

IN THE CONSISTORY COURT OF THE DIOCESE OF BRISTOL

In re Malmesbury Abbey, St Peter and St Paul

JUDGMENT

1. The Petitioners, the Trustees of the Athelstan First King of All England Trust, seek permission to dig a total of five trial investigation pits which lie within the curtilage of Malmesbury Abbey along a public thoroughfare which runs for 0.4 of a mile identified as Birdcage Walk adjacent to and which forms part of the churchyard of St Paul's Church (Malmesbury Abbey, St Peter and St Paul). Each is said to be no more than 0.7 metres in depth and the extent of the excavation is that each pit is said to be one square metre, yet one pit may extend to 2 x 1 metre.
2. The sole objective is to inform development proposals for townscape improvements, the centrepiece of which is a statue to commemorate King Athelstan who it is believed is buried within the Abbey. The foundation details for the statue including amenity seating and service routes for cabling and other electrical wiring have been carefully set out before me in an archaeological investigation.
3. The archaeological investigation dovetails with the existing planning permission obtained from Wiltshire County Council as the local planning authority to prune three birch trees and three lime trees along the walk and the pruning of the roots to facilitate the excavation of the test pits. I have read the rather detailed Arboriculture Method Statement in addition to the archaeological investigation, more of which later.
4. The archaeological investigations, if this faculty is granted, will be overseen in conjunction with the Diocese and I have read the recommendations of the Diocesan Advisory Committee (DAC) as to the conditions that should be imposed.
5. Mr Chiz Harwood of Urban Archaeology and concurrently an Arborist will be in attendance should these works proceed, to monitor and protect the tree roots. Urban Archaeology have produced a very detailed report examining the site, its history and challenges and emphasised with great care the need to mitigate and minimalise disturbing as much as possible of the ground.
6. There is an objection by Ms Ruth Strange who elected in an earlier point not to become a party opponent but wished understandably for her written submissions to be taken into account. Ms Strange is clearly an interested party within the meaning of Part 10 of the Faculty Jurisdiction Rules 2015 as amended in relation to this Petition for a Faculty as she is a person who is resident within the parish and in fact lives very close by to Birdcage Walk.
7. I am more than satisfied that the Petition can be decided upon the written material I have considered under Part 14 of the Rules having regard to the overriding objective in Part 1 thereof.

There is of course no party opponent and I must avoid unnecessary expense and this really should be dealt with as expeditiously as possible.

8. Athelstan was of course the First King of All England. The proposed statue I believe is to be cast in bronze and will be placed upon a stone plinth weighing some 776 kilos. The total weight including its resting plinth of stones on top of existing flagstones will exceed 3.8 tonnes. It must be understood that only one of the trial pits will be excavated underneath the proposed location of the statue, the others are located elsewhere along the walk.
9. The objector Ms Ruth Strange set out very helpfully in her email to the Registry of 24 January 2026 that she does wish to remain an objector and she wishes me to consider the material that she has put to the Registry including but not exclusively set out in Form 5 which she lodged. Likewise the petitioners invite me to deal with the matter on their existing written submissions and the documents filed which of course highlight the documents I have already referred to, that is to say, the written scheme investigation for an archaeological evaluation prepared by Mr Harwood and the Arboriculture Method Statement (AMS) prepared by Mr Matthew Dry, Managing Director of Dryad Land and Tree Care Limited.
10. The objections raised by Ms Strange show to me her strength of feeling and her focus is upon protecting understandably the trees and the landscape. There is before me a wealth of evidence that the archaeological remains exist within the curtilage of the church and there is a desire to know about these in detail. It is after all a medieval Grade I listed schedule ancient monument and the walk itself is scheduled as an ancient monument that retains I am told the archaeological evidence of the former St Paul's Church, a church dedicated certainly by 1191. By the time of the dissolution of the Abbey in 1541 it was described as being in very poor condition. Writing in the 19th Century, Sir Stephen Glynne sadly described the church as effectively disappeared save for its steeple.
11. The Parochial Church Council (PCC) and also an advisory committee (DAC) certainly support this application. I note in passing it is recorded by the DAC that the Petitioners have provided one of the most detailed and thorough WSIs they have encountered.
12. I granted the faculty and during the public consultation period (which was concertinaed)the objection was lodged by Ms Strange. As I have said she is very concerned about any damage potentially to the trees and the wildlife notwithstanding the Arboriculture Method Statement prepared by Mr Dry which I have referred to. He affords separate treatment and if I may say so and describe it as such, a care plan for each species of tree. It is not lost upon me as Ms Strange has pointed out that some of these trees have been in the churchyard for at least 54 years if not longer. I note that Mr Dry added this in his overview:

“However, it is essential that every effort is made to minimalise damage to all parts of the root systems where they occur. Given the position of the test pits the hope would be that no major anchoring or stabilising roots will be encountered”.

He describes the birch tree, in the United Kingdom, as having typically shallow rooted roots indeed with a dense fibrous root system that can extend significantly outside any canopy edge. It is likely that fibrous roots and lateral roots will be visible when paving slabs are lifted.

13. As to the lime trees these have lapsed pollards displaying medium vitality. The root systems will be encountered and avoidance to disturbance should be avoided. Not only has he set forth a blueprint as to the principles of pruning, but when it should happen, that pruning really should only take place from late summer to autumn and kept to the bare minimum. He has even identified which tools should be used. I remind myself that all work around the roots would be carried out using hand tools only. Soft brushes would be recommended to use alongside trowels. I have been enormously impressed by the detail that he affords including the back filling once the excavation has been completed that such backfill should not be over compacted.
14. I also note in Mr Harwood's own report at paragraph 6.3 that test pits when they have been located, every effort will be made with the arborist to ensure that the tree roots wherever possible are the subject of minimal disruption.
15. In terms of the trial pits themselves any archaeological features, structures or deposits which will be found will be subject to the single context recording procedures and more importantly human remains and coffin furniture which by their very nature would be fragile and vulnerable to damage will be disturbed to the minimum level and I am assured that all such remains will be recorded and left in situ.
16. Irrespective of the fact that Scheduled Monument consent has been given and a tree works application granted by the local authority I have to consider whether in this jurisdiction this application is made out. I am more than satisfied on the material before me that this application is merited and that it is necessary and desirable for these works to be undertaken. This is not a full-blown archaeological dig of the entire site. It is limited to these trial pits, at these locations and it is for good purpose to understand the landscape and what, if any, archaeological material may exist for it to be recorded for posterity. It is also important that the statue is placed in a very sensitive position and I hope that the documentation I have read will reassure Ms Strange. Taking into account her concerns, they have of course been echoed elsewhere within the subject of a great deal of public scrutiny including the BBC. The principal point for me is that because it is a well thought out plan and the detail is immense it does appear to me to be anterior and superior to the objections made by Ms Strange. That is not too belittle her concerns. Her concerns have been addressed elsewhere. I am satisfied that I should grant this faculty subject to the conditions identified by the DAC.

04 March 2026

District Judge Stewart

Deputy Chancellor of the Diocese of Bristol