

Neutral Citation No [2018] ECC Yor 1

In the Diocese of York In the Consistory Court

The Parish of Nunburnholme

The Church of the St James

1. The Petitioners in this matter are the Reverend Geoff Hollingsworth, Mr Andrew Hensworth churchwarden, and Mrs Ann Hill a member of the PCC.
2. By a petition dated 11th December 2017 they have sought a faculty to permit them to fell a sycamore tree, in the churchyard, and replace it with smaller suitable trees further away from the church building.
3. The matter was considered by the DAC at a meeting on the 9th January 2018. They recommended the works for approval by the court.
4. Public Notice was then given of the proposals and two persons sent letters of objection to the Diocesan Registrar. Those persons were:

Mr C J Emberton, letter dated 8th February 2018;
Mrs Ann Emberton, letter dated 8th December 2016 (in fact it must have been 8th February; it was received in the Registry on 9th February);
5. On the 13th February 2018 the Registrar wrote to each of these people explaining the options facing them, namely whether to formally object by filing a Form 5 document, or to allow me to take their letters of objection into account when coming to my decision, without them becoming parties to contested proceedings.
6. Mrs Emberton replied on the 26th February and Mr Emberton on the 27th February. Each indicated that they wished me to take their letter of objection into account and did not wish to become parties opponent in the proceedings.
7. The Registrar had also written to the Petitioners to inform them of the objections received. Mrs Hill responded in a letter dated 1st April 2018.
8. The matter has therefore been referred back to me for a final decision on the matter.
9. The petitioners' proposal was based upon a report they had received from L. Jenkins of L. J. Horticulture. Mr Jenkins is a qualified tree surgeon with NPTC certification. He had been asked to advise on the condition and any risks posed by the large sycamore tree situated in the churchyard. In his report he described the tree as having an approximate height of 25 m, being higher than the church tower by an estimated 10 to 12 m. The

distance from the stem to the edge of the church is 5.3 m and the spread of the canopy at its widest is approximately 13 m. He describes the imbalance of the canopy as a result of branches having been removed from the tree side of the church in order to stop interference with the building structure. He says that this has resulted in the canopy being weighted to the roadside which has the potential to cause ground heave/movement in the future. He says it is anticipated that the root plate spread will be similar to the canopy spread and there is therefore the possibility of root encroachment at the church walls or foundations. He draws attention to the gathering of moss adjacent to the tree on the roof of the church and considers that that requires attention. The tree has 4 main stems from the trunk at a height of approximately 3.3 m and has a flat profile which would indicate the tree has been cut back in its younger years and regrown as a multi-stemmed tree. With each stem growing in a different direction there is the potential for splits, water invasion or stem loss. His conclusion was that this tree will continue growing over a number of years. He advised that if the decision was made to remove it as a result of the risks he had identified it would be prudent to plant a number of trees in the hedgerow that will not reach such proportions. He suggested Rowan or mountain ash which reach heights of about 15 m at full maturity but are more open branched with flowers for insects in spring and berries for birds in the late summer.

10. In their letters Mr Emberton said that he had no objection to the tree being felled if it poses a safety threat or if its proximity to the church is affecting the church structure or fabric. His personal view was that the tree enhances the church's frontal appearance. Mrs Emberton described the tree as a "beautiful mature tree" and was concerned at the potential loss of benefits provided by carbon extraction, by supporting many insects and birds and by taking attention away from the very different appearance of the tower and the rest of the building, lifting the eyes upwards giving the church building more of a feeling of unity than it would otherwise have. However she also acknowledged that if the advice was that the tree was unsafe then of course it must be felled.

11. The petitioners responded to those letters by emphasising that the request for removal was not for aesthetic reasons but to protect the fabric of the church building and public safety. They say that the tree has over the years had several large branches removed from the tower side and is imbalanced; it is taller than the tower causing a significant amount of moss to form on the church roof and in the autumn the gutter and fall pipes are blocked with leaves; the buttress nearest the tree is covered with black mould and that the PCC was concerned about potential damage from falling branches both to the church and people. They felt that having regard to their responsibility as trustees for maintaining the fabric and ensuring public safety they should pursue the application for a faculty to remove the tree.

12. In my judgement, the petitioners have made out their case. Whilst undoubtedly the tree has an aesthetic value and does provide ecological benefit they have to be balanced against the potential risks of allowing the tree to continue growing. The most significant risk is that potentially to be caused by the root plate. Cutting back branches on the church side of the tree will not have stopped the root plate on that side advancing. Additionally the imbalance of the canopy coupled with the multi-stemmed nature of the tree carries the risk of stem loss as advised by Mr Jenkins. The further effects of the size and position of the tree

in relation to leaf shed, moss and mould are factors to be taken into account. It seems to me that although there is no immediate disturbance to the fabric of the likely branch fall, the petitioners would be unwise to await such dramatic developments before taking action and removing the tree.

13. Their proposal is not only to remove but to replace and to replace with the sort of trees advised by Mr Jenkins with the benefits that those trees will bring for insect and bird life in the locality.

14. In all these circumstances I am satisfied that the petitioners have made out the case for their proposal, that the various objections whether taken separately or together do not provide any reason why the proposal should not be allowed to proceed.

15. I therefore direct the faculty will pass the seal until further order.

16. I will allow 12 months for the completion of the proposals.

17. This being an opposed petition the petitioners will have to pay the additional costs created by this being an opposed petition.

Canon Peter Collier QC
Chancellor

14th April 2018