

Neutral Citation Number: [2023] ECC Lei 4

IN THE CONSISTORY COURT OF THE DIOCESE OF LEICESTER

ALL SAINTS' CHURCH, ISLEY WALTON - LIME TREES

1. In January 2021 and February 2022 two mature lime trees were felled in the churchyard of All Saints' Church, Isley Walton. The felling took place pursuant to a licence that had been granted by the Archdeacon under List B. Subsequently a complaint against the felling of these trees was received from Val Spalton ("the Complainant") who lives in a property neighbouring the church.
2. As a result of this complaint, Chancellor de Mestre KC proceeded to determine pursuant to rule 3.8 of the Faculty Jurisdiction Rules 2015 whether a faculty had been required for the felling of these trees (referred to as "T1" and "T2"). In a judgment dated 6 May 2022 ([2022] ECC Lei 1) she concluded that the felling of the first tree (T1) was permitted by the Archdeacon's consent under List B, but that the felling of the second tree (T2) was not, and required a faculty. She went on to grant a retrospective faculty authorising the felling of T2. This faculty was subject to a number of conditions, the relevant ones for present purposes being as follows:

"51.2 An arboriculturalist ... should review the remains of T1 and T2 and, within 4 weeks of [*the date of the communication of this determination*], provide written recommendations (which may be in the form of an email) to the PCC and the Diocesan Environmental Advisor of the DAC (alternatively any appropriately composed environmental

sub-committee of the DAC) for the treatment of the stumps and remains, including (but not limited to) consideration of (i) whether stump grinding / extraction / removal is recommended; (ii) the environmental impact of any recommended steps; (iii) whether re-planting of any tree(s) to replace T1 and T2 is recommended and if so with which species and in which locations, together with any other relevant considerations;

“51.3 A report by the church’s inspecting architect (or, if so advised by the inspecting architect, a structural engineer) should be produced within 3 months of receipt of the written recommendations at (2) above. The report should review structures in all areas of the churchyard likely to be, or have been, affected by T1 and/or T2 and their felling (including but not limited to the south-west wall and the memorials in the south west corner of the churchyard) and, taking account of the recommendations provided pursuant to (1) above together with any comment provided to the PCC and structural engineer by the Diocesan Advisor in respect of them, should provide to the PCC recommendations for the amelioration and/or prevention and/or reversal of the effects of any ground swelling caused, or likely to be caused, by the felling of T1 and T2.”

“Any further works deemed necessary following receipt of the recommendations and reports referred to above may then be considered by the PCC and dealt with by separate faculty or

appropriate alternative consent.”

3. Further requirements were added by an addendum determination dated 25 May 2022 that:

- (1) The arboriculturalist should be informed as to any applications of herbicide that have been made to the stumps of T1 and / or T2 since their felling; and
- (2) Copies of the reports of the arboriculturalist and of the architect should be provided to the Complainant.

4. A report was received from Mr Boddy, an arboriculturalist of Symbiosis Consulting Ltd, on 30 May 2022. This report makes reference to the eastern stump (T1) having been treated with herbicide as there were drill holes evident around the base. It makes no reference to the stump of T2 having been treated with herbicide, and I do not understand the stump to have been so treated at this time. The report describes T2's stump as “regenerating vigorously” and as being “a dense mass of young suckers”. The report continued:

“Although a section of the boundary wall has previously collapsed and had to be rebuilt, this is between the stumps rather than directly adjacent to either of them. It did not therefore appear that the influence of the trees was the primary cause of the wall's collapse and I do not consider that the removal of the trees will have a detrimental impact on the ongoing stability of the wall...

With regard to the potential removal of the stumps, there is no

overriding need for them to be ground out and the benefits of doing so need to be weighed against the not insignificant cost of both the grinding and the subsequent reinstatement works. If they are not to be ground out, a decision needs to be made whether to treat the second stump to kill the regrowth and prevent it regenerating further. My personal view is that from an aesthetic perspective it would be better not to treat the second stump, but regularly trim the regrowth to manage it as a large bush.”

5. On 7 July 2022 comments from the DAC Ecological Adviser were passed to the PCC by Gill Elliott, the Diocese Building Development Enabler. These were as follows:

“The DAC Ecological Advisor agrees with the report in that you could allow the dead stump to decay and keep managing the live one. There will be an ongoing cost to the management of that tree which may over time outweigh the cost of stump grinding and unless completed annually will cost a good deal more. He does not know the church so finds it difficult to comment on how the growing tree would fit with the overall management . If it's kept very neat and tidy it may not suit, the stump may fit in if it is left like a nature area.

A yew would be an obvious choice ,or a planting of native shrubs which would be easy to manage with a smaller mature size may be the answer.

He does not feel qualified on the effects of the trees on the ground, that would need a qualified arborist, but his gut feeling would be the

live one would continue to grow and disrupt the ground, the dead one will slowly die back and shrink away.

My understanding is that the PCC need to give this advice and the tree report to the church architect so that he can take all the comments into account in making recommendations for the amelioration / prevention / reversal of effect of any ground swelling due to the felling of the two lime trees.”

The same day Mr John Shields, the PCC Treasurer confirmed that the PCC were not particularly keen to plant another tree and that the stump of T2 was “sprouting nicely”.

6. I understand from information provided by the PCC that, in or about early August 2022, relatives of a person who is buried close to the stump of T2 cut back some of the growth from this stump and applied herbicide in the form of “Ecoplugs” - a method of treating the stump with glyphosphate. The PCC have stated that they were unaware of these actions and they had not authorised this person to treat the stump of T2 in this manner. They have explained that the person had on a previous occasion (at the PCC’s request) treated the stump of T1 with herbicide and that he had misunderstood the situation and assumed that the PCC wished for the stump of T2 to be treated in a similar manner.

7. Mr Gareth Jones, a Conservation Architect viewed the churchyard on 10 August and provided a report on 18 August 2022. He states (in relation to T2):

“The western stump continues to sprout and this growth has not been prevented. It is assumed that this will be allowed to regenerate as a large bush”.

He goes on to consider (as directed by the Chancellor) the potential effects of the removal of the trees on the wall to the south of the churchyard, the south wall of the nave of the church, a gully to the south west corner of the organ loft and on the general porosity of the churchyard. His view was that the regeneration of T2 as a large bush should not affect these matters. The report also identifies that it was not apparent that the removal of the trees had affected the general porosity of the ground in the southern part of the churchyard, but that this would be monitored. The Architect did not observe that the stump of T2 had been treated with herbicide.

8. The Complainant wrote to the Registrar regarding compliance with the Chancellor’s directions, and alleging various breaches by the PCC. This led to the Chancellor giving directions under r18.3 FJR 2015 for the Complainant to detail her concerns and for the PCC to respond. Further correspondence was received from the Complainant on 25 October 2022, from Mr Shields on behalf of the PCC on 7 November 2022
9. The Complainant’s objections as set out in her letter of 25 October 2022 can be summarised as follows:
 - (1) That herbicide had been applied to the stump of T2 prior to the Architect’s visit, and that this was contrary to the Chancellor’s Determination which had required both reports to be produced before

considering any works;

- (2) That the Architect's report was prepared on a false premise, namely that the stump of T2 would be allowed to regenerate;
- (3) That the Architect had failed to identify that the stump of T2 had been treated with herbicide.
- (4) That the Architect's report contained a very limited review of structures potentially affected.
- (5) That the report did not contain any recommendations for the amelioration, prevention or reversal of the effects of any ground swelling caused or likely to be caused;
- (6) That there has been historic ground movement in the north east corner of the churchyard following the felling of a tree more than ten years ago and the Complainant is concerned that there may be future movement in the south west corner as a result of the felling of T1 and T2.

10. Mr John Shields' response of 7 November 2022 on behalf of the PCC gives further background as to the discovery of the herbicide plugs. It also confirms that the Architect had been provided with a full copy of the Chancellor's direction, the reports of the arboriculturalist and the Diocesan Ecological Adviser and "was totally aware of his brief". A further letter dated 8 November 2022 was received from Mr Angus Shields the PCC Secretary confirming that the stump of T2 had been treated with herbicide as a result of a misunderstanding and that the PCC had agreed to the following course of action:

- (1) The removal of the herbicide plugs (and no further herbicide treatment to take place).
 - (2) The monitoring of the stump of T2 with the view that if:
 - (a) the stump recovers, it should be retained as a bush; or
 - (b) the stump dies, the PCC will consider alternative planting further away from the existing memorials.
11. A further lengthy response was received from the Complainant date 15 November 2022.
12. Chancellor de Mestre KC took no further action in relation to this matter prior to her resignation in February 2023 upon her appointment as Chancellor of the Diocese of York.
13. This matter was referred to me as Acting Chancellor in June 2023. Unfortunately due to other commitments and a recent indisposition it has taken me longer to deal with this matter than I had originally hoped.
14. In my view the issues that I need to address are relatively limited:
 - (1) I am satisfied that the PCC intended that the stump of T2 should be allowed to regenerate as a bush. The application of herbicide to the stump took place as a result of a misunderstanding and was not authorised by the PCC. I do not propose to take any further action in this regard.
 - (2) The Architect's report, although relatively brief, in my view largely

addressed the substance of Chancellor de Mestre's directions. It identified that the removal of T1 and T2 should not affect the foundation of the existing boundary wall, not the newly repaired section. It also identified that the removal of the trees had not had any detrimental effect on the structure of the south wall of the church itself.

(3) However, I consider that there are some aspects of the report where further information would have been desirable:

(a) The report is based upon the premise that the stump of T2 will be left to regenerate. However, because of the herbicide treatment it is unclear whether this is now possible. It would be useful to understand whether the possible removal of the stump of T2 would affect the Architect's conclusions.

(b) The report makes no specific mention of the possible effect of the felling of the trees on the memorials in the southwest corner of the churchyard, close to the stump of T2.

15. I do not consider the PCC to be in breach of Chancellor de Mestre's conditions. Although there are points that can be made about the Architect's report, I consider that the PCC took proper steps to comply with the Chancellor's directions and are not responsible for the treatment of the stump of T2 with herbicide.

16. However, I accept that the Architect's report did not address the totality of the matters directed by the Chancellor and, in addition, proceeded on the basis that the stump of T2 was to be retained as a bush. Moreover, it is clear from

the Architect's report that further monitoring of the effect of the felling of T1 and T2 on the southern part of the churchyard was intended in any event. In consequence, and bearing in mind the time that has passed since his initial visit, I consider that there is some value in now asking the Architect to conduct a further site visit.

17. I will therefore direct as follows:

- (1) The PCC should within 28 days of receipt of this judgment:
 - (a) confirm whether the stump of T2 has now died or whether it has sprouted during the 2023 growing season; and
 - (b) confirm their plans in relation to the stump of T2 (whether it is to be retained as a bush or, if dead, whether it is to be ground out and / or replaced with alternative planting).
- (2) The Architect should be asked to reinspect the site. Having regard to the PCC's responses on point 1 above, he should inspect the churchyard wall and memorials in the southwest corner of the churchyard in the vicinity of the site of the stumps of T1 and T2 and report on the following matters:
 - (a) Whether there has been any ground swelling or subsidence since his last visit;
 - (b) Whether there has been any damage to or deterioration of the wall or memorials since his last visit;
 - (c) If there has been any such damage, whether that damage or deterioration is, or is likely, to be connected to the felling of T1 or T2;

- (d) Whether, in his opinion any future damage or deterioration to these structures is likely to arise as a result of the felling of T1 or T2;
- (e) Any recommendations that he may have for the amelioration and / or prevention and / or reversal of the effect of any ground swelling or subsidence caused or likely to be caused by the felling of T1 or T2.

18. The response of the PCC and the response of the Architect should be provided to me and to the Complainant via the Registry within 7 days of their receipt. Once I have received the Architect's report I will decide what (if any) further action is required.

David Rees KC

Deputy Chancellor, Diocese of Leicester

13 October 2023