

6/11/01

Trees in Churchyards

In the Consistory Court of the Diocese of Worcester

Archdeaconry of Worcester: Parish of Upton Snodsbury St Kenelm

Faculty petition (01-24) relating to removal of sycamore tree

Judgment

1. This petition relates to a proposal to fell a sycamore tree in the churchyard at Upton Snodsbury. The proposal is not recommended by the Diocesan Advisory Committee (DAC).

2. The case is of some significance since, as far as I am aware, there is no reported decision from any consistory court as to the approach which should be taken in relation to the grant or refusal of a faculty for the carrying out of works to trees in churchyards. And that in turn is of greater consequence in the light of the making of the new Faculty Jurisdiction Rules 2000 (SI No 2047: hereafter "the 2000 Rules"), which came into force on 1 January 2001 and which make explicitly clear that which had hitherto been merely assumed – namely, that the faculty jurisdiction is to apply to the control of such works: see, for example, rules 3(4) and 4(3) and Form C in Appendix C, which for the first time recognise that petitions relating to works to trees are quite different to those relating to building works, and provide a special procedure accordingly.

3. Although the present petition is dated 13 August 2000, it was only lodged with the Registry on 27 April 2001. It seems to me that, for the purposes of rule 38 of the 2000 Rules, these proceedings were "begun" on the latter date, and that they should therefore be determined under the 2000 Rules rather than under the 1992 Rules (SI No 2882); but, save as already noted, there is no material difference between them.

Factual background

4. The church at Upton Snodsbury is of medieval origin, but extensively restored in the Victorian period. It has been listed by the Secretary of State as a building of special architectural or historic interest, under the Planning (Listed Buildings and Conservation Areas) Act 1990. The churchyard surrounds it on all sides, but is principally to the north and south. A public highway abuts the east side of the churchyard, and the footway along the west side of that highway is separated from the churchyard by a retaining wall. This wall is also listed in its own right – that is, not simply by being a structure in the curtilage of the church. The churchyard is within a conservation area, designated by the local planning authority under the 1990 Act.

5. There were and are a number of trees growing within the churchyard, all of which have grown in the last 125 years. None of them is subject to a tree preservation order under the Town and Country Planning Act 1990 or its predecessors. The tree that is the subject of this petition (01-24) is a large sycamore, growing approximately 12.5 metres to the south of the east end of the church and 3 metres from the retaining wall. There is no evidence as to whether it was planted or simply self-sown.

6. At the same time as the submission of the petition which forms the subject of this judgment, a further petition (01-25) was submitted seeking a faculty for the felling of an oak and a cypress to the north of the church and a second, smaller sycamore to the south of the one which is at issue here.

7. The Petitioners, the incumbent and the churchwardens, claimed that the works to all four trees were necessary because their roots were damaging the retaining wall and the foundations of the church.

8. There were no parties opponent as such (“objectors” in the terms of the new Rules) to either petition but, following its meeting on 25 July 2000, the Diocesan Advisory Committee (DAC) decided not to recommend the felling of the large sycamore on the ground that –

“The tree is a particularly fine and attractive specimen, and offers considerable local amenity value. There is insufficient evidence on the seriousness of its impact on the boundary wall and chancel, and its removal should not be countenanced until this is achieved. Methods of mitigating its impact, such as the introduction of an impervious membrane below ground level and/or a reduction in its overall size, should also be explored.”

The DAC did however recommend that the other three trees should be felled.

9. As noted already, the four trees were not subject to a tree preservation order; the local planning authority confirmed in a letter of June 2000 that it did not, as a rule, place tree preservation orders on trees that are “owned by the Diocese” [sic] – which I take to be a reference to trees growing on land that is subject to the faculty jurisdiction. However, since the churchyard is in a conservation area, the authority was given notice of the proposed works, as required by section 211 of the Town and Country Planning Act 1990. It expressed concern, but it did not take the opportunity to make a tree preservation order in respect of any of the four trees.

10. There was little dispute as to the desirability of felling the three trees which formed the subject of petition 01-25, even though all concerned accepted that it would be regrettable in amenity terms. The DAC did not seem unduly distressed as to the loss of the two on the north side; and the planning authority accepted that they were “less prominent”. As for the smaller sycamore at the south-east corner of the churchyard, the report by Mr Finch made it clear that it was hazardous and that in any event it probably had a limited life expectancy. I therefore directed that a faculty should issue for the felling of those three trees, subject to conditions; and they were indeed felled during the summer of 2001.

11. I carried out a site inspection on 14 September 2001, at which none of those involved were present or represented.

The case for each of the parties

The case for the Parish

12. I have been supplied by the petitioners with a number of reports considering the sycamore tree: in particular, a report dated February 1999 by Clarke Nicholls & Marcel (“CNM”), civil and structural engineers; a report dated January 2000 by Mr Finch, an arboricultural consultant; a report dated 29 September 2000 by Richardson’s Botanical Identifications; a further report from CNM dated 2 January 2001, and a letter of 3 January 2001 from Stainburn Taylor, the church’s architects. I was also given several letters to the Registry from the Churchwarden, in particular a report dated January 2001 and a letter dated 17 August 2001, helpfully summarising the parish’s position.

13. The Church’s engineers (CNM) had concluded in their first report –

“... it may be prudent to consider the felling and replacing of [the two sycamores] (or at least the one closest to the church) with more appropriate species, rather than putting off this decision until it becomes one of urgent necessity. If they are considered to be an important visual amenity, or have tree preservation orders on them, then this recommendation may not be practical at this time, but it is possible that they could be regularly reduced.”

In their subsequent report (of January 2001) they stated that their monitoring indicated that the east end of the church was subsiding, although they did not in terms attribute that to the sycamore; and they suggested that the felling of the tree might be of benefit to the stability of the eastern boundary wall. They also (in a letter of 19 December 2000) queried the conclusions of Ian Keen’s report for English Heritage (see below).

14. Mr Finch, the church’s tree surgeon, in his report dated 14 January 2000, stated that he considered the sycamore tree to be of high amenity value, and that it had only a low influence on any movement of the church’s foundations. On the other hand, the displaced retaining wall should also be taken into account. He had accordingly explored the possibility of a 25% crown reduction, in order to retain the tree while curtailing its influence on the adjacent structures; but he did not consider that to be appropriate. He had also discounted root severance as a possible option, considering that it might in itself lead in the longer term to the tree being less stable and more liable to wind-throw. And he considered that a root barrier would not be effective to prevent further subsidence. He had therefore “regretfully” come to

the conclusion that that the tree should be removed, largely due to its effect on the retaining wall.

15. Mr Finch also noted that the tree is now mature, and that if not removed it would have a maximum life expectancy of 50 to 60 years, during the course of which it will continue to decline and cause damage.

16. The Churchwarden, in his report of January 2001, noted that there were sycamore roots round the chancel foundations, and stated that local people were feeling that, if it had to be a choice between the church and the tree, the church should take priority. He also pointed out, in his final representations, that – even after the felling of all four trees – there would still be five very mature trees in the churchyard (three sycamores and two yews), four more modest ones (holy, laburnum, cherry and yew), and two other semi-mature trees of uncertain ownership on the boundary of the churchyard. In addition, he said, the parish intended to plant two red oaks in place of the two sycamores to be felled.

The case for the Diocesan Advisory Committee

17. The DAC considered the sycamore to be a particularly fine specimen and of considerable local amenity value. The report of its site visit, in June 2000, stated that

“it was acknowledged that the rooting appeared to be having little impact on the fabric of the [church] building ... As there did not appear to be imminent danger of the boundary wall collapsing, it seemed that the removal of the tree might be a little premature”.

I have already noted the basis of its formal decision not to recommend the works. The secretary of the DAC, in his letter of 4 August 2001 notifying the parish of that decision, urged it to consider all possible options to mitigate any impact which the tree might have on the church, and in particular the insertion of an impervious membrane (root barrier) between the tree and the chancel.

18. I invited the DAC to comment on the further material that had been produced by the Parish following its decision. In its response, dated 25 May 2001, the Committee simply stated that the tree is a magnificent specimen and should be retained.

The case for English Heritage

19. English Heritage had been involved in connection with restoration works being carried out to the church itself. Ian Keen, an arboricultural consultant, in a report prepared for English Heritage dated 27 November 2000, concluded that seasonal movement might increase at the east end of the church if the sycamore were retained. However, in view of the importance of the tree, he suggested that it could be retained for twelve months, and the level monitoring continued bi-monthly, so that a decision could then be made. He also advised the planting of a new tree as a matter of urgency.

20. Subsequently, Mr Shapcott, a structural engineer working for English Heritage, in a letter dated 18 December 2000, withdrew his objections to the total felling of the tree.

The case for the local planning authority

21. The landscape officer of the local planning authority, Wychavon District Council, in his letter of 6 June 2000, considered this sycamore to be a magnificent specimen, whose life could be prolonged with pruning, crown thinning and reduction. However, he gave no evidence as to the likely effect of such work; and no indication as to his opinion of the effect that the sycamore might be having on the foundations of the church.

22. In passing, I should observe that the policy of the authority, which I have already noted, not to impose tree preservation orders on trees in churchyards, seems to me to be unfortunate. Just as it is of assistance to chancellors that only some churches are listed by the Secretary of State (since many if not most are claimed by those who love them to be of special interest), so too it would be of assistance to know which trees are considered to be of special value. It would also help architects and surveyors advising parishes, since there is a specific requirement for the quinquennial inspection of a church to extend to every tree in its churchyard, whether open or closed, that is the subject of a tree preservation order (see Inspection of Churches Measure 1955, section 1A(c), inserted by the 1991 Measure, Schedule 3).

The law

“Secular” legislation

23. The law applies in general to trees in churchyards as to those elsewhere; but subject to the additional requirement that any works within a churchyard – including the carrying out of works to existing trees, and the planting of new ones – are subject to control by the consistory court. The owners of such trees are thus liable for them, and more especially for any harm which they cause, just as any other tree owner. That will include liability in nuisance for any damage caused by roots and branches encroaching onto neighbouring property, liability in negligence for harm to those on neighbouring land (including in particular those on any adjacent highways), and liability under the Occupier’s Liability Act 1957 for harm to those in the churchyard itself. The “owner” for these purposes is generally the Parochial Church Council (PCC) – see section 6(1) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (as amended by section 13 of the Church of England (Miscellaneous Provisions) Measure 1995) – although the position may be otherwise in the case of a closed churchyard transferred to a local authority under the terms of section 215 of the Local Government Act 1972.
24. A felling licence is never required for the felling of trees in a churchyard, regardless of the scale of the operation (see section 9(2)(b) of the Forestry Act 1967).
25. However, local authorities may, and indeed some authorities frequently do, make tree preservation orders in respect of trees in churchyards; and churchyards are often included within conservation areas. In such cases, the relevant controls under the Town and Country Planning Act 1990 apply exactly as elsewhere – there is no “ecclesiastical exemption” from control by the local planning authority over works to trees (as there is, of course, in the case of building works to the interior of churches which are listed).
26. Consent is thus generally required from the relevant local planning authority for the lopping, topping, felling or uprooting of any tree that is subject to a tree preservation order. And notice must generally be given to the authority of any works to trees in a conservation area,

which enables the authority if it wishes to impose a tree preservation order on the tree. Both of these requirements are subject to numerous exceptions, many of which are likely to be of little if any relevance in the context of churchyard trees. The basis on which such control is (or should be) currently exercised is set out in the document entitled *Tree Preservation Orders: a Guide to the Law and Good Practice*, published by the Department of the Environment, Transport and the Regions in 1999.

Trees and the faculty jurisdiction

27. The extent of control by consistory courts over works to existing churchyard trees and the planting of new ones has hitherto been the subject of some uncertainty.

28. Prior to the coming into force of the 1991 Measure, on 1 March 1993, section 20(1) of the Repair of Benefice Buildings Measure 1972 provided that the consent of the parsonages board had to be obtained for –

- (a) the felling, lopping or topping of the trees of a parsonage house which in the opinion of the diocesan surveyor (after taking such expert advice, if any, as he thinks fit) ought to be preserved (see section 4(3) of the 1972 Measure); and
- (b) the felling of the timber growing in a churchyard

It was further provided explicitly, by section 20(5), that the consent of the ordinary was not necessary for any felling in accordance with section 20.

29. The need for the consent of the parsonages board for works to churchyard trees was repealed by section 6(4) of the 1991 Measure. It is probably not by chance that it was the 1991 Measure which also explicitly declared (at section 11(1)) that the jurisdiction of the consistory court of a diocese extended to the churchyards appertaining to all parish churches in the diocese. The effect of the 1991 Measure was thus (amongst other things) to introduce, or at least to declare the existence of, a single system of control extending to the whole of every churchyard, including not only the graves, funerary monuments, lych gate and other structures, but also the ground itself and the trees and shrubs which are a part of that ground.

30. Further, the chancellor of each diocese is to give written guidance to all PCCs in the diocese as to the planting, felling, lopping and topping of trees in churchyards (see section 6(3) of the 1991 Measure). The guidance is to be prepared after consultation with the DAC; and a DAC should therefore take care to ensure that, if possible, there is amongst its members at least one with arboricultural knowledge and experience, in addition to those with expertise in the subjects mentioned in paragraph 5 of Schedule 1 to the Measure. Such guidance, once prepared, should be generally available, perhaps from the secretary of the DAC or from the diocesan registry.
31. It seems probable that in practice many, if not most, works to trees have in the past been carried out without any authorisation from the board (prior to 1993) or a faculty (thereafter). The rationale for that state of affairs, if one were sought, was no doubt that works to trees were considered to be of no particular importance – or at any rate of no direct relevance to the life and work of the church as a local centre of worship and mission. However, by virtue of section 11(8) of the 1991 Measure, every chancellor is now to give written guidance as to those matters within the jurisdiction of the consistory court which he considers to be of such a minor nature that they may be undertaken without a faculty – sometimes referred to as the *de minimis* rules (from the Latin phrase *de minimis non curat lex*: the law takes no account of trifles) – and under the guidance currently in force within this diocese no works to existing churchyard trees fall within this category. The same situation applies, apparently, in many other dioceses.
32. It would of course be possible for a chancellor to direct under section 11(8) that minor works to trees can be carried out without a faculty provided that they are done in accordance with the guidance given under section 6(3); and the extent of “minor” works could be specified by reference to, for example, the relevant exemptions from the need for consent under planning legislation, so as to minimise the scope for conflict between the two systems. However, until such a direction is made, any proposal for the carrying out of works to a tree in a churchyard, at least in theory, needs to be authorised by the grant of a faculty. And it is likely that, however the exemptions from control are drafted, many if not all felling operations (as opposed to pruning, lopping and topping) will always come within the scope of those requiring a faculty.

33. Finally, perhaps surprisingly, no works to trees fell within the categories of works which could be authorised by an Archdeacon under the provisions of Appendix A to the Faculty Jurisdiction Rules 1992 (SI No 2882) or fall within those which can be so authorised under the corresponding provisions in the 2000 Rules. Any faculty relating to trees therefore has to be granted by the chancellor – even though the guidance prepared under section 6(3) in some dioceses (including this one) seems to suggest otherwise.

The basis on which control is exercised

Dangerous trees

34. Works to a tree are often claimed to be necessary because some or all of it is dangerous. Where this is indeed the case, steps should be taken as soon as may be to remove the danger – if necessary authorised by the court as a matter of urgency under the procedure in rule 8(3)(a) of the 2000 Rules, or retrospectively under rule 10(1)(a). It is noteworthy that, under the provisions of section 20 of the Repair of Benefice Buildings Measure 1972, already noted, consent was not required for the felling of timber “necessary to avoid immediate danger to the occupants of [... any] building or to the general public”. The advantage of urgent works being authorised by a faculty (if necessary a confirmatory faculty) is of course that a condition can be imposed requiring a replacement tree to be planted where appropriate, since there is no automatic requirement to that effect as there is (at least in some cases) under planning legislation.

35. However, claims as to the supposed urgency of works to trees need to be considered with caution. Firstly, it may be that the condition and location of a tree are such that all or part of it is likely to cause harm to persons or animals (for example, by falling onto them), so that it can indeed properly be said to be dangerous; on the other hand, it may be that the only harm which seems likely is to property – in the form of, for example, a building being damaged by a branch or a whole tree falling onto it, or its foundations being damaged due to the underlying ground subsiding as a result of excessive moisture uptake by nearby tree roots.

36. Thus in *Smith v Oliver* [1989] 2 PLR 1, a case in the Divisional Court relating to the control under planning legislation of works to allegedly dangerous trees, the only harm being caused by the tree in question was that it was pushing over a fence as it grew, and its roots were pushing up the pavement; but both judgments referred to a tree falling and roots disturbing foundations as though they were in the same category (see Farquahrson J at p 3F, and Tudor Price J at p 4G). That seems, with respect, to be unhelpful; the label “dangerous” can properly be ascribed to a tree which is liable to shed a branch, causing injury to persons or animals, but not to one which is only threatening to cause foundation damage through subsidence.
37. As a matter of language, the distinction would seem to be between damage (either to persons or property) which is both sudden and unavoidable, and damage which is gradual and readily remediable. A tree might thus be categorised as dangerous if it is likely to fall onto a building, or to cause damage to foundations which, due to the design of a building, might in turn cause injury or death – because of a sudden collapse of masonry, for example, or the fracture of a gas pipe. But the more common situation is where a tree is located such that its roots cause damage to foundations of buildings, or to curtilage structures such as retaining walls, resulting only in minor cracks which lead to the discovery of a problem in time for it to be cured. The latter is no doubt a nuisance (in the non-legal sense of that term), and expensive – if not dealt with promptly, possibly very expensive – but it cannot be said that such a tree is “dangerous”, such as to justify the carrying out of immediate works.
38. Secondly, even where a tree is indeed dangerous, it may be appropriate to solve the problem (possibly on a temporary basis) by some means other than works to the tree. Thus, for a danger to exist, there must be both a defective tree and a potential target. Where, for example, it is feared that a tree may fall so as to injure those using a path through a churchyard, it may be sufficient simply to close the path while expert arboricultural advice is obtained as to the best way forward. And where the situation is such as to justify works to the tree, those works should be limited to the part which is the cause of the danger: the existence of a dangerous branch does not justify the felling of an entire tree.

Cases other than dangerous trees

39. Where works to trees are not urgently necessary to remove a danger, there is no prescribed test as to the approach to be adopted in considering faculty petitions. It is therefore necessary to consider the matter from first principles.

40. As noted above, the effect of section 6 of the 1991 Measure, and the amendments made by it to the 1955 and 1972 Measures, was to introduce a single system of control extending to the whole of every churchyard, including the trees and shrubs which are a part of it. In relation to the control of works to church buildings, a series of decisions of the consistory courts and the appeal courts have made it clear that a consistory court must have regard both to the role of a church as a local centre of worship and mission and to its importance (if any) as a building of special architectural or historic interest – see, for example, the decision of the Court of Arches in *re St Luke's, Maidstone* [1995] Fam 1 – and clearly practical considerations such as those relating to maintenance and repairs will also be relevant. In the case of churchyards, by contrast, it will not be often that an issue will arise which will affect the role of a church as a local centre of worship and mission (other than the pastoral concerns which regularly arise in connection with burial and exhumation). On the other hand, issues may well arise which affect:

- (a) the setting of the church building and thus its character and appearance as a building of special interest;
- (b) the structures within the churchyard, and in particular (but by no means exclusively) those of special interest, and their settings,
- (c) the character and appearance of the churchyard as a whole; and
- (d) the contribution of the churchyard to the character and appearance of the area surrounding it.

And, again, practical considerations such as those relating to maintenance and repairs will frequently be very important.

41. Against that background, the correct approach to be adopted by a consistory court would seem to depend on whether or not the tree is subject to a tree preservation order or is in a conservation area. There are thus several possible scenarios.

42. First, where a tree has been made the subject of a tree preservation order, this is a clear statement by the planning authority that it regards the tree to be of especial value; as is reflected by the criminal liability attaching to the carrying out of almost any works without its explicit consent. It follows that only in the most exceptional circumstances is there likely to be any point in the consistory court considering any application for works which the planning authority, and the Secretary of State where there has been an appeal, has refused to authorise. Further, where the authority or the Secretary of State has decided to granted consent under the order, it would only be appropriate for the court to reconsider the matter if there was some ground of objection which had not been fully taken into account in that decision – particularly where that ground related to the work and mission of the church.

43. This approach echoes that of consistory courts deciding cases where planning permission is needed for a proposal as well as a faculty. Thus, for example, in *Re St Mary's, King's Worthy* (1998) 5 Ecc LJ 133, the Winchester Consistory Court (Clark Ch) stated:

“there is a strong argument for saying that, once the planning authority has granted permission for a particular proposal, issues [such as traffic flow and parking availability] ought not to be raised for reconsideration by a consistory court. In the exercise of my discretion, however, I have agreed to hear evidence relating to these matters, but only on the basis that the decision whether or not to grant a faculty is unlikely to be affected by it unless the evidence is of a very strong and compelling character. In other words, I shall assume the planning authority made the correct decision in this respect, unless there is convincing evidence to the contrary.”

The decision of the Blackburn Consistory Court in *St James, Stalmine* (2000) 6 Ecc LJ 81 is to similar effect. The position would seem to be the same in relation to proposals for tree works which require consent under a tree preservation order as well as a faculty.

44. Secondly, where a tree is in a conservation area (but not subject to a tree preservation order), the authority must be notified of proposed works to trees – here too a failure to comply will lead to prosecution. If, following such notification, the authority wishes to prevent the works, it must impose a tree preservation order on the tree. The position is then as in the first scenario. And if it explicitly approves the works, then again it would only be appropriate for the court to reconsider the matter if there was some ground of objection which had not been

fully taken into account. If on the other hand it declines to make any decision, the court must do so: the position is as in the third scenario.

45. The third scenario is thus where a tree is neither subject to a tree preservation order nor within a conservation area – or where it is in a conservation area and the authority has declined to make a decision. In such a situation, the court must decide. In this scenario, the right approach would seem to be to consider, first, in the light of the four factors highlighted in paragraph 40 above, –

- (a) the amenity value of the tree in itself,
- (b) its contribution to the amenity value of the churchyard as a whole, and
- (c) any loss of amenity likely to arise from the carrying out of the works.

It would also be appropriate to consider the value of the tree as a habitat for wildlife, particularly in the case of a veteran tree; and any historical associations which may exist. Then, if there is any loss of amenity, it will then be necessary to consider the need for the proposed works, as put forward by the petitioners – again, paying particular attention to any factors said to affect the role of the church as a centre of worship and mission, and pastoral concerns such as the effect of the tree on nearby graves. And, finally, obviously, it will be necessary to consider whether the loss of amenity will be outweighed by the need for the works.

46. It will also be necessary in some cases to consider the financial consequences of the possible options. The reason for this is because, if remedial action to avoid future problems (for example, the removal of one branch) would cost relatively little, it would clearly be undesirable to lose altogether a tree of significant amenity value (at least until a suitable replacement has had a chance to establish itself). If on the other hand such action would cost a great deal (as with underpinning a medieval church), it would equally clearly be absurd not to fell the tree. In many cases, of course, the true position will be somewhere in the middle.

47. This approach, unsurprisingly, echoes that advocated by the Secretary of State in his advice to planning authorities, at paragraph 6.45 of the *Guide to Law and Good Practice*, on the

approach they should adopt in considering applications for consent for applications for consent under tree preservation orders.

Application to the present case

48. In this case, there has been some suggestion that the presence of the sycamore is leading to the adjacent retaining wall being unstable; it may indeed, eventually, cause the wall to collapse. I am not convinced, however, that this is such as to lead to the tree being properly categorised as “dangerous”. It follows that its removal cannot be authorised on the basis of being urgently required.

49. I have noted that the tree in issue in this case is not subject to a tree preservation order, but is within a conservation area. It is thus in the second of the three categories I outlined immediately above. However, since the planning authority, on being given notice of the works, has neither protected it by means of a tree preservation order nor granted consent for its removal, this court is required to make a decision, in accordance with the approach outlined at paragraph 45 above.

Amenity value of the tree

50. There seems to be universal agreement that this tree is in itself of considerable amenity value, so that its removal is inherently undesirable. Sycamore trees are in many circles not highly valued, but this particular specimen, because of its form, its size, and its prominent location, contributes significantly to the appearance of the churchyard, both in views from within it and as seen from neighbouring roads and distant viewpoints.

51. On the other hand, while its removal would be immediately noticeable, there are – as pointed out by the petitioners – a number of other trees in the churchyard; and in most if not all views (including those from a distance) there would still be a generous amount of tree cover. I did not see the churchyard prior to the felling of the three trees which were the subject of the other petition, but I saw where they had been, and I did not consider the churchyard greatly

the poorer for their loss. I suspect that those living in the village, as well as those visiting the church, would soon become accustomed to the altered appearance of the churchyard without the sycamore.

52. No-one has claimed that the tree has any special historical associations, or drawn attention to any particular value that it might have as a wildlife habitat.

The need for the felling

53. As to the need for the proposed works in this case, no-one has raised any pastoral or other concerns of a specifically "ecclesiastical" character. The only justification for the works thus relates to the practical problems perceived to arise as a result of the roots of the tree.

54. I consider that the parish has perfectly properly explored all possible courses of action which might enable the tree to remain without causing damage to the foundations of the church and to the retaining wall. As for the church, I note the view of Mr Finch that the sycamore has a limited effect on any movement of its foundations. If that were the only problem, I might be persuaded to require the parish to leave the tree for a year or two, following the felling of the other three trees, and to monitor the cracks and levels to see what happens. However, there is also the retaining wall to consider. It is far from clear that there is an immediate risk of it collapsing; but it will need rebuilding in due course if the tree is not removed (indeed it may need to be rebuilt anyway). Mr Shapcott is not confident that there could be an effective rebuilding of the wall as long as the tree remains; and both CNM and Mr Finch consider that the removal of the tree would benefit the wall. Mr Finch has also discounted crown reduction as providing a lasting solution, and states that root severance might cause as many problems as it solves.

55. I am also aware that the parish has limited funds, and that it has already spent a great deal on obtaining professional advice in relation to this matter. It thus seems to me, other things being equal, undesirable that it should be required to come back again to this court for a faculty, having no doubt spent even more on professional fees, solely to put off the felling of

the tree for two or three years. Whenever it is felled, there will be the same loss of amenity; merely postponing it will not make the position any better.

56. And I am mindful that the wall is itself a listed structure, and that if it were to collapse it would fall directly onto a public footway.

57. I also note that those opposed to the felling have offered little evidence to counterbalance the case put forward by the petitioners. The DAC, in particular, has perfectly properly pointed to the amenity value of the tree, and has sought from the petitioners more information as to the alleged need for the felling; but having received that further information it has not chosen to comment on it in detail.

Conclusion

58. I thus conclude that the felling of the sycamore tree would constitute a serious loss of visual amenity; that indeed seems to be the view of all concerned in this matter. I do however note that if it were to be felled there would still be a significant number of trees in the churchyard, particularly if two trees were to be planted to replace the two sycamores.

59. I am not wholly convinced as to the need for the tree to be felled, since even the experts seem not to be altogether certain that it will entirely solve the problem of the retaining wall. And there may of course be some element of heave, which will cause further problems, although that may be lessened if the stump were to be left to decay in the ground. On the other hand, there seems to be no other form of remedial action being seriously suggested. It does seem therefore that sooner or later there will almost certainly be a need to fell the tree; and that the retaining wall may suffer considerable distortion before that stage is reached, and just might collapse onto the footway. I am therefore satisfied that there is likely to be some significant benefit from the felling being carried out sooner rather than later; and I do not see a great benefit in putting it off for a relatively short period.

60. In short, the loss of the tree would constitute a significant but not serious loss of amenity, especially in the short-term; but it would be likely to lead to some practical benefit in relation to the retaining wall (and possibly in relation to the church). I am therefore, reluctantly, prepared to grant a faculty to allow the tree to be felled.

Conditions

61. The faculty will be subject to conditions, as follows:

- (1) the works be carried out so as to conform to British Standard 3998:1989, *Recommendations for Tree Works*;
- (2) the stump be left in place but treated with appropriate herbicide to prevent regrowth;
- (3) crack and level monitoring be continued for at least 12 months after the felling, to confirm the efficacy of the works; and
- (4) a tree of appropriate species be planted in the 24 months following the felling at an appropriate location, the species and location to be approved by the DAC in writing or, in default, by the court.

The choice of the location and species of the replacement tree will need to be given considerable care, and I suggest that it is not hurried.



CHARLES MYNORS

Chancellor

6 November 2001