



Neutral Citation No: [2023] ECC Oxf 6

Faculty – Grade II listed Thames-side village church situated within the Sonning Conservation Area – Retrospective application for the felling and removal of a mature lime tree which was assessed as having become dangerous – PCC retrospectively consenting to the felling – DAC retrospectively recommending the felling for approval – Faculty granted with appropriate reminders of the need to obtain List B consent (or a faculty) before the future felling of any mature tree even if it is dying or dead or has become dangerous*

Application Ref: 2023-084695

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Monday, 8 May 2023

Before:

THE WORSHIPFUL CHANCELLOR HODGE KC

In the matter of:

St Andrew, Sonning

THE PETITION OF:

TERENCE HUNT
(Deputy Churchwarden)

This is an unopposed online faculty petition determined on the papers and without a hearing.

The following case is referred to in the Judgment:

JUDGMENT

Introduction

1. According to the entry at pages 518-9 of the current (2010) edition of the volume of *Pevsner's Buildings of England* for *Berkshire* (edited by Geoffrey Tyack and Simon Bradley), Sonning is “a prosperous Thames-side village, much frequented in late Victorian and Edwardian times by anglers and lovers of the picturesque. It was an important ecclesiastical centre in Anglo-Saxon times and then came into the possession of the Bishops of Salisbury, who had a palace here, south of the church.” The Church of St Andrew is described as: “Visually Victorian, but retaining its mediaeval aisled plan, mediaeval proportions and some original flintwork.” The church, and its churchyard, are situated within the Sonning Conservation Area.

2. On 21 April 2023, the deputy churchwarden, Mr Terence Hunt, issued an online faculty petition seeking a retrospective faculty to regularise the felling of a lime tree formerly growing within the churchyard of St Andrew, Sonning (in the Archdeaconry of Berkshire) which had become dangerous. The cost of felling the lime tree was estimated at £2,376. On the same day, in the exercise of delegated authority, the Diocesan Advisory Committee (the **DAC**) issued a Notification of Advice recommending the works for approval by the court, on condition that consent for any replacement tree should be obtained under List B.7 (1) prior to planting. The DAC advised that the felling of the tree would not affect the character of the church as a building of special architectural or historic interest. A majority (eleven) of the members of the PCC have since sent emails to the deputy churchwarden confirming that they are content that the lime tree was felled in the circumstances explained to them. No member has raised any objection to the felling.

3. I am requested to dispense with the giving of the usual public notices due to the retrospective nature of this application. I do so pursuant to rule 6.7 (1) (b) of the Faculty Jurisdiction Rules 2015, as amended (the **FJR**) on the footing that it would not be expedient to require the giving of public notice under the rules. Since the lime tree has already been felled, it would serve no useful purpose to invite anyone who might wish to object to its felling to send a letter to the Diocesan Registrar stating the grounds of their objection: “*what's done is done*”.

Background

4. On 15 March 2023, Mr Julian Clarke, of Canon Tree Care, applied, on behalf of the parish, to Wokingham Borough Council (under application number 230650) to fell a dangerous lime tree situated within the grounds of St Andrew's Church, Sonning for health and safety reasons. On the same day, the Council, acting by their Trees and Landscape Team Manager, confirmed in writing that under regulation 14 (1) (c) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, the parish could undertake the felling and replacement of the lime tree because it was considered to be in the category of ‘*dead and/or dangerous*’. The letter noted that photographic and video evidence had been submitted to the Council confirming that the felling of the tree was required to make the area safe. The Council deemed it necessary not to object to the felling at that time. Mr Clarke had explained that the tree was positioned over a car park and at exactly the point where a hearse or a wedding car would stop. He was giving the Council notice because both he and the church would like to

move forward with haste as, understandably, they had concerns for public health and safety. Mr Clarke's notes recorded:

Large.

Twin stem low fork.

Lots of dead and hanging branches.

At first glance the tree doesn't look in such poor condition but some black lesions on the stem made me want to investigate further with my resonance hammer.

Sound test tells me that approximately 75% of the stem is dead from ground level up to as high as I can reach 2.5m, into main fork.

Lime wood when dead decays very quickly.

Fell/Remove

The Council's letter contained the following informatives:

1. You are advised that this letter is in respect of the **Conservation Area** only and it does not imply that consent would be forthcoming from the owner of the tree(s) or any such other persons from whom consent would be required.

2. A minimum of one replacement tree must be planted as close as reasonably practical to the tree(s) removed. The replacement trees are required to meet the following criteria:

- Lime (*Tilia spp.*)

- The tree must be a nursery container grown standard with a minimum girth of 10-12cm (measured at 1 metre above ground level).

- Planted in accordance with British Standard 8545:2014 Trees - from nursery to independence in the landscape Recommendations.

- Planted in the current or next planting season (whichever is soonest), following the removal of the Limes. The planting season is November to March. Container-grown tree can be planted outside this time but will require additional irrigation. In all cases do not plant in periods of drought. For both types, avoid frosty soil.

- Should the replacement tree be removed, die, or become severely damaged or seriously diseased, it shall be replaced by a tree of a similar size and species to that originally planted. Modifications to the requirements of this condition must be agreed in writing with Wokingham Borough Council Tree and Landscape Department.

- PLEASE NOTE: The requirement to replant is the responsibility of the tree owner even if the application was submitted by another person.

- Please let the Council know when the replanting has been carried out so that the Tree Officer may come and inspect the tree(s).

Informative number 1 should have served as a reminder to the parish to consider the need for faculty approval or archdeacon's consent to the felling of the tree.

5. The lime tree was felled between 20 and 22 March 2023. Mr Clarke prepared a brief report of his findings after the lime tree had been dissected, exhibiting two copies of the same photographic image of a cross-section of the tree's trunk. I have reproduced these images at the end of this judgment. On the second of these images, Mr Clarke has drawn a red line to indicate the extent of dead cambium (the live part under the bark that builds new cells); and he has marked one area in blue to show where the wood had started to decay, and another in green to show where the wood had ceased to function, and was dead but not yet decayed. Mr Clarke concludes that the lime tree had been infected by a fungus called '*Kretzschmaria deusta*' or '*Brittle Cinder*'. This leaves marks behind from its fruiting body that look like cinders from a fire. It is an aggressive fungus that rapidly attacks its host, first killing its cambium and then digesting the wood, which subsequently dies behind the areas of dead cambium. After attacking cell walls, leaving behind lignin, the wood becomes very brittle. The fungus prefers cellulose (the cell wall) but moves on to digest lignin. In his report, Mr Clarke has provided a link to the Wikipedia entry for *Kretzschmaria deusta*, with further information about this disease. This describes it as "*a fungus and plant pathogen found in temperate regions of the Northern Hemisphere on broad-leaved trees*". The entry states that there is no designated treatment once it has infected its host. Once established, the infection is terminal for the tree. It can result in sudden breakage in otherwise apparently healthy trees, with visually healthy crowns. This can result in hazardous trees in public settings near roadways, trails, or buildings. Therefore, the recommended treatment would be to fell trees in areas that may be hazardous, and to avoid using the infected plant material as mulch.

6. Mr Clarke's findings are that:

(1) The cambium had died to approximately 70% of the circumference of the main stem (coloured red in photograph 2), as predicted in his initial report and application to the Council.

(2) The decay (marked blue) had started but was not as extensive as Mr Clarke had initially thought after his resonance test. It was very shallow, travelling around the circumference almost as much as he had thought, but only travelling in by as few as 5 - 10 annual rings.

(3) The amount of wood that had ceased to function (marked green) was approximately 25% less than it had seemed.

(4) Mr Clarke had previously thought that the extent of already decaying wood was going to be approximately half way between the area where it currently was (marked blue) and the area (marked green) where the wood that had ceased to function was.

7. Mr Clarke concludes that the infection would have been able to rapidly invade and digest already dead areas, whilst the wood behind the dead cambium would also rapidly have ceased to function, leaving it susceptible to further spreading of infection. After dissecting the tree, it had become apparent that Mr Clarke's initial view that this tree had been dangerous was probably wrong. It might possibly have lasted between two and ten years (being lenient) before becoming unsafe. Mr Clarke is sorry for the tree's early removal; but he considers that having removed it too early rather than too late is probably the better outcome. Although he feels guilty for having removed the tree slightly early, it would have made him feel even more guilty if he had not raised his concerns and the tree had failed prematurely. Mr Clarke reiterates that his initial findings had given him great concern.

The felling of trees within the faculty jurisdiction

8. I have recently considered the law relating to the felling of trees growing within land that is subject to the faculty jurisdiction in my judgment in *Re St Nicholas, Kingsey* [2023] ECC Oxf 5; but, for convenience, I repeat it here.

9. List A of the FJR lists those matters which may be undertaken without a faculty, and without the need for any consultation, subject to any specified conditions. The relevant part relating to the felling of trees without a faculty or the need for consultation is item A.8 (1), which permits:

- (1) The felling, lopping or topping of a tree the diameter of any stem of which does not exceed 75 millimetres (measured over the bark at a height of 1.5 metres above ground level)

The specified conditions relating to A.8 (1) are:

The works do not relate to any tree in respect of which a tree preservation order is in force or which is in a conservation area

Regard is had to guidance issued by the Church Buildings Council as to the planting, felling, lopping and topping of trees in churchyards

10. List B of the FJR lists those works which may be carried out without a faculty if the archdeacon has been consulted on the proposal and has given notice in writing that it may be undertaken without a faculty (together with any conditions added by the archdeacon). The relevant part relating to the felling of trees without a faculty is item B.7 (2). This permits the archdeacon to give consent to:

- (2) The felling of a tree –
 - (a) that is dying or dead; or
 - (b) that has become dangerous

The specified conditions relating to B.7(2) are:

In the case of any tree in respect of which a tree preservation order is in force or which is in a conservation area, section 206 of the Town and Country Planning Act 1990 (which provides for the planting of replacement trees) is complied with

Regard is had to the guidance issued by the Church Buildings Council as to the planting, felling, lopping and topping of trees in churchyards

Beyond the situations prescribed in Lists A.8 (1) and B.7 (2), the felling of a tree in a churchyard requires a faculty. Once a tree has been felled, only a faculty may serve to regularise the position for the future: an archdeacon's notice is no longer an available alternative.

11. As regards the guidance issued by the Church Buildings Council referred to in the specified conditions of A.8 (1) and B.7 (2), the Council's document, issued in September 2021 and entitled *Works to Trees in Churchyards*, emphasises that: *"The felling of a tree which is not dying and has not become dangerous requires a faculty."* It also points out that: *"Secular law also applies to churchyard trees and the Local Planning Authority (LPA) should be consulted before any significant tree works are carried out."* The guidance explains that:

A *'dying'* tree is one that is [in] rapid decline and is expected to be dead within one or two years. In these circumstances, the tree may well be suffering from pests or disease. An old tree, in slow decline, is not a *'dying'* tree under the

Rules. Indeed, ancient or veteran trees can be more beautiful, more historically significant and more biodiverse than a young or middle-aged tree. With care, they can continue living for decades. The archdeacon should be consulted before any work is undertaken on these significant trees and expert arboricultural advice obtained. A ‘dead’ tree has no life in it. Even if defoliated, however, it may not be dead; take time to monitor and ascertain the state of the tree.

A ‘dangerous’ tree poses an immediate and serious danger, which may mean that there is not the time to go through the full faculty process before dealing with any threat.

12. The diameter of this lime tree’s trunk greatly exceeded that referred to in List A.8 (1). Also, the tree was in a conservation area. Therefore, the felling of the tree required either an archdeacon’s notice under List B.7 (2), on the footing that the tree was either dead or dying, or it had become dangerous; or it required a faculty from the consistory court.

13. In my earlier judgment, I referred to the Bishop of Oxford’s Presidential Address to the most recent meeting of the Oxford Diocesan Synod, held at Cowley on Saturday 11 March 2023, where he spoke of the importance of Christian action to prevent climate change and to work towards carbon net-zero. The most immediate reason is for the future of life on Earth, for ourselves, and for those who will follow us. The Bible teaches us, from Genesis to Revelation, that humanity is part of God’s creation, with a particular relationship with the natural world. Humanity has been given a responsibility to serve and to steward and watch over the earth and all that live on it. Members of Diocesan Synod heard of the ways in which the diocese could repair and restore creation, particularly in influencing the ecology of the Thames Valley over the coming years. The diocese was able to support the pathway to net-zero through the actions taken in schools, churches and vicarages across its three counties. Engaging with gardening and green issues and biodiversity was becoming a normal part of church life across the diocese; and tree planting was cited as one example of the actions that were already being taken. In conclusion, Bishop Steven reiterated the importance of humankind to till and keep the Earth, which is essential for its survival, and to respond to the challenges of climate change. The Church of England was not able to do this single-handedly, but it must offer leadership on the matter whenever it can.

14. Later at the same meeting of Diocesan Synod, the Bishop of Reading stated that this diocese is committed to becoming a more Christ-like Church for the sake of God’s world; and these values apply to the natural world and the preservation of the ability to sustain life. The fifth Mark of Mission compels us to sustain life on earth. A commitment to the natural world is not an add-on to Christian discipleship but is integral to, and part of the identity of, disciples of Jesus Christ.

Analysis and conclusions

15. The parish have confessed that in their hurry to fell what they had been advised was a dangerous tree, they neglected to obtain the necessary List B consent. They therefore seek to regularise the position for the future by applying for this retrospective faculty. The parish should never have found themselves in the position of needing to petition for this faculty. Although, with the benefit of the hindsight afforded by Mr Clarke’s later investigations, it would appear that the tree was neither dying within the meaning of the FJR, since it might possibly have lasted

for between two and ten more years, nor was it dangerous, on the evidence that was presented to the Council, and would presumably have been presented to the Archdeacon, I have no doubt that the tree would have been treated as falling within the scope of List B.7 (2). As previously stated, informative number 1 to the Council's letter of 15 March 2023 should have served as a reminder to the parish to consider the need for an archdeacon's notice authorising the felling of this tree. The moral of this unhappy case is that even if a tree poses an immediate and serious danger, so there is not the time to go through the full faculty process before dealing with the threat it presents, parishes need to bear firmly in mind the need for the Archdeacon's written consent under List B.7 (2). This can usually be obtained extremely quickly, and at the same time as obtaining any necessary local authority consent if this is required because the tree is subject to a tree preservation order or is in a conservation area.

16. Since this is an unopposed faculty petition, I am satisfied that it is expedient in the interests of justice, and in furtherance of the overriding objective of the FJR of dealing with this case justly, including saving expense, dealing with the case proportionately to the importance of the case and the complexity of the issues, and ensuring that it is dealt with expeditiously and fairly, for me to determine this petition without a hearing, and on the basis of the material that has been uploaded to the online faculty system and is before the court.

17. I am satisfied that the felling of this lime tree will result in no harm to the significance of the church of St Andrew as a Grade II* listed church building of special architectural or historic interest. It follows that the question for this court is whether the petitioner has shown a sufficiently good reason for the felling of the lime tree to overcome the ordinary presumption, in faculty proceedings, that, in the absence of good reason, any change to a church or a churchyard should not be permitted. In determining that question, the court must give due weight both to the aesthetic and the environmental impacts of the loss of the tree; and it must do so against the background that the world is facing a climate emergency. I must bear the impact of the loss of this mature lime tree on the appearance, and the immediate environment, of this churchyard, firmly in mind. Against these factors, however, I must weigh the facts that: (1) immediately before the tree was felled, it was perceived, by an experienced and suitably qualified tree surgeon, to be dangerous, and to represent an immediate threat to health and safety; (2) the local authority had been satisfied that the felling of the tree was required to make the area around it safe; (3) even on the information now available, the tree would have had to be felled within the next two to ten years; and (4) the tree will be replaced by at least one replacement lime tree, to be planted as close as reasonably practical to the tree that has been removed. Bearing these factors in mind, I have concluded, with regret at the premature loss of a lime tree, that the petitioner has shown a sufficiently good reason for the felling of this lime tree to overcome the ordinary presumption, in faculty proceedings, that change should not be permitted in the absence of good reason. I will therefore grant a faculty as asked. Since I am dispensing with the giving of the usual public notices, I will impose a further condition that the parish are to display a copy of this judgment in some prominent place within the church, so that any resident of the parish who is concerned by the loss of this lime tree may know, and understand, the reasons for this; and to supply a copy of this judgment (in hard or soft copy) to anyone who asks for one.

18. I have felt it necessary to prepare this written judgment:

(1) In the hope that similar situations, involving the need to apply for a faculty to regularise the unauthorised felling of a mature tree, do not recur in the future.

(2) So that any resident of the parish who is concerned by the loss of this lime tree may know, and understand, the reasons for this.

19. For these reasons, I grant a faculty regularising the felling of this lime tree, subject to the following conditions:

(1) The parish are to comply with the requirements contained in the letter from Wokingham Borough Council dated 15 March 2023 under application no 230650, subject to any modifications agreed in writing with Wokingham Borough Council Tree and Landscape Department.

(2) Consent for any replacement tree is also be obtained under List B.7 (1) prior to planting.

(3) The parish are to display a copy of this judgment in some prominent place within the church, and to supply a copy of this judgment (in hard or soft copy) to anyone who asks for one.

I give the parish permission to apply to the court, by letter to the Registry, for any further directions as to the carrying-out of this faculty.

20. In the usual way, I charge no fee for this written judgment. The petitioner must pay the costs of this petition.

David R. Hodge

The Worshipful Chancellor Hodge KC

8 May 2023

Photograph 1 (Unmarked)



Photograph 2 (Marked)

