

In the Consistory Court of the Diocese of Durham

In the Matter of the Churchyard of St Mary the Virgin, Middleton-in-Teesdale, and a petition dated 9 November 2020

Judgment

1. By a petition dated 9 November 2020 the petitioners, who are the Associate Minister and Churchwarden, seek the removal of two mature blue cedar trees from the churchyard at St Mary the Virgin Middleton-in-Teesdale. Following public notice of the petition, a letter of objection dated 25 October 2020 was received from Mrs Gayle Lowe, on behalf of herself and her husband Mr Michael Lowe. Mr and Mrs Lowe are on the electoral role and resident in the parish. They were invited to become a party opponent but were content instead to have their letter of objection taken into consideration without taking part in the proceedings.
2. St Mary's churchyard contains a variety of mature trees of the sort typically found in churchyards. There are conifers of various types and a fine row of limes on the southern margin. Well-maintained beech hedges flank the northern and eastern boundaries of the churchyard. The statement of significance records that visitors to the churchyard may see robins, chaffinches, swallows, house martins, goldcrests and occasionally treecreepers, as well as spotted flycatchers, depending of course on the season.
3. The two cedar trees in question are situated within 2 metres of the northern wall of a plant room which is adjacent to the vestry. They are healthy specimens; no birds appear to be nesting in them. In recent years the trees have been causing problems. They drop a large amount of debris on the roof on the north side of the church, choking gutters and downpipes and causing rainwater to cascade down the wall – this is in spite of the PCC having invested in new gutters and downpipes. In June 2020 when contractors removed old plaster from the north wall of the church, they discovered evidence of damage to the wall caused by blockages to the rainwater drainage system and also possibly by tree roots. The quinquennial inspector advised the PCC that he believed the two cedar trees needed to be removed, and on behalf of the PCC he commissioned A L Daines and Partners, consulting civil and structural engineers, to inspect and report back.

4. The resulting written report in July 2020 noted cracking in the western gable wall and concluded that this was probably not caused by tree roots but instead was due to differential settlement of the column foundations supporting the main church walls and the lower aisle walls. However, the report observed that there was clear evidence of movement and rotation of the north wall and this was attributable to the effect of the roots of the two cedar trees. The report also noted that the two cedars had a distinct lean towards the church, and debris from them was holding moisture on the roof allowing moss and lichen to grow so as to block gutters and downpipes. The consulting civil and structural engineers recommended that both cedar trees should be removed so as to safeguard the integrity of the structure of the church in the longer term.
5. There are no Tree Preservation Orders on the trees, but the churchyard is in a conservation area. The PCC, which was unanimous in its decision to remove the two cedars, notified Durham County Council under the Town and Country Planning Act 1990 that it intended to fell them. Durham County Council by letter dated 15th December 2020 informed the PCC that it did not object, but it desires two replacement trees to be planted in the churchyard in their place, one being an *ulmus lobel* elm of 12-14 cms girth, and the other an *ulmus lutece* elm also of 12-14 cms girth; these trees are resistant to Dutch elm disease. The Council, which maintains the churchyard, will carry out the work, and has agreed to plant the two new trees.
6. The DAC's notification of advice recommends that the work be done, and draws attention to the CBC's ChurchCare Guidance Note to PCCs on trees.
7. Mrs Lowe's letter of objection to the proposed works is short, but to the point:

"I write in opposition to the felling of the two Blue Cedar Trees in the old churchyard at St Mary's Parish Church Middleton-in-Tees.

These beautiful and rare trees, especially for these parts, should be protected for their wildlife value in a world of fast diminishing bio-diversity and habitat loss"

In a post-script she added:

"We wish good stewardship of God's creation to be effected."
8. The court entirely understands the concerns of Mr and Mrs Lowe, and it is normally deeply regrettable when any healthy mature trees are felled. However, there is no doubt

on the expert evidence presented that the two cedar trees are damaging the fabric of the church, which dates from the mid-nineteenth century and is grade II listed. The petitioners have accordingly made out a convincing case for their removal, and a faculty is therefore granted for the work to be done within 3 months. The impact of losing the two cedars will be mitigated by the planting of the two new trees in the churchyard by Durham County Council. The faculty is to be subject to the condition that the Archdeacon is to be consulted as to where in the churchyard the new trees are to be sited.

Adrian Iles
Chancellor

7 January 2021