

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

Churchyard of St Mary, Whitchurch

**Regarding works recommended by a Quinquennial Inspection
(to stained glass windows and to stonework & in the chancel), together
with replacement of a grave-marker (removed without permission) and
removal or lopping of trees in the churchyard that are causing concern.**

**(1) Revd Canon Dr Richard Cooke;
&
(2) Professor Carol Chillington Rutter.**

Petitioners

Petition 2025-118619

JUDGMENT

Overview

- 1) The Church of St Mary in Whitchurch is a Grade II* listed Early Medieval building with origins pre-dating the Norman Conquest. It has been described as follows: *The church is located adjacent to a farm next to the river Stour. It is a simple, two-cell structure of Nave and Chancel, with a bellcote at the west end. It is built of local rubble masonry with tiled roofs, the bellcote being shingled. It is grade II* listed. A group of 10 headstones south of the church are separately listed grade II. There is evidence of 11th century masonry on the north side of the Nave, the eastern half being early 12th century. The Chancel was lengthened in the early 13th century and remodelled c.1500. The bellcote is 17th century, when the western end of the Nave was truncated. This followed storm damage c.1659, and restoration followed 1666-80, the west end dating from 1670-74. The Chancel retains some 15th century glass in the tracery lights. Sir Arthur Blomfield & Sons restored the Chancel in 1890 and the Nave in 1896.*
The church is not situated within a conservation area.

- 2) In the Quinquennial Inspection Report, from November 2021, by Stephen Oliver, of Oliver Architecture (an architect and firm well known to this Court), was an ‘executive summary’ that reads as follows: *The church is not in good condition, the major concern being the significant structural concerns to the Chancel. A programme of repair will be necessary, with masonry repairs and glazing repairs once the structural issues are addressed. Other long term concerns remain to be dealt with, such as the perimeter drainage channel which has failed, isolated roof damage, open joints, etc.*

The recommendations in the Quinquennial inspection report included that a specialist glazier should assess all the windows in the Chancel to report on the works of repair clearly required. It was also suggested that there be obtained a report from a tree surgeon concerning the trees in the Churchyard.

- 3) There is before the Court a detailed report following a survey by Nick and Tom Bayliss of Nick Bayliss (Architectural Glass) Limited (a firm well known to this Court). Set out therein is a schedule of necessary works to various windows in this Church. This report supplements a schedule of repair works to and concerning the Chancel of the building prepared by Stephen Oliver. The cost of all the works would be in excess of £150,000 plus VAT. The PCC has available approximately one-third of the sum necessary to conduct the necessary works and must now fundraise the remaining monies from various charitable organisations. As is so often the case, many charitable trusts will not agree to provide funds unless assured that there is in place a faculty to conduct the works.

The petition

- 4) There is before the Court a petition, by the Incumbent and Churchwarden, seeking permission to conduct the repairs to the chancel stonework and guttering and also to repair the various windows identified by Messrs Bayliss. Additionally, there is a request to replace a grave-marker from the grave of Julia Handy (removed without permission by person or persons unknown) and the

lopping of a vandalised Rowan Tree and the removal of both a self-seeded holly tree and a Mediterranean Cypress tree.

- 5) Following consultation between the members of the Diocesan Advisory Committee and the parish representatives, including an assessment of the identified trees by the DAC Ecological Adviser, the Coventry Diocesan Advisory Committee issued a certificate of recommendation for the works at the meeting held on 22nd October 2025.
- 6) This matter could have been dealt with simply, with appropriate conditions being made concerning the recommended works. Unfortunately, the proposed removal of the Mediterranean Cypress has resulted in two letters of objection being submitted. The first was from Barbara Smith (Mrs), who offered the tree to the church in memory of her late husband (effectively when the tree became too large for the pot in which it was stored, without a home, at a Nursery in Quinton, Birmingham), and from Richard John James, a former Churchwarden of the parish. Neither person has chosen to become a party opponent to the proceedings, but still a judgment must be handed down to explain my decision on the matter.

The objections

- 7) (a) Within the Statement of Needs prepared in support of the petition the PCC members explained the request to remove the Mediterranean Cypress as follows:
Finally, we request permission to remove a Mediterranean cypress tree planted in the churchyard without benefit of archdeacon approval in a prime location for future burial. This non-native species is out of place in our Warwickshire country churchyard and is now showing signs of requiring maintenance -- banding -- that the PCC is unwilling to undertake as an on-going financial liability.
(b) The reference to a non-native species clearly refers to the Church Building Council's guidance on planting, felling, lopping, and topping of trees. The section on planting in that useful document begins with a warning: *Think*

carefully before adding more trees to your churchyard and don't forget to consult your archdeacon. You need a well-considered scheme. There then follows four points to consider, including "[Plant] native trees: they will be better suited to the area".

(c) The reference to consulting the Archdeacon is probably because the planting of trees in a Churchyard is ordinarily a matter now authorised by the Archdeacon under paragraph B7(1) of List B of The Faculty Jurisdiction Rules of 2015 (with the rider '*Regard is had to the guidance issued by the Church Buildings Council as to the planting, felling, lopping and topping of trees in churchyards*'). Prior to the introduction of List B (in force from 1st January 2016) every Chancellor was required to provide written guidance as to, *inter alia*, the planting of trees (under section 6(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991). However, that Measure also stated (section 6(1)) "*The powers, duties and liabilities of a parochial church council with respect to the care and maintenance of churchyards shall extend to trees therein, including those proposed to be planted.*" It is agreed that the Cypress Tree was planted prior to 1st January 2016, and therefore the Chancellor's Guidance would have applied.

(d) In the Diocese of Coventry the applicable guidance (issued 17th March 2005) stated:

*"7.3 Before planting any trees, the Parochial Church Council **must** consult the Arboricultural Officer of the Local Authority, or an Arboricultural Consultant as to the suitability of any proposed species for the churchyard in question, and as to the appropriate location in the churchyard.*

*7.4 Having received such advice the Parochial Church Council **must also**: -*

a) For up to three trees, apply to the DAC Secretary, who will seek the consent of the appropriate Archdeacon, which will be conveyed in writing."

Thus, to lawfully introduce a tree into the Churchyard at the relevant time the consent of the Archdeacon (or a faculty) would have been required, after the PCC had sought appropriate professional advice as to the suitability of the tree.

- 8) Barbara Smith gave explanation for the introduction of the tree as mentioned in paragraph 6 above. She explained that the tree is one of a pair (the other eventually died) that her late husband and she had brought back from Greece, in or about 2002, and planted in pots beside their front door, one tree representing ‘peace’ and the other representing ‘prosperity’. Although she was - and remains - no longer resident in the Parish, she asked for the tree to be planted in the churchyard, near to the grave of her husband, approximately (she guessed) 15 to 17 years ago.

Mrs Smith justified the introduction of a non-native tree to the churchyard in two ways; Firstly, that ‘Sad’ Cypress is traditionally a tree of mourning; and secondly, by positing *‘where would we be without the redoubtable ‘plant hunters’ of the past, who made hazardous journeys to many far flung places to bring back specimens?’* She mentioned the Camelia and the Tree of Lebanon, *‘which grace some very fine and glorious estates in Britain’*.

- 9) Mr James gave seven reasons why the Cypress tree should not be removed. (1) the PCC gave permission for the planting in 2010, (2) the tree is 26 years old, 7 metres tall and over 50 cm in girth, (3) the tree is healthy with no need for maintenance (here he perhaps did not know that the tree had been pruned as and when necessary, the last time at the end of 2025, which Mrs Smith conceded she could no longer achieve, given her age), (4) if works to the tree were required then the ‘protocol on maintenance of memorials’ would mean Mrs Smith and her family would fund the necessary works (here failing to note that no ‘memorial’ can be introduced to a churchyard without authority arising from the Consistory Court) (5) *‘In my view the tree is suitable for the location’* (he gave no professional qualification to show on what basis his opinion could be validly considered of relevance to the matters to be considered by the Court), (6) He stated that the need for space for further burials is not an issue [in the churchyard]. He further stated that [in his opinion] the space where the tree is planted is ‘insignificant’ and ‘irrelevant’ [when compared with the vacant burial spaces available], and (7) the location for planting had been selected with care

*‘by the PCC’ and was a ‘prime location’ (which rather contradicts his sixth assertion). Mr James then included an email correspondence he had been engaged in with the now Incumbent, Revd Canon Dr Richard Cooke, where he (Mr James) had stated *inter alia* “It is rightly a matter for you and the PCC to determine whether the Cypress tree is allowed to remain. However, I do remind you that it was a PCC decision that it be planted and I feel that it would reflect badly on you if you did not use your executive authority, as the incumbent, to uphold the earlier PCC decision or pursue whatever action is needed to secure its future; may that be for both ‘peace’ and ‘prosperity’.”* Mr James also suggested that advice to seek removal of the cypress tree *“has been provided in a vacuum of relevant information concerning the merits and status of the Tree”*. His expectation was that, once his views had been put forward, the advice concerning removal of the tree would change to be in favour of the tree remaining. Similarly, his communication with the Incumbent, quoted above, suggests a belief that his viewpoint was right, come what may, and everyone else should change their stance accordingly.

- 10) Given the insistence by Mr James that the members of the PCC had been active in accepting the tree, even selecting the site for planting, and had ‘decided’ (i.e. voted) to accept the introduction of the tree into the Churchyard, I requested that the PCC Secretary searched the PCC minutes from 2007 to 2017 for any mention of the tree being introduced. In the end only three mentions of the tree were found, in September and November of 2014 and in January of 2015. There was no record of a proposal or vote to agree to the introduction of the tree. Rather there was mention in the Churchwardens’ report that Richard (presumably Mr James, who had been Churchwarden) had been approached by Mrs Smith, had agreed to accept the tree (if it was delivered to the Churchyard), had personally selected a location for the tree to be planted, and had undertaken the planting himself. There was no mention at all of consent being sought from the Archdeacon or Chancellor for the introduction of the tree, nor of the required advice having been obtained from an arboricultural Officer or Consultant (albeit

the minutes shew that on some other issues, unconnected with the churchyard, professional advice had been sought).

11) Given the above I must conclude that the cypress tree was not lawfully introduced into the Churchyard. It has, however, now been in place for approximately a dozen years. I am mindful that the jurisdiction to order removal of the tree, as an unlawfully introduced item, by way of a restoration order, ceased after six years (section 72 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018).

12) With neither objector choosing to become a party opponent, the Registrar was still required to seek from the petitioners any comment upon the objections (rule 10.5(1)) and I must take account of any objection and any comment received from the petitioners (rule 10.5(2)). A letter of comment was received from the Incumbent, the Reverend Canon Dr Richard Cooke. He raised four issues:

(1) The PCC is acting on professional advice in requesting to remove the tree. He cited an opinion expressed by the Parish Structural Engineer, and later also voiced by the DAC Ecological adviser, *‘that the tree posed concerns to the structure of the Church’*. He stated *“The structural concerns are that the cypress tree may grow eventually to over 100ft in height, and have a lateral spread of 7ft, so that its size may threaten the fabric of the church, as well as other elements of the churchyard, such as adjacent graves and grave markers, several of which are listed, as well as the security of the boundary fence and churchyard gate”*. He also pointed out *“[a]esthetically, the tree threatens in future to dominate the view of the church as it is approached from the gate, decisively changing the natural aspect”*

(2) The tree was planted without permission. He then detailed the fact that PCC minutes show Mr James had personally accepted and planted the tree without a PCC vote and without seeking the necessary consent. He added *“Faculty processes have not always been well understood or therefore observed in the parishes currently under my care. It would be unfortunate if an exception*

to the regulations were accepted in this case, as it would seem to sanction further flouting of the regulations in the future.”

(3) There has been extensive preliminary pastoral discussion with Mrs Smith. He detailed how he had reached out to Mrs Smith on several occasions to provide pastoral support, whilst also needing to explain the problem posed by the tree and why removal was being sought.

(4) Mr James’ interpretation of my views is unwarranted. This refers to comments Mr James had made in his objection that need not be repeated here. I have read what Mr James said and I have read what the Incumbent has said in response. I will give due regard to those comments.

Professional advice concerning the Cypress tree

- 13) Not only had the Parish structural engineer voiced concern about the risk the Cypress tree would pose as it grew larger, but the DAC Ecological adviser had been consulted on several occasions about all the trees. His advice had been based upon three specific questions:

- Will the tree affect the churches foundations?
- Is it too close that when at full height it will collapse on the magnificent (indeed it is) church?
- Will it block the view of the church from a significant viewpoint when it reaches full height?

Having considered all the evidence his professional advice had been that the tree had been planted in the wrong location for such a large tree and, as it would continue to grow, he supported removal.

Determination

- 14) The issue of the removal of the Cypress tree is the only matter of contention, but I accept the professional advice, expressed by both a structural engineer and the DAC Ecological adviser, that removal of the non-native tree, which will continue to grow, is appropriate. I have already indicated that the evidence is the tree was introduced without permission, and I do not accept the suggestion made by Mr

James that the PCC held a vote and agreed to the introduction of the tree, and that the members of the PCC selected where the tree should be planted. I am mindful that the CBC guidance is that such a non-native tree should not have been introduced into a rural churchyard, and I note also that no arboricultural advice had been obtained as to the appropriateness of introducing that particular tree in that particular location. I have little doubt that had the correct procedure been followed in 2014, permission to introduce the tree would not have followed. I must therefore conclude that permission to remove this particular tree should be given.

- 15) In reaching that decision I am mindful that it will be upsetting for Mrs Smith. It is undoubtedly the case that she has been let down in this matter, by believing that her proffered tree had been lawfully introduced into the churchyard. Had I needed to make a finding of fault in this matter, it is obvious that fault would have rested on the shoulders of a single person. I need say no more on the matter, save to note the comment of the Incumbent: *[Faculty] processes have not always been well understood or therefore observed in the parishes currently under my care*. That is undoubtedly the situation found as regards the introduction of this particular tree. In 2014 no regard at all was had to the then applicable rules for the lawful introduction into a churchyard of a tree.
- 16) The faculty will be granted, as requested, but conditions will be applied. Given that there is still fundraising required before the Chancel works can commence, the duration of the faculty will be three years. Any application to extend that time period must be made before the period has elapsed.
- 17) Although I note Stephen Oliver stated there was no evidence of bats roosting in the Church building, the Standard Information form indicates there is evidence that bats *'use the church, or its curtilage or any adjoining structure'*. I remind the petitioners that there is a legal obligation to ensure that no works will disturb roosting bats. It is also stated in the Church Buildings Council guidance that a

bat survey should be commissioned before any trees in a churchyard are felled or have limbs removed.

- 18) Although no formal directions have been given in this matter by the Chancellor, the registry has still been required to undertake additional works. However, no fee will be charged for drafting this judgment, although I certify that consideration of the issues and drafting took over three and a half hours.

Conditions

- (1) The selection of (a) the glazier and (b) the methodology and (c) the materials used in the stained glass repairs must be approved by a designated representative of Nick Bayliss (Architectural Glass) Limited;
- (2) The Church insurers must be given full details of the proposed works to the Chancel and stained glass before any such works commence. The petitioners must ensure that any reasonable requirement from the insurers is complied with (and, in the event of dispute as to the reasonableness of any requirement, the matter must be referred to the court for directions);
- (3) All works to and concerning the Chancel (other than to the stained glass) must be supervised by Stephen Oliver or another designated architect;
- (4) Before works to the trees are carried out the choice of tree surgeon must be approved by a designated representative of the Diocesan Advisory Committee; and
- (5) Full details of all the works performed under this faculty must be entered in the church log book within one month of completion.

Glyn Ross Samuel
Diocesan Chancellor
31st August 2026.