

In the matter of St John the Baptist, Knaresborough

Judgment

1. By a petition dated 16 January 2017, the team rector and churchwardens seek a faculty for the following works:

To replace a damaged, badly worn tree bench sited between the south door and church hall, which surrounds a Sugar maple tree, subject to a TPO. To make good the immediate surrounding area of the tree bench by defining a new shape, with a new kerb.

Works as per the architect's report with photographs, and the tree assessment of Barnes Associates of March 2015.

2. The report of Barnes Associates dated 3 March 2015 contained the following recommendation:

In light of the tree's location, the risk of direct damage to the hard surfacing and the elevated risk of branch failure which constitutes a high risk the tree and stump should ideally be removed entirely and the stump treated to prevent regrowth before damage occurs. [...] I recommend that the tree should be removed in the next year.

3. In the light of the stark dissonance between the works proposed by the parish and the evidence filed in support, on 4 May 2017, I issued directions in the following terms:

The only direct evidence submitted with the papers is a report dated 2015 from Barnes & Associates, independent arboricultural consultants, concluding that the tree in question represents a "high risk". This includes branch failure which makes long term retention untenable. The fact that a TPO may have been imposed does not detract from this professional assessment. I trust the content of this report has been communicated to the PCC's insurers. If it has not the policy is liable to be vitiated. The court will not countenance authorising the reconstruction of seating around this tree, which will act as an allurements to visitors to bring themselves within a known danger zone. Responsible stewardship sometimes means taking hard decisions. I propose to stay the petition for three months to afford the parish the opportunity of filing further evidence, whereupon I will make further directions for determining the matter, whether by a hearing or otherwise. If no evidence is filed within the time frame, the petition will stand dismissed.

4. By email of 15 May 2017, the petitioners asked the registry clerk, "Can you please enquire of the Chancellor if other evidence would be required other than a new report on the tree in question?", to which the clerk replied, on my instructions, that I cannot advise a party to proceedings as to what evidence they should put before the court. It is for them to decide, and if they are uncertain then they should seek the advice of an ecclesiastical solicitor. The Consistory Court, and the registry which serves it, must be entirely independent both of the diocese and of individual litigants. An object lesson in the consequence of blurring those sharp dividing lines is apparent from the robust remarks of Rodgers Dep Ch in *Re Christ Church Spitalfields* (unreported, 5 February 2017) at paragraphs 603-607.

5. Whether or not the petitioners sought and obtained independent legal advice, they duly filed further evidence, namely:
 - i. A statement dated 6 June 2017, from the First Petitioner, Mrs Pamela Child;
 - ii. An arboricultural survey, authored by Mr Andrew Glaister of Harrogate Borough Council dated 25 May 2017.

6. The tree in question was inspected by Mr Glaister on 18 May 2017. He records that it is subject to a tree preservation order made by Harrogate Borough Council in 2015. Mr Glaister notes:

The tree is in a paved, semi-enclosed setting between the church and associated buildings. It is a single stem from ground level, before splitting into multiple stems at 1.5 meters.

Many of the stems have what is known as 'included unions' between them. Whilst these unions do have the potential for weakness, there is no evidence of movement at this time. In addition, there is no evidence of heavy or recent pruning – both of which can affect the stability of branch unions on all trees – but particularly with trees of this species. [...]

The tree shows excellent signs of vitality; it has a full crown with no significant die-back evident and strong cambial expansion marks visible around the stem. It is therefore likely that the tree is able to lay down new wood to compensate for any weakness there may be within its structure.

I carried out a risk assessment of the tree in accordance to the Quantified Tree Risk Assessment (QTRA) methods, of which I am a licensed user. The score suggests risks associated with the tree are within a 'tolerable' level and no works are required to the tree at this time to control foreseeable risks to people or property. This backed up my 'gut' feeling following the initial survey.

7. Mr Glaister recommended an element of 'crown-lifting' (removal of lower branches) because vehicles pass beneath the tree. His formal recommendation reads as follows:

I recommend the tree is crown lifted to a height of 3.5 meters above the macadam surface below. I recommend that the branches are cut back from the church building to give 2 meters clearance. In both cases, no primary branches are to be removed and the maximum diameter branch to be removed will be 50mm. Works should be to BS3998 (2010) or as revised. In addition, crossing branches should retain [sic] within the crown of the tree as these can act as natural braces.

8. Mr Glaister estimates that the tree has approximately 20-30 years of useful life and sees no difficulty in the replacement of the bench as his risk assessment was carried out on the basis of the existing surrounding seating. He voiced concern that any replacement of the concrete slabs should be done in such a way as not to impact upon the tree roots, which are protected by the TPO in the same way as the above ground elements of the tree.
9. Mr Glaister does not comment on the view expressed in the report of Barnes & Associates, nor do the petitioners explain why they had sought to rely upon it when its clear recommendation was for the removal of the tree.

10. The petitioners have not sought to revise the petition by the removal of the reference to the Barnes & Associates report (which argues against their underlying proposal) and its substitution with reference to Mr Glaister's report. However, such an amendment is undoubtedly required. The Consistory Court should be slow to allow variations to the Schedule of Works or Proposals and astute to the prejudice which may result, *inter alia*, to parishioners and others who rely upon the description as replicated in the public notice in deciding whether or not to voice objection. An injustice might result if an amendment were made which materially altered the proposal but denied the opportunity of consultation or objection. In this instance I am satisfied that the amendment can be made without risk of prejudice or injustice. The underlying proposal remains the same: the amendment is to the evidence relied on in support.
11. So after that lengthy excursus, we come to the merits of the petition. As presented it was doomed to failure. The Court could never sanction work to a bench surrounding a tree which presented a current and future risk. However, the new evidence suggests that the concerns in the Barnes & Associates Report is misplaced, and that there is no such risk.
12. The replacement of the badly worn bench is both appropriate and overdue. The surrounding area is in need of improvement along the lines outlined both for pedestrian and vehicular use, and for aesthetic reasons. It will be a place for rest and reflection, for visitors to exchange pleasantries and ponder the beauty of this grade I listed church. There seems to be the possibility of funding for the proposed works from Harrogate Borough Council under its Commuted Sums Scheme. This proposal would otherwise come within List B, under section B5(1), 'The introduction of benches in a churchyard' although strictly this bench lies within the car park.
13. The DAC Notification of Advice, dated 23 March 2017, was in the form of 'no objection'. This was primarily, as I understand the position, in consequence of the dubiety as to the life expectancy of the tree. Certainly this was the tenor of the DAC's email to the petitioners dated 3 February 2017 to which the petitioners responded on 9 March 2017.
14. I am content that a faculty issue in respect of the proposed works, to include the lifting of the crown, as outlined in Mr Glaister's report. However it will be on condition that prior to the works commencing:
 - a. the necessary consents are obtained from Harrogate Borough Council in respect of the works to and affecting the tree which is subject to a Tree Preservation Order;

- b. that the petitioners agree with Mr Glaister (or some other officer of Harrogate Borough Council) the ordering of the works (including the lifting of the crown) to minimise potential harm to the tree;
- c. that the petitioners satisfy themselves that planning is not required in respect of the landscaping works to the car park at the base of the tree;
- d. the costs of this petition, to include a correspondence fee, payable by the petitioners, are settled in full, .

15. The works are to be carried out under the supervision of the parish's inspecting architect and completed within 12 months or such extended period as the Court may authorise.

The Worshipful Mark Hill QC
Chancellor

15 June 2017