

In the Consistory Court of the Diocese of Salisbury

In the Matter of Southbroom, St James

Judgment

1. The Vicar and Churchwardens of this parish have petitioned for a faculty permitting the felling of twelve hornbeam trees which line the pathway in the churchyard to the south porch. The church building is Grade II* listed and is in the Devizes Conservation Area.
2. The DAC has recommended the works for approval. Wiltshire Council, through its Tree and Landscape Officer, has no concerns about the proposal, having been given formal notice of the intended works under the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
3. Eighteen letters or emails of objection have been received by the Registry in response to the Public Notices displayed. The author of each letter has been given the opportunity to make formal objections and take party status within these proceedings. All have chosen, instead, to have their representations taken into account under rule 10.5 of the Faculty Jurisdiction Rules 2015. As required by rule 10.5, the Petitioners have been afforded the opportunity to respond to the objections received.

Status of interested parties

4. I pause to note that rule 10.2 of the FJR 2015 provides that an ‘interested person’ (as defined in rule 10.1) may object to the grant of a faculty. Many of the objectors are ‘interested persons’ for the purposes of rule 10.1 as they live within the parish. A number of the objectors do not, however, live within the parish. None of the objectors are on its electoral roll, although some seem to think that they are, perhaps as a result of confusion with the civil electoral roll for the area. In relation to two of the objectors it is not possible to establish whether they are ‘interested persons’ as details of their residence are not provided. I have considered whether this means that I should not take into account the representations made by those objectors whose status as ‘interested persons’ is unclear. I note that under rule 10.1 an ‘interested person’ includes “any other person or body appearing to the chancellor to have a sufficient interest in the subject matter of the petition”. It is clear from the content of all but two of the objections that those objectors who do not live in the parish nevertheless live within adjoining parishes in the town of Devizes. I am satisfied that they have

sufficient interest in the subject matter of the petition and take into account all of the representations received. In so far as the two remaining objections are concerned, they do not raise any objections which are not already raised by others and as such I will take account of the concerns raised by them in any event.

Background to the petition

5. The twelve hornbeam trees which form the subject matter of this petition were planted as an avenue of trees along the southern path in the churchyard in 1990 as a memorial to twelve former members of the congregation. The commemorative nature of the trees is recorded in a memorial plaque nearby. By 2019 the trees had grown significantly and their condition was considered as part of what appears to be a plan of careful churchyard maintenance. Concerns were expressed about certain aspects of their impact in the churchyard. Those concerns included the suggestion that the trees had outgrown the space, and had not yet reached their full height potential; that their significant growth made the area very dark whilst they are in leaf and affecting the grass beneath them; both the roots and the leaf-drop affect the safety of the path beneath the trees, making it uneven and at times slippery. In order to address these concerns, the PCC sought permission (by way of the Archdeacon's List B consent) for the incremental reduction in height of the hornbeams over a number of years. In 2020 permission was granted only for a single phase of reduction of the hornbeams, and the Diocesan Advisory Committee expressed concern about the ongoing plan of a phased reduction. The DAC's report stated:

“the future intention to undertake reductions a second and third time would require further List B approval, and would not be supported by the DAC. This is because the trees have outgrown their situation to the extent that it would be difficult to reduce them after the current occasion, whilst retaining their sense of shape and form. The aim of the PCC to eventually reduce them to a 2.0m pollard would result with extremely ugly looking specimens, creating unnatural regrowth and trees not worthy of retention. The DAC therefore recommends that consideration should be given to the removal of all the hornbeams over a period of time and in liaison with a qualified arboriculturalist and Wiltshire Council.”

6. It is clear that the PCC's Churchyard Management Group felt some disquiet about this suggestion, but after consideration by the full PCC it was decided that a faculty should be sought for removal of the trees. Various steps were proposed to mitigate the impact of their loss, including the improvement of the commemorative plaque, the planting of a tree near the burial of ashes area, the introduction of seating in the churchyard and the regeneration of the area to the side of the avenue with wildlife-friendly wildflowers, perennials and bulbs. Since that time the PCC have also

determined to support the town's "Greening Devizes" project to ensure the planting of new trees within the town.

7. Advice was sought from the Tree and Landscape Officer of Wiltshire Council who gave advice similar to that of the DAC, stating that concerns about the proposed felling would be unlikely and that the trees were "well intended but wrong tree, wrong place". That advice is reflected in the Council's formal "no objection" certificate raised in response to the PCC's notification of the proposed works in December 2021. Devizes Town Council was consulted as part of this notification and did not object to the proposed works.

The objections

8. As indicated, I have read all of the objections carefully. I trust that I do them no disservice when I say that they fall into three principal categories:
 - a. The aesthetic impact of the proposals;
 - b. The commemorative significance of the trees; and
 - c. The environmental impact of the proposals.

I will address each of these issues in turn.

9. It is clear that these trees have a significant aesthetic impact within the churchyard. Many of the objectors describe their appreciation of the vaulted avenue created by the trees on their path through the churchyard and how they create a focal point within the area. The Petitioners accept that this passageway effect can be attractive, but point out that the trees create a rather dark area in this approach to the church. Most of the objectors suggest that the trees should be pruned or pollarded rather than felled. This accepts, expressly or by implication, that the current condition of the trees creates some aesthetic difficulty in that the area beneath them is rather dark. This, say the Petitioners, is not ideal when a more open approach to the church would reduce the fear and reality of crime in a location used by the public and which has been subject to recent lead theft and vandalism. Further, it is clear that there is an aesthetic impact from the trees obscuring views of the south side of the Grade II* listed church building.
10. The suggestion that the trees should be pruned or pollarded instead of felled is, at first glance, an attractive one. The difficulty is that it is the consensus of expert advice in this case that the specific nature and condition of the trees at present does not support careful pruning as a way of achieving an improved aesthetic for the trees. The DAC tree advisor and the Wiltshire Council Trees and Landscape Officer have each advised that the trees were the wrong species to be planted in this location at this proximity to each other – and that they are now too large for the setting. It may be that earlier careful pruning would have prevented this happening (although I have no evidence to support that), but the evidence before me

clearly suggests a consensus that there is no longer a reasonable possibility of maintaining the amenity value of these trees by careful pruning.

11. It is accepted that these trees were planted as a memorial to former members of the congregation. Concern has been expressed at the loss of such a memorial. Prior to submitting this petition, the Petitioners approached relatives of those commemorated to discuss what was proposed. I accept that none raised objections to the works, either directly to the Petitioners or to the Registry through the more formal route as a result of the Public Notices displayed. I make it clear that the commemorative plaque which exists must be retained or replaced with a suitable alternative (upon obtaining appropriate permission) naming those commemorated.
12. The objectors also raise concerns about the environmental impact of the loss of the trees. They question whether the church should be cutting down any healthy trees at a time when the world is facing a climate emergency and they criticize the loss of habitat. The Petitioners say that the PCC is alive to such issues and that it has and will take steps to mitigate the environmental consequences of felling the hornbeams. It is clear that these concerns were part of the discussions of the PCC when the decision was made to seek this faculty.
13. Although there would be some loss of habitat if the hornbeams are felled, the Petitioners highlight the 18 other mature trees within the churchyard which provide, it is said, a better habitat for wildlife than the hornbeams. Given this number of existing trees, they say that there is not appropriate space to plant 12 replacement trees within the churchyard, but instead they intend to engage with the Greening Devises initiative which will support the planting of new trees in appropriate spaces within the town. The Petitioners point out that the PCC has a bronze EcoChurch award and is living out its commitment to God's creation in various ways, including the installation of solar panels on the St James Centre, the replanting of boundary hedging and the encouraging of biodiversity in the churchyard.

Conclusion

14. I have considered the representations made by the Petitioners and the objectors. Although there will be some loss of amenity in the felling of the hornbeams, in the form of the loss of habitat and a change in the aesthetic of the churchyard, I find that the benefits from the proposals outweigh that loss of amenity. The consensus of the expert advice is that these trees were, though no doubt well-intentioned, the wrong species to plant in this location, so close to each other and to the path. They have now grown to the extent that they are beginning to cause difficulties with the path, in terms of it being damaged and becoming slippery with leaves in poor weather. The surrounding area is kept in shadow and consequently the grass is poor and the planting of beds impossible. All of these difficulties

will only get worse if the situation is not addressed as the trees have not yet reached their full height potential.

15. The aesthetic impact of the proposals is mixed. Again, the expert consensus is that the heavy pruning or pollarding required to retain the trees will result in 'ugly looking specimens'. By contrast, the felling of the trees will open up views of the south side of this Grade II* listed building which is currently substantially obscured and will provide an open aspect which will limit and risk and fear of crime in this public space.

16. In all the circumstances I am satisfied that the Petitioners have made out their case and grant the faculty sought on the following conditions:

- a. The works shall be executed under the direction of the incumbent; and
- b. The works shall be undertaken by a suitably qualified and experienced arboriculturalist who holds appropriate insurance for the works; and
- c. The works shall be completed within 12 months or such further time as may be allowed.



The Worshipful Canon Ruth Arlow
Diocesan Chancellor

26 April 2022