

Section 16(1)(c) of the Interpretation Act 1978 provides that where an enactment is repealed, the repeal does not, unless the contrary appears, affect any right, privilege, obligation or liability acquired or incurred under that enactment. The court considered that the permission granted under the 2017 notice was a 'right accrued' and so, in principle, was not affected by the amendments to the Faculty Jurisdiction Rules taking force from 2022.

However, the court expressed concern that the notice relied upon was issued as far back as October 2017, and considered the argument that a parish could be taken as having abandoned a List B archdeacon's notice if it subsequently implemented alternative works (in this case, repairs) inconsistent with the permission given in it. In the light of this, the court considered that it was not able to determine finally whether the replacement gas boiler was lawfully installed.

The court indicated that it would be content if the Archdeacon took the view that the matter was not worthwhile pursuing further, in the absence of any suggestion that the parish had acted other than sensibly, reasonably and in good faith.

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## Re St Nicholas, Kingsey

Oxford Consistory Court: Hodge Ch, 16 April 2023

[2023] ECC Oxf 5

*Removal of healthy tree*

David Willink

A 1950s cottage neighbouring the churchyard of this Grade II-listed, 19th century church was showing signs of subsidence caused by trees, one of which was a mature and healthy lime tree in the churchyard. The parish's insurers were satisfied that an actionable nuisance had occurred, and that removal of the tree was reasonable abatement; the cottage's insurers had formally requested its removal. Reluctantly, the PCC petitioned for a faculty for its removal, out of neighbourliness and to mitigate any future risk to the cottage; and the DAC, noting the unusual circumstances, did not object. Letters of objection were received, citing aesthetic and environmental concerns. Pursuant to rule 9.1 of the Faculty Jurisdiction Rules 2015, special notice of the petition was given to the owners of the cottage and the church's insurers, neither of whom objected.

The court referred to the CBC's document 'Works to Trees in Churchyards', which explains the conditions under which a tree, above the size specified in List A8(1), meets the criteria of 'dying or dead' or 'dangerous' under List B7(2). Where these criteria are not met, the felling of the tree requires a faculty. The

court referred to *Re St Leonard, Monyash* [2017] ECC Der 3, where a faculty had been granted for the felling of a healthy lime tree in order to protect neighbouring property.

As the answer to the first *Duffield* question was negative, the question for the court was whether sufficiently good reason had been shown to displace the presumption against change—that presumption giving due weight to the climate emergency. The court considered that it should not question the expert advice received by the church's insurers, or the view taken by the PCC as custodian of the parish's finances, which would bear the cost of alternative remediation such as underpinning.

The court concluded that it should not stand in the petitioners' way, and granted the faculty. In doing so, it emphasised that the faculty was permissive, and did not have to be implemented at once or at all. The petitioners would want to satisfy themselves that there was no immediate prospect of the cottage being demolished and replaced with a more substantial and modern building before the tree was felled. Conditions included compliance the Wildlife and Countryside Act as to the timing of any felling; that the tree was not to be felled until after, or at the same time as, the felling of other trees (outside the churchyard) identified as contributing to the subsidence; and the planting of at least one replacement tree.

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## Re St Leonard, Hythe

Canterbury Commissary Court: Hopkins CG, 26 April 2023  
[2023] ECC Can 2

*Restoration order—temporary minor re-ordering licence—abuse of process*

David Willink

The petitioner sought an order requiring the PCC and churchwardens to remove a moveable altar and associated furniture from the nave, and that they be returned to a side chapel, thereby restoring full use of the high altar. In his application, he asserted that the altar had been introduced without faculty in the first decade of the present century, and that since the end of 2016, it had been used at the chancel steps without lawful authority. Apparently in response to the application, the incumbent sought and obtained a Temporary Minor Re-Ordering licence from the Archdeacon, permitting the occasional use of the moveable altar in the nave for a period of two years (the Archdeacon noting that in his view, a TMRO was not needed as the furniture in question was moveable in any event).