In the consistory court of the Diocese of Winchester

**In the Parish of: Newnham with Nately Scures with Mapledurwell with Up Nately
with Greywell**

Re: Mapledurwell, St Mary

JUDGMENT

Works to Trees in the Churchyard

1. Martin Luther is supposed to have been fond of the following proverb: “If I knew that tomorrow was the end of the world, I would plant an apple tree today”. The point being that good works begun now will be brought to fulfilment at the second coming. Normally, of course, it takes many years for a tree to grow to maturity such that the trees in our streets and churchyards are a testament to the previous generations who planted them.
2. This case, however, is not about planting trees but cutting them down. Specifically, it concerns five yew trees, a conifer and a holly in the churchyard of St Mary’s, Mapledurwell which were felled without the benefit of a faculty. I have to consider whether to grant a faculty for these works retrospectively, and if so on what terms.
3. Before dealing with the substance of the case, I will deal briefly with how it was that these trees came to be felled without permission. A petition was filed by Mrs Suzanne Coull, the churchwarden of St Mary’s, in December 2018. This sought permission for various tree works including the felling of the trees currently in issue. By the time the matter had been considered by the DAC it was late February 2019 and

Mrs Coull was eager for the works to commence in advance of the bird nesting season.

4. I granted permission for the majority of the works on 27 February 2019, as they seemed entirely uncontroversial. However, I was concerned about the proposals for felling which seemed insufficiently justified on the material available to me. I was also not minded to waive the requirement for public notice in respect of the felling. I therefore requested further information and arranged to visit the site and see the trees for myself as soon as possible (which was 1 March 2019).
5. I was somewhat surprised when Mrs Coull responded to this proposed course of action with “disappointment... after the positive email response from the Chancellor dated 19th February on the Online Faculty System”. This must have been a reference to the DAC’s notification of advice (as the papers had not even been sent to me on the OFS by that point), which clearly states the following:

This notification constitutes advice only and does not give you permission to carry out the works or other proposals to which it relates. A faculty must be obtained from the Consistory Court before the works or proposals may lawfully be carried out

6. I was further surprised, on visiting the site, to find no public notice on display and no trees, as they had already been felled. The petitioner’s conduct in this respect has simply been unacceptable. She has however apologised for her error and I am satisfied that, being relatively new in post, she acted as she did out of a misunderstanding of the process that should have been followed.

7. Churchwardens need to understand the requirement for faculty permission, which must be observed with particularly care if irreversible changes are to be made. Otherwise, the court is effectively deprived of jurisdiction to consider whether to permit the changes or not. I will ask for this short judgment to be circulated to parishes so that other churchwardens can learn from the experience here. If similar events occur in future I would be minded to call a hearing for them to explain their actions and also to consider making an appropriate costs order.
8. As regards churchyard trees, it should not be assumed that just because any relevant consents have been obtained from the local authority (as they were in this case) that a faculty will automatically be granted. Where trees in a conservation area are concerned, the local authority will simply consider whether the trees provide sufficient amenity value to warrant the making of a tree preservation order.
9. This court, on the other hand, will look at matters in a broader perspective which acknowledges that trees are living parts of God's good creation, which have value for that reason regardless of their utility to human beings. This is particularly so if, as appears to have been the case here, the trees provide a habitat for other species. More specifically, trees may form an important part of the character and appearance of the churchyard. Yew trees in particular have long been associated with churchyards (although the reasons for this association are somewhat obscure) and the presence of mature yew trees in a churchyard is accordingly of some historical and cultural value in itself. I have already mentioned, above, the link that mature trees provide to past generations who have cared for the site.
10. For all these reasons the court will require clear and convincing justification if the felling of churchyard trees is proposed, together with an explanation of why pruning

is not an acceptable alternative. It will be sensible, if local authority consent is also required, for the two applications to be progressed simultaneously. Had that been done in the present case, it would have avoided the perceived need for urgency towards the end of the process.

11. I must now determine the substantive petition. As I have already indicated, it is something of a moot point whether or not permission is granted because the trees have gone and nothing I say will bring them back. Not having seen the trees in situ, I am also not able to second guess what my decision would have been had I been considering this matter prospectively. From photographs, it seems that the conifer (apparently a non-native species) was somewhat unsightly and little may have been lost from its removal. The yew trees (also described in documents presented by the petitioners as a multi-stemmed bush) and holly do appear to have been valuable in various ways. The concern with them was that they were in the wrong location, too near either to the church or to a gravestone and the boundary wall respectively. I was not presented with any evidence to demonstrate that safe retention of the trees would have been impossible or unduly difficult, however.

12. In all the circumstances, I am minded to grant a faculty to regularise the situation. However, I will also impose a condition that three new native trees must be planted in the churchyard. This will compensate for the loss of trees of value, and the new planting can be carried out in locations which are more appropriate in the long term. In that way this unfortunate case will hopefully leave a positive legacy for the future.

24th April 2019

Matthew Cain Ormondroyd

Diocesan Chancellor