



Faculty – Grade II listed village church (constructed in 1892-3) – Felling and removal of a healthy mature lime tree contributing to subsidence damage to neighbouring residential property – Parish reluctant to fell a healthy tree forming a cherished part of the churchyard landscape and wildlife habitat but prepared to do so in this case out of good neighbourliness and in order to mitigate any future risk to the neighbouring property – DAC equally reluctant but not objecting to felling – Faculty granted subject to conditions and with reservations

Application Ref: 2022-071491

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday 16 April 2023

Before:

THE WORSHIPFUL CHANCELLOR HODGE KC

In the matter of:

St Nicholas, Kingsey

THE PETITION OF:

The Reverend Cassa Messervy (Rector)

Anne Mackellar and

Graham Barnes (Churchwarden)

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

Objections were received from a local resident who elected not to become a party opponent.

The following cases are referred to in the Judgment:

Delaware Mansions Ltd v City of Westminster [2001] UKHL 55, [2002] 1 AC 321

Re St Leonard, Monyash [2017] ECC Der 3

JUDGMENT

Introduction and background

1. The parish of Kingsey, in the Archdeaconry of Buckingham, lies to the north-west of Princes Risborough. The church of St Nicholas was built in 1892-3 by H. W Moore of Oxford to replace an earlier church of 1780-2. It is Grade II listed. The church and its churchyard are not situated within a conservation area. This is an online faculty petition, dated 18 November 2022, by the Rector and the churchwardens of this church seeking the '*removal of a healthy mature lime tree due to risk of subsidence damage of neighbouring property*'. The lime tree stands in the churchyard, and I have attached two photographic images showing the lime tree at the end of this judgment. I understand that the tree is not the subject of any tree preservation order. The estimated cost of felling the lime tree to ground level and removing all debris from the site has been estimated at £2,875.

2. Situated to the west of the churchyard stands a detached bungalow, dating from the mid-1950s, known as Copper Beech. It is of traditional construction, with rendered brick walls surmounted by a hipped, tiled roof. To the front of the original construction is an extension to the living room and kitchen. To the side, and towards the rear, and nearest the lime tree, is a flat-roofed extension with a garage, utility room and bathroom. Investigations carried out by loss adjusters acting for the adjoining house-owners have identified "*slight damage*" by cracking to the front extension, and also to the side extension where it abuts the bungalow. Site investigations and the testing of soil and root samples have confirmed the existence of the conditions necessary for clay shrinkage subsidence related to moisture abstraction by vegetation. An arboricultural appraisal report, obtained by the loss adjusters in May 2019 from MWA Arboriculture Ltd, has identified the lime tree in the churchyard (which is some 5 metres from the property, with an estimated height of 15-16 m, a diameter of 1 m, and a crown spread of 15 m and referred to in the report as **T2**) as a principal, or materially contributory, cause of the current subsidence damage. Consideration had been given to pruning alone as a means of mitigating the vegetative influence but this is not considered to offer a viable long-term solution due to the proximity of the lime tree. The report notes that this tree has been subject to reduction and pruning in the past, and it recommends its felling to near ground level, and treating the stump to inhibit regrowth. It should be noted, however, that this report also recommends other trees in close proximity to the bungalow for felling: in table 1 - a cypress and spruce (G1) to be felled to ground level: an ash (G2) to be felled to ground level, with the stump being treated to inhibit regrowth; an elm and an ash (SG 1) to be felled to ground level, with the stumps being treated to prevent regrowth; and, in table 2 – an ash (T1) to be felled to near ground level, with the stump being treated to inhibit regrowth.

3. A tree management company (Boward Tree Management) retained by the parish's own insurers have considered the documents produced by the loss adjusters and produced their own short report. They are satisfied that sufficient investigations have been carried out to satisfy a court of law that an actionable nuisance has occurred. Legal precedent would require the removal of the lime tree growing on the church's land as a reasonable means of abatement. However, the author was concerned that the damaged building had been constructed with sections of its foundations being of differing depths. Given that the property was built on ground consisting of clay with a high volume change potential, and that the lime tree pre-dates the construction of the bungalow and the extension, meaning that the property was constructed on ground partially desiccated by the actions of existing tree roots, the author of this report was concerned that felling of the tree might result in further damage to the bungalow since the removal of the tree would result, at least in part, in the rehydration of the subsoil leading to the swelling of the previously desiccated and shrunken subsoil.

4. The author of this report notes that the felling of trees that have been implicated as a cause of, or a contributing factor to, an incidence of subsidence is considered to be the most reasonable method of abatement since tree felling is considerably less expensive than remedial engineering works, such as underpinning of damaged foundations. However, in the past little consideration has been given, when considering abatement, to the true value of the tree in question. It has recently been agreed by the majority of scientific opinion, as well as the majority of governments, that the world is in a period of climate change, resulting from human action in releasing greenhouse gasses, particularly carbon dioxide, into the atmosphere. It is known that trees remove carbon dioxide from the atmosphere. It is estimated that the actions of the average UK resident result in the release of approximately nine tonnes of CO₂ each year. It has been calculated that the average large-growing, mature tree, such as this lime, removes approximately 0.16 tonnes of CO₂ each year from the atmosphere. Therefore approximately 56 such trees are required to remove the CO₂ emissions of just one person. At this time, trees and vegetation are the only available means of removing CO₂ from the atmosphere. When a mature tree is felled, it is not possible to replace it other than by planting a sapling that will take 40 to 100 years to mature. Given all of this, the author of the report recommended asking the owner of the affected property whether any calculations had been made as to the likelihood of heave damage, resulting from the rehydration of subsoils following the removal of the tree, causing further damage to the property. If the property were retained, and the lime tree removed, there was considered to be the potential for future structural damage, caused by heave subsoil movement, because of the methods used in the construction of the property, with minimal, and dissimilar, foundation depths, which would render it susceptible to such heave damage. The author of the report considered that it would be even more unfortunate if the tree were to be removed only to find that the site was later redeveloped, with the damaged property being demolished.

5. Residents of the parish have also expressed concerns that: (1) the bungalow was originally constructed quickly and cheaply and that it is now ripe for demolition, with a view to redeveloping the site, and it would be a terrible waste of the tree if it were felled in order to preserve a bungalow which was then demolished; (2) the lime tree is part of the benefits conferred on the community by the green space afforded by the churchyard; and (3) there are graves underneath the lime tree which are visited regularly by family members who are concerned and distressed that the graves of their loved ones may be disturbed by the felling of the tree and any resultant heave.

6. The parish's insurers have put these points to the loss adjusters retained by the neighbouring property owner but their response has been to point out that the parish's own retained arboriculturist agrees with arboriculturist instructed by the loss adjusters that the evidential tests for nuisance by tree roots have been satisfied, that tree removal is the usual best solution, and that it is more cost effective than underpinning. Calculations have been made which have satisfied the loss adjusters that there is no heave risk to the insured property. The loss adjusters are concerned with the existing damage under the terms of the householder's insurance policy and not with what might happen to the property in the future. The building has stood the test of time for the past 70 years until the roots of the lime tree (and other vegetation) had caused the soil to dry out to such an extent that damage had resulted. Regarding the environmental issues, the carbon footprint associated with underpinning was said to be huge, equating to the CO₂ absorbed by dozens of trees, so underpinning would be more environmentally damaging than the removal of one tree, which would, in any event, die a natural death one day. It went without saying that should the lime tree be removed, the contractor would need to be experienced, qualified, and insured. Whilst it might be difficult, it was certainly not impossible to remove the lime tree without causing damage to any of the neighbouring graves. The cost of any potential liability claim faced by the parish far outweighed the cost of removing the lime tree. Whilst the loss adjusters had no intention of upsetting any relations within the community, there was a legal duty resting on the parish to abate the nuisance that their lime tree was causing. If the tree work remained outstanding, and further damage occurred, the parish would be held liable for the cost.

7. Consulting civil and structural engineers have been consulted by solicitors (BLM) acting for the parish's insurers; and they are of opinion that any long term heave movement that might result from the felling of the lime tree is likely to be acceptable, and that the actual depth of the foundations of the 1980s extensions to the neighbouring property is more or less acceptable. I have also been provided with the relative survey readings of the level monitoring undertaken on the instructions of the loss adjusters retained by the neighbouring property owners' insurers every two months between February 2019 and December 2022. These readings would appear to raise no new concerns.

8. In October 2021, Crawford & Company Legal Services Limited wrote to the parish, on behalf of the insurers of the estate of the late Mr P J Cotton (as the owners of Copper Beech), formally requesting the removal of the lime tree. The letter notes that the parish had previously been provided with clear evidence that the roots of the lime tree within the churchyard (T2) were trespassing under the insured's property. The letter asserts that site investigation and arboricultural reports have conclusively proved that the roots are live and taking moisture from the clay subsoil, thus causing the property to subside in the dry months and sustain damage. Crack monitoring had also confirmed continued seasonal movement. Despite numerous requests for the removal of the tree, the parish had failed to respond to the loss adjusters' correspondence, or to carry out the requested felling of the tree. The loss adjusters' expert arboriculturist had confirmed that unless the tree were to be removed immediately, the property would sustain further damage. As at November 2021, the reserve to rectify the damage caused by the lime tree stood at £21,577.60. Should the lime tree not be removed, the insurers would have no choice but to proceed with a structural engineering or underpinning scheme to stabilise the risk, and to address and protect their policyholder's assets.

9. The letter went on to advise that a claim might be pursued against the parish for the damage already sustained to the neighbouring property. In addition, should the parish fail to remove the lime tree, as recommended by the loss adjusters' expert arboriculturist, and further damage was sustained to the property as a result, action could also be brought against the parish for investigation costs, underpinning or some other suitably engineered stabilisation scheme, remedial works required to restore the property to a pre-loss condition, any other losses incurred as a direct result of the failure to remove the lime tree, and legal costs associated with pursuing the claim. Legal action, which would proceed through the courts if necessary, would be brought as a result of: (1) negligence, in failing to maintain the tree, thereby permitting it to be a foreseeable risk of harm to the neighbouring property; and (2) continuing nuisance, in failing to abate the tree from causing ongoing damage. Reference was made to observations of Lord Cooke in *Delaware Mansions Ltd v City of Westminster* [2001] UKHL 55, [2002] 1 AC 321 at [33]: "*If reasonableness between neighbours is the key to the solution of problems in this field, it cannot be right to visit the authority or owner responsible for a tree with a large bill for underpinning without giving them notice of the damage and the opportunity of avoiding further damage by removal of the tree [A]s a general proposition, I think that the defendant is entitled to notice and a reasonable opportunity of abatement before liability for remedial expenditure can arise. In this case Westminster had ample notice and time before the underpinning and piling, and is in my opinion liable*". The parish had been on notice of the damage that their tree was causing since May 2019, and they had been provided with ample opportunities to remove it. If the lime tree was not removed promptly, and the nuisance was allowed to persist, then, regrettably, the insurers would have no option but to instruct works to start on an appropriate scheme of underpinning, to stabilise the foundations of the property in the absence of tree removal, and to reflect the fact that the continued risk and nuisance posed by the lime tree would remain. At that time, it was estimated that those additional repairs, plus the associated engineering fees and expenses attributable to the works, would cost in the region of £21,159.57, plus VAT. I can take judicial notice of the fact that construction costs have risen significantly since this date.

The faculty proceedings

10. At a meeting of the Parochial Church Council in November 2021, the PCC reluctantly decided to progress with applying for any necessary faculty for the felling of the lime tree. On 16 November 2022, the Diocesan Advisory Committee issued a Notification of Advice stating that they did not object to the parish's proposal for the "*Removal of a healthy mature lime tree due to risk of subsidence damage of neighbouring property*". The Notification recorded that:

It is not the desire of the Parish or the DAC to fell healthy trees which are a cherished part of the churchyard landscape and wildlife habitat, however the Parish have accepted to do so in this case out of good neighbourliness and in order to mitigate any future risk to the adjacent property.

The DAC advised that the proposal would not affect the character of the church as a building of special architectural or historic interest.

11. The petition was issued through the online faculty system by the Rector of the church and the churchwardens on 18 November 2022. The usual public notices were displayed between 18 November and 18 December 2022.

12. One letter was received from a longstanding resident of the parish objecting very strongly to the felling of the lime tree. The writer appreciated the worry about possible subsidence to the neighbouring property caused by the lime tree, but she wished to point out

that the tree had been there much longer than the bungalow, which had been built very close to what was then a mature lime tree. *“Limes are lovely British native trees and mature trees should be considered part of our natural heritage.”* The letter went on to point out that subsidence occurs anyway in the heavy clay soil in that area as the earth contracts and expands with the weather so, even if the tree were to be removed, there would be no guarantee that the neighbouring property would not suffer subsidence anyway. *“We are supposed to be preserving trees to help with climate change and it takes many generations to grow a tree the size of this lime – I hope it can be left intact, I think it would be a sin to fell it!”* In summary, the objections are founded upon the aesthetic impact of the proposal, the environmental impact of the loss of the tree, raising the question whether the parish should be cutting down any healthy tree at a time when the world is facing a climate emergency, and criticising the loss of amenity and natural habitat, together with practical considerations. When the objector was sent the usual written notice under rule 10.3 of the Faculty Jurisdiction Rules 2015 as amended (the **FJR**), she chose not to become a party opponent, inviting me instead to take her objections into account when reaching my decision on this petition under FJR 10.5. This I have duly done.

13. This objection was sent to the PCC for their observations; and it provoked a response from the Treasurer (a former PCC Secretary, and another long-standing resident of the parish) who wrote about how passionate she felt about this tree and how she was so opposed to it being felled, emphasising the importance of mature trees in carbon capture and storage, and the need to preserve, and not to fell, mature trees.

14. In order that they might have an opportunity to respond to the petition – either by way of representations in support or particulars of objection – on 23 January 2023 I directed, pursuant to FJR 9.1, that special notice of the petition should be given to: (1) the owners of Copper Beech and their professional advisers, Crawford & Co Legal Services Ltd, and (2) BLM, as the solicitors retained for and on behalf of Ecclesiastical, the parish’s insurers. This was duly done by way of a letter from the Registry dated 26 January 2023, with any representations in response to be submitted within 21 days. As well as a copy of the public notice, the recipients were also served with copies of the petition and the objections. On 15 February, solicitors acting in the administration of his estate for the executors of the owner of Copper Beech, Sinclair Gibson LLP, wrote to the Registry indicating that they had only received the Registry’s letter on 6 February, and requesting an extension of the deadline for a reply, from 16 to 27 February, in order to allow time to obtain their clients’ instructions and prepare their response. This extension was duly granted.

15. For the parish’s insurers, BLM responded to the special notice by email on 26 January 2023, indicating that the view of their retained structural engineer was that there was no heave risk if the lime tree were to be removed. This response explained that although the arboriculturist who had been engaged by the parish had suggested that there was a heave risk, it was for an engineer, rather than an arboriculturist, to comment on the risk of heave, and BLM had therefore liaised with their structural engineer. On 27 February 2023, Sinclair Gibson LLP responded to the special notice, on behalf of the executors acting for the estate of the neighbouring property owner, stating that their clients did not object to the proposed works set out in the petition, and that the court might proceed as necessary. Perhaps understandably, in light of that response, the professional advisers acting for the owners’ loss adjusters, Crawford & Co Legal Services Ltd, have not responded to the special notice.

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, for me to determine this petition without a hearing, and on the basis of the written and illustrative material that has been uploaded to the online faculty system and is before the court.

The felling of trees within the faculty jurisdiction

17. 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 A8 (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 A8 (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

18. 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 B7 (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 B7(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 A8 (1) and B7 (2), the felling of a tree in a churchyard requires a faculty.

19. As regards the guidance issued by the Church Buildings Council referred to in the specified conditions of A8 (1) and B7 (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.

20. Clearly, a faculty is required for the felling of this lime tree. The diameter of its trunk greatly exceeds that referred to in List A8 (1). The tree is not dead or dying, and it has not become dangerous.

21. In *Re St Leonard, Monyash* [2017] ECC Der 3 (in the Diocese of Derby) Deputy Chancellor Clarke granted a faculty to authorise the removal from the churchyard of a lime tree which was in danger of causing damage to an adjoining property, as recommended in a report prepared by a tree specialist. The minister and churchwardens had sought the faculty at the request of the owners and occupiers of an adjoining residential property formerly used, and now known, as The Old Reading Room, which had been constructed in 1882. The tree in question was not the subject of a tree preservation order, but it did lie within a conservation area. The local planning authority had confirmed in writing that it had no objection to the removal of the tree. The PCC supported the application, as did the DAC. The lime tree in question had been planted in the mid-1990s. The owners of The Old Reading Room had requested the removal of the tree due to its proximity to the south wall of their property. They were concerned that damage and increased maintenance would result from the overhanging branches, as well as the shading of their garden. The tree specialist was of the view that these were legitimate concerns. He considered that the level of pruning which would be required to address these concerns would have an adverse effect on the appearance of the tree. He considered it unlikely that a tree would now be planted in such close proximity to a dwelling. There was also concern that the roots of the tree might, in the future, cause damage to a French drain which had been constructed in 2004, with the support of the PCC and the benefit of a faculty, around the south and west walls of the Old Reading Room. The tree specialist had commented that the churchyard was well treed, particularly around the boundaries. He also noted that the tree in question was not especially visible from outside the churchyard. His recommendation was that the tree should be removed and the stump treated to prevent regrowth. One objection to the tree’s removal was received from a longstanding resident of the parish in response to the public notice of the petition. The petitioners’ response to the objection was to indicate that they would be willing to plant at least two other trees elsewhere in the churchyard, in the event that the faculty was granted. In response to a question from the Deputy Chancellor, the owners of The

Old Reading Room had indicated that they would be willing to fund the cost, not only of felling the tree, but also of having the stump ground out and the area made good.

22. Whilst the Deputy Chancellor shared the objector's concerns about the loss of trees in public places, he understood the adjoining landowners' concerns about the possible detrimental effect of this particular tree on their own property. He considered it better to prevent those problems now, rather than wait and possibly have to deal with both felling the tree and repairing damage to the property in the future. The Deputy Chancellor also welcomed the offer by the PCC to replace the tree with at least one other, which could be planted in a more suitable location, and the adjoining owners' willingness to pay for a complete removal of the tree, including its stump. Particularly in the light of those offers, the petition should be granted. A faculty would issue to permit the felling of the lime tree and the removal of the stump, on condition that at least one tree was planted elsewhere in the churchyard to replace it. The works might be carried out once the tree's leaves had fallen; and they should be carried out within twelve months.

23. The facts of *Re St Leonard, Monyash* are very different from those of the present case. There, the planting of the tree long post-dated the construction of the adjoining property whereas, here, the neighbouring bungalow was both built, and extended, notwithstanding its proximity to the existing lime tree. There, unlike here, both the PCC and the DAC actively supported the petition; and the adjoining owners were willing to pay for the complete removal of the tree, including its stump. However, there the threat to the adjoining property was potential, rather than (as here) actual. Nevertheless, the case affords an instance of the grant of a faculty which permitted the felling of a healthy, mature lime tree growing in a churchyard in order to protect a neighbouring property from damage, both to property and amenity.

Analysis and conclusions

24. The felling of this lime tree will result in no harm to the significance of the church of St Nicholas as a Grade II listed church building of special architectural or historic interest. It follows that the question for this court is whether the petitioners have 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, 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.

25. In his Presidential Address to the most recent meeting of the Oxford Diocesan Synod, held at Cowley on Saturday 11 March 2023, the Bishop of Oxford spoke of the Four Horsemen of the Apocalypse, from the Book of Revelation, and the threat of the climate crisis. The four riders represented conquest, war, famine and death. Members heard that in the 21st Century, there are now two new riders; and they represent the threats of greenhouse gasses, and the systematic destruction of nature. The systematic destruction of nature put the Earth's eco system - on which human life depends - at risk. Bishop Steven spoke of the importance of Christian action to prevent climate change and work towards carbon net zero. The most immediate reason is for the future of life on Earth, for ourselves and for those who will come after 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.

26. 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.

27. 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 the two new Horsemen of the Apocalypse. The Church of England is not able to do this single-handedly, but it must offer leadership on the matter whenever it can.

28. Later at the same meeting of Diocesan Synod, the Bishop of Reading stated that the 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, and part of the identity of disciples of Jesus Christ.

29. I must bear all of these factors, and the impact of the loss of this mature tree on the appearance, and the immediate environment, of this churchyard, firmly in mind. I must weigh against them, however, the financial risks to the parish in terms of threatened, and costly, litigation. The insurers acting for the parish have instructed reputable solicitors, who have obtained expert arboricultural opinion which is to the effect that sufficient investigations have been carried out to satisfy a court of law that an actionable nuisance has occurred; and that legal precedent would require the removal of the lime tree which grows on the church's land as a reasonable means of abatement of this nuisance. I do not consider that it is for me, as Diocesan Chancellor, to seek to re-visit, or to question, such advice when it accords with the advice apparently received by the neighbouring landowners. Whilst underpinning the foundations of the bungalow might be an alternative to the felling of the lime tree, after allowing for the inflation of construction costs since October 2021, and the incidence of VAT, the costs of underpinning would be roughly ten times greater than the cost of felling the lime tree. Underpinning would also make its own contribution to the carbon footprint of this part of Buckinghamshire. In my judgment, it must be for the PCC, as the custodian of the parish's finances, to determine whether that is a price worth paying, as the cost of preserving this lime tree, bearing in mind the aesthetic, and the environmental, impacts of the loss of that tree.

30. I have concluded, with great reluctance and regret at the loss of a mature and healthy lime tree, that if that is the course which the parish consider appropriate in order to address the nuisance that the tree is causing to their neighbour's residential property, then the consistory court should not stand in their way. I am satisfied that the petitioners have shown a sufficiently good reason for the felling of the lime tree, in terms of abating the nuisance to their neighbour's residential property, 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. In doing so, however, I emphasise that a faculty is precisely that: it is permissive, and it does not have to be implemented; and certainly not at once. It will be for the PCC to decide whether, and when, to implement the faculty, within the generous time constraints imposed by the court. In deciding whether or not to implement the faculty, the PCC will need to bear in mind the environmental and aesthetic impacts, as well as the costs, of either course of action. In doing so,

the parish should also recognise that, on the expert evidence provided by the loss adjusters retained by the neighbouring landowners, the lime tree is only one of a number of trees which would appear to have contributed to the subsidence damage. There is no reason why the parish should bear all the costs of any necessary remedial underpinning. There can also be no reason why the lime tree should be felled in advance of the other trees that have contributed to the subsidence damage. I also acknowledge the point that it would be sad, to say the least, for the lime tree to be felled, only to discover that the bungalow is soon to be demolished in any event, in order to make way for a more substantial, and up-to-date, alternative building. The PCC will wish to seek to assure themselves, from inquiries directed to the executors, local estate agents, and the local planning authority, that there is no immediate, foreseeable prospect of this happening before they give any instructions for the felling of the lime tree.

31. For all these reasons, I will allow a generous period of three (3) years for implementing this faculty. I also bear in mind that since it is an offence under the Wildlife and Countryside Act 1981 to disturb birds while they are nesting, building a nest, or in, or near, a nest containing their young, the felling (or major pruning) of trees (and shrubs) must take place outside the bird nesting season, which officially starts in February and ends in August. The faculty will contain a condition to this effect. Because of the sensitive nature of the work, and the potential impact upon neighbouring graves, I will impose a condition that the tree felling shall be undertaken by a suitably qualified and experienced arboriculturist, who holds appropriate insurance for the works. I will also include a condition that the lime tree is not be felled until after, or at the same time as, the other trees recommended for felling in the arboricultural appraisal report obtained by the neighbouring owners' loss adjusters in May 2019 from MWA Arboriculture Ltd. Finally, because of the impact of the loss of this mature lime tree on the environment of the churchyard, I will impose a further condition that at least one replacement tree, of a species, and at a location, to be approved by the archdeacon, should be planted during the current, or the next, growing season after the felling of the lime tree. I express the hope that this faculty will bring an end to the parish's difficulties with their neighbour.

32. For these reasons, I grant a faculty permitting (but nor requiring) the felling of this lime tree, subject to the following conditions:

- (1) The tree felling shall be carried under the direction of the Rector and churchwardens; and shall be undertaken by a suitably qualified and experienced arboriculturist who holds appropriate insurance for the works
- (2) The tree felling shall be completed within three (3) years of the grant of the faculty, or such further time as the court may allow.
- (3) The tree felling shall take place outside the bird nesting season, which officially starts in February and ends in August.
- (4) Care is to be taken not to disturb any birds whilst they are nesting, building a nest, or in or near a nest containing their young.
- (5) The lime tree is not be felled until after, or at the same time as, the other trees recommended for felling in the arboricultural appraisal report obtained by the neighbouring owners' loss adjusters in May 2019 from MWA Arboriculture Ltd.

(6) At least one replacement tree of a species, and at a location, to be approved by the archdeacon must be planted during the current, or the next, growing season after the felling of the lime tree.

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

33. In the usual way, I charge no fee for this written judgment. The petitioners must pay the costs of this petition, including any additional fees incurred by the Registry in dealing with this application.

David R. Hodge

The Worshipful Chancellor Hodge KC

The First Sunday after Easter

16 April 2023

View of the lime tree from the south (September 2022)



View of the lime tree from the east (September 2022)

