

**In the Diocese of York**

**In the Consistory Court**

**The Parish of Fraisthorpe**

**The Church of St Edmund**

1. The Petitioner in this matter is Angus Stewart Deas the Pastoral and Closed Churches Officer for the Diocese of York.
2. By a petition dated 2<sup>nd</sup> October 2018 he has sought a faculty to permit him to fell two sycamore trees in the churchyard of this church which is listed Grade II and which has been closed.
3. The matter was considered by the DAC at a meeting on the 17<sup>th</sup> October 2018 when the DAC recommended the works for approval by the court. In its minute of the meeting it recorded that:

“This closed church was likely to be sold and converted to residential use and the Church Commissioners were applying for planning permission. Probably due to the exceptionally dry weather during the summer, the roots of one of the trees in question had caused ground shrinkage, resulting in the appearance of vertical cracks at the corner of the building. That tree needed to be felled, as did the second tree which would obstruct the proposed driveway and septic tank. There would still be one small tree left in the churchyard at the rear of the church building.”

4. Public Notice was then given of the proposals and the Diocesan Registrar received a number of letters setting out objections to the proposals. They were from:

George Leslie Wiles; his letter was undated but was received on 7<sup>th</sup> November 2018.

Mrs Susan M Tennant; her letter was dated 8<sup>th</sup> November 2018.

Howard and Sally Hayhurst; their letter was also undated but was received on 16 November 2018.

5. The Registrar thereafter, in accordance with the Faculty Jurisdiction Rules (FJR) 10.3, wrote to each of them explaining the options facing them, namely whether to formally object by filing a Form 5 document, or to allow me to take their letters of objection into account when coming to my decision, without them becoming parties to contested proceedings.
6. Mr Wiles and Mrs Tennant replied respectively on the 12<sup>th</sup> and 22<sup>nd</sup> of November 2018. Each indicated that they did not wish to become parties opponent but wanted their original letters and comments to be taken into account by me. The Registrar has heard nothing further from the Hayhursts.

7. The Registrar had also written to the Petitioner, as required by FJR 10.5, to inform him of the 'objections' received. In due course he responded in a letter dated 21<sup>st</sup> December 2018.
8. The matter has therefore now been referred back to me for a final decision on the matter in relation to the proposal. FJR 10.5(2) requires me to take account of any letters of objection, and any comments on them received from the petitioner, in reaching a decision on the petition.
9. In his original letter Mr Wiles, who is a parish councillor, said that the trees would have been planted to protect the church from East and Westerly gales and asked whether they could not be pruned. He pointed out that few trees grow within a mile of the coast.
10. In her letter, Mrs Tennant said that the trees which are on the boundary of her property had been part of the landscape for over 40 years, they were not rotting and no good reason had been offered for their felling.
11. The Hayhursts say that they live 100 yards from the church, that they strongly object to the felling of trees which are not only well established, but they improve the site of the property and also substantially reduce the wind from the south open grassland, which would have a serious effect on the property, especially as it is situated on a hill.
12. The petitioner responded in relation these various points as follows:
  - (i) The trees are believed to be self-seeded rather than deliberately planted. If a windbreak had been necessary then a row of trees would have been planted. They offer very little protection from wind.
  - (ii) Rather than affording building protection, it is now evident that the tree to the south-west of the churchyard is damaging the building, having caused two vertical cracks in the west and south walls of the building by drawing water from the subsoil during the prolonged dry summer of 2018.
  - (iii) The reasons advanced for felling, namely to prevent further damage and to enable effective use of the building following its closure outweigh the small visual amenity they currently afford.
  - (iv) The likely future use is conversion to residential use in which event the south-east corner of the property is the most practical position for offstreet parking, a garden store room and the necessary septic tank.
13. I note that the trees are not listed and that they are not within a conservation area, consequently no local authority planning consent is required for their felling. In my judgement, it is apparent that these trees are self-seeded rather than deliberately

planted and that although they provide a small visual amenity they do not provide any effective windbreak. I am satisfied that the dry summer of 2018 resulted in the presence of the tree to the south-west causing cracking in the south and west walls of the church. A fresh use must be found for this closed church and the most likely use is a conversion to residential property. In all the circumstances I am satisfied that the petitioner has made out the case for his proposals set out in paragraph 2 above, namely the felling of these two sycamore trees.

15. I therefore direct that a faculty will pass the seal until further order.
16. I will allow 6 months for the completion of the proposals.
17. This being an 'opposed' petition the petitioner will have to pay the additional costs created by this being an opposed petition.

Canon Peter Collier QC  
Chancellor

9<sup>th</sup> January 2019