

Neutral Citation Number: [2020] ECC Nor 1

IN THE CONSISTORY COURT

DIOCESE OF NORWICH

**In the matter of
HADDISCOE, ST MARY**

-and-

**In the matter of
A PETITION FROM DAVID WILLIAM MULLENDER AND SUSAN
GREENWOOD TO FELL ONE HOLLY TREE, ONE ASH TREE AND
TO REDUCE THE CROWN OF TWO HOLLY TREES**

Judgment of the Chancellor

March 17, 2020

1. This Petition concerns arboreal management in this churchyard and it has aroused strong feelings. With the consent of the petitioners, and without Parties Opponent, I decide this petition on the papers.
2. The Petitioners seek to fell one Holly Tree (Plan Reference T 1523) and not because it is unviable. Indeed, as a tree it only requires arboreal management. The problem is that its roots are damaging a table-top memorial tomb containing the mortal remains of John Elliott, Suzanne Elliott (his wife) and Martha, their young grand-daughter. It is dated 1791 and is situated close to the path leading to the church porch. There are living descendants of this family who do not want the tomb disturbed.
3. In practical terms, having read both the report of AT Coombes Associates Ltd and further observations in correspondence, it is clear to me that there are only two realistic proposals as far as the Chartered Foresters and Consulting Arboriculturists are concerned: namely removal of the tomb or felling of the tree. I am told and accept expert opinion that removal of the Holly Tree would be unlikely to succeed.

4. I have read with care what has been said by Wendy Alford and Jane Moir who object to the proposals but who do not wish to become Parties Opponent in contested proceedings. Jane Moir says that the tree to be felled is in her view the nicest Holly Tree and enhances the appearance of the churchyard. She says she understands that it is disturbing some gravestones but argues that a hundred year old tree should be protected over and above grave stones. She opines that these could be removed with no real damage and at much less cost. She invites the Church (the court) to take a more environmentally aware approach. She says that it would be possible (although less desirable) to relocate the tree successfully – a view not shared by the experts. She also says there should be a TPO in respect of that tree. TPOs are not a matter for the court and there is no TPO.
5. Wendy Alford has written at length, raised a petition and made additional suggestions which I have read carefully. She has also referred to views of others whom she has identified.
6. She makes the point that the Holly Tree is not diseased or unviable and, indeed, that is agreed. It is its relationship with the memorial that is the issue. She makes the suggestion that this could in fact be moved and that this has not been considered. I am considering it in this judgment. She makes further points in relation to the other trees (other than the Ash tree which clearly needs to be felled) and I will deal with those later on.
7. As far as the Holly Tree T 1523 is concerned, I have come to the conclusion that, regrettably it should be felled.
8. I did not reach that decision lightly. I agree that the Holly Tree is an attractive tree and I share a number of the sentiments expressed by Wendy Alford as to its place in an English churchyard. It cannot practically be moved with any decent chance of success according to the expert evidence I have received. So, the question before me is whether the preservation of the tomb and the remains *in situ* should take precedence over the fate of the Holly Tree or vice versa.
9. I found Jane Moirs' reference to "some grave stones" somewhat understated the true position, but then, of course, they are not the remains of her ancestor(s). These remains in that distinctive table top memorial have lain there undisturbed since 1791. They contain the mortal remains of three people including a three-year old child. The senior living member of that family, himself elderly and in frail health, finds the thought of disturbing their remains very distressing.

10. One of the principal functions of maintaining a churchyard is to protect the memorials and remains whose last resting place is within it. Trees are an important part of a churchyard and in most cases the two live happily together.
11. In order to preserve the tree, it would be necessary to try and move the memorial (if that was even possible) and exhume the mortal remains of the three people buried there. Exhumation is only rarely granted by the court and then in exceptional circumstances. Burial, according to the Christian faith, is both final and permanent within the capabilities of human beings to order things. Exhumation of remains buried two hundred and twenty-nine years ago, may pose many difficulties in practice even if it was acceptable in principle.
12. Although I have found this a painful decision, because I am very conscious of the beauty and importance of trees in general and the feeling for this one in particular, I have come to the firm conclusion that the correct decision is to accede to the petitioners' prayer to have this Holly Tree felled in order to preserve the viability of the memorial *in situ*. In doing so, I consider they are acting consistently with their duties and responsibilities in maintaining this churchyard.
13. There is no question other than that the Ash Tree (T 1539) must be felled and no-one wants to persuade me otherwise. It has very poor vitality and wood boring insect holes on the main stem. It will probably fail. The consequence of that failure is assessed as significant and posing at least a moderate risk to safety. I grant the petitioners' prayer in respect of this tree.
14. That leaves the two Holly Trees said to encroach over graves (T 1534). The petitioners ask me to permit reducing the crown of these two trees towards the cherry tree that stands in between to allow sufficient space for the cherry tree to grow. These Holly Trees are also healthy and viable and require only arboreal management.
15. Wendy Alford questions whether such drastic surgery is required and why more modest pruning would not be sufficient.
16. I am not persuaded at this stage that the proposal is justified to the extent that is planned and I consider Wendy Alford's observations have force: particularly in light of the fact that the other Holly Tree, T1523, is to be felled.
17. The petitioners and their consultant are asked to consider more modest proposals to prune these two trees, making the Holly Trees, not the Cherry Tree, the priority. If there is a plan to do this that can be put forward I am prepared to consider it as an amendment to the Faculty I am granting.

18. In conclusion, I agree to the petitioners request, supported by the recommendation of the Diocesan Advisory Committee (DAC) to fell Holly Tree T 1523 which is damaging the memorial, I agree to the request to fell the Ash Tree T 1539, but I do not at this stage give permission to reduce the crown of the two Holly Trees (T 1534) notwithstanding the recommendation in its favour from the DAC but am willing to consider an alternative, and more modest, proposal.
19. I impose a condition that suitable replacement trees for those to be felled are planted in locations advised by the arboreal consultants to reduce any loss to biodiversity.