

Re St Mary Magdalene & St Denys, Midhurst

Judgment

1. By a petition dated 11 December 2001, the parish seeks a faculty to re-order the west end of the church by carrying out the following works:
 - i. the replacement of the oak doors with glazed doors;
 - ii. the removal of an existing screen and its replacement with a glazed screen;
 - iii. the introduction of a new kitchen and disabled toilet facility, including the extension of the church building in the process;
 - iv. improving disabled access;
 - v. the introduction of a new lighting system;
 - iv. internal redecoration.

2. On 14 January 2002, the DAC issued a certificate recommending the works subject to a minor technical proviso. Planning permission was granted by Chichester District Council on 2 August 1999. The consultation and notice process required under the Faculty Jurisdiction Rules produced the following:
 - (a) two letters of objection, one from Mr and Mrs J Wright dated 6 February 2002 and the other from Mrs H J Mitten dated 11 February 2002;
 - (b) English Heritage, by letter dated 26 June 2002, stated that it had no objection to the proposals;
 - (c) The Society for the Protection of Ancient Buildings sent an e-mail on 23 April 2002 indicating that it did not have any observations to make.
 - (d) The Victorian Society, having failed to respond to the consultation made by the parish in 2000, wrote a letter on 18 June 2002 in which various misgivings were voiced.
 - (e) The Council for the Care of Churches, upon whom I ordered that notice be served under rule 15 of the Faculty Jurisdiction Rules 2000, responded by letter dated 17 May 2002, the detailed content of which is discussed later in this judgment.

3. The parish was content for this matter to be determined by written representations under rule 26 and I considered it expedient to do so. However, the nature and extent of the various works proposed, coupled with the level of concern expressed in relation to them, necessitated a visit to the church. I duly attended on the morning of Friday 6 September 2002. Present during my visit were the petitioners (being the vicar, the Reverend Andrew Cunnington, and two churchwardens, Mrs Betty Marsden and Mr David Puttick), Mr John Bayley (the parish's inspecting architect) and Mr Jonathan Goodchild, casework and law officer for the Council for the Care of Churches. I invited the Victorian Society to enter a formal objection but it declined to do so, nor did it take up my invitation to expand upon the content of its earlier letter.

4. The purpose of the visit was not to hear evidence but, instead, to see the church and to 'walk through' the proposals. In reaching my decision I have taken into account what I observed during my visit but I have given full and particular regard to the correspondence from the parish, the inspecting architect, the CCC, the Victorian Society, and Mr and Mrs Wright and Mrs Mitten. I should like to express my thanks to each of them for the care which they have taken in outlining their opinions and explaining the basis for them. I have been much assisted by what I read prior to the visit, which I have read again subsequently.
5. Before turning to the detail of this case, I wish to make a general comment which may be of assistance in other cases in the Diocese of Chichester. A source of concern voiced here, and in recent weeks in the letters page of the Church Times is the problem, within the faculty jurisdiction, of adopting the contributions of a plethora of consultees so that at the time a petition is presented 'all one's ducks are in a line'. Consultation must not be confused with subjugation. A parish should not feel obliged to take on board each and every comment from an amenity society or other consultee. It should, of course, give such comments the careful and considered weight which they deserve being the professional views expressed by persons with considerable expertise and experience. They should not, however, unquestioningly incorporate every aspect of sometimes mutually contradictory advice, since, in doing so, the essence of a valid project may be compromised.
6. It is self-evident that a proposal which has the full support of every consultee is more likely to find favour with the Consistory Court. However, petitioners should not feel that a proposal which lacks such support in one or more particular is necessarily doomed to failure. It is for the parish to make its case and if it is cogent and convincing as a matter of fact and law then a faculty will issue. I should like to draw particular attention to the guidance now to be found in Part 2 of the Chancellor's General Directions Concerning Churches and Churchyards, entitled 'Preliminary Steps'. Mention is made there of two helpful publications, namely *Making Changes to a Listed Church* (1999) and *The National Amenity Societies: Their Role in the Conservation of Anglican Churches* (1998).
7. The process which led to the current application began a good many years ago, long before the issue of the Chancellor's Directions and the changes introduced by the Faculty Jurisdiction Rules 2000. Were the process to have begun today, the more sophisticated and timely requirements for consultation would have applied and I would have expected those with a legitimate interest in the works to have been consulted much earlier on. It is regrettable that the Victorian Society did not respond in 2000 when first it was consulted. It is equally regrettable that no-one thought to consult English Heritage or the CCC until the petition had been submitted. It ought to have been apparent that I would be obliged to give notice to the CCC under rule 15 and whilst I appreciate the frustration of the parish at its late involvement, this could have - and indeed should have - been avoided. The rule expressly provides that such notice must be given 'unless the chancellor is satisfied that there has already been consultation with the CCC in respect of the proposals the subject of the petition'.
8. Turning then to the proposals themselves, they relate to the west end of an attractive Grade II* listed church set in the centre of Midhurst. The internal

re-decoration and the introduction of a new lighting system is uncontroversial and I propose to say no more on these aspects. Equally the improvement of disabled access does not appear to have been met with opposition and, in any event, is a necessary requirement on the part of the parish in order to comply with its statutory duty under the Disability Discrimination Act 1995 which will come into force in relation to physical features of church buildings on 1 October 2004.

9. The items in relation to which there is controversy comprise the following:
- (a) the replacement of the doors at the west end with glazed doors;
 - (b) the removal of the Victorian screen and the introduction of a contemporary glazed screen;
 - (c) the provision of a new kitchen and toilet facility.

I propose to address each in turn.

The west doors

10. The CCC describes the plans to replace the west doors as 'worthy of support' since it would bring light into the main narthex area and make the west end more open to the street. The Victorian Society says this:

The Society also has concerns at the proposed replacement of the existing timber doors facing the square with glazed alternatives. It believes that instead of attempting to symbolise openness with physical change to historic buildings, parishes would be better advised to reach out to the community through activities. The addition of glazed doors is acceptable only in cases where the original timber doors can be retained in situ.

I do not think that this comment sits happily with the statutory provision of section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 which reads:

Any person or body carrying out functions of care and conservation under this Measure or under any other enactment or rule of law relating to churches shall have due regard to the role of a church as a local centre of worship and mission.

Physical features of church buildings speak redolently of the ecclesiology of a faith community, of its vision, of its ministry, and of its mission; and they have done so for centuries - evolving as styles of worship, liturgy and 'presence' have altered. One cannot underestimate the importance that the appearance, style and layout of church buildings contribute to its work and ministry. The impression of a closed unwelcoming building is one to be avoided.

11. Of greater force are the observations of Mr and Mrs Wright that the glass doors will give directly onto the road where there is no pavement and thus it will be difficult for pedestrians to look inside or to venture in. It is also said, again with force, that the door will get exceedingly dirty, splashed by the passing traffic and require a great deal of cleaning. Mrs Mitten makes very similar points and adds that the proximity of the church to a public house may make the glass door vulnerable to yobbish behaviour. She is also concerned that the tranquillity of the church may be disturbed by the increased audibility of passing traffic and pedestrians.
12. From a conservation point of view, both Mr and Mrs Wright and Mrs Mitten suggest that it is not appropriate for the oak doors to be removed. The former suggest that it may be illegal in that the market square is a 'protected area'. Mrs

Mitten raises the point that the square may be a conservation area and therefore the outside fabric of the church should not be altered. The local planning authority is the arbiter of these matters and I note that planning permission was granted for the reordering works on 2 August 1999. However, in the description of the development in the permission, no mention is made of the substitution of the oak doors with glazed doors. This may well be a typographical oversight. I require written confirmation that this element of the project formed part of plans which were submitted to Chichester District Council since, without it the works cannot proceed even were a faculty to be granted. I do not anticipate any difficulty in this regard, however, as the architects plans clearly pre-date the application for planning permission.

13. The petitioners, in their letter of 7 May 2002, deal with the matters raised by Mr and Mrs Wright and by Mrs Mitten. They speak of the vision that people passing by may see into the church straight to the altar and east window, and indicate that despite the absence of a pavement many people walk on the road itself in passing through the town or using the car parking area provided. There is a suggestion that tentative plans exist for pedestrianising this part of the square but, for the purposes of determining this petition, I propose to disregard any uncertain future contingency such as this. The letter acknowledges the importance of keeping the door clean, and I am confident that this appropriate aspiration will be met having regard to the care so clearly lavished upon the interior and exterior of the church at present.
14. Neither the oak doors nor their attendant ironmongery are of inherent artistic or historic merit, as was confirmed by Mr Goodchild, and as would have been apparent to the Victorian Society had it sent a representative to the church rather than relied on photographs. Their substitution with glazed doors would, in my opinion, provide a visible symbol of openness and place a meaningful visual emphasis upon the eucharistic ministry which lies at the heart of the Christian faith and which informs its outreach. The additional natural light which would result also falls to be considered in conjunction with the rest of the project.
15. Subject to being satisfied on the technical issue concerning planning permission, I am of the opinion the balance falls in favour of what is proposed. I am fortified in this by the professional views expressed by the local planning authority, the CCC, the DAC, SPAB and English Heritage.

The screen

16. Mrs Mitten opposes the removal of the screen, an act which she describes as making change for change's sake. She points to its efficacy as a teaching aid for the young and comments that it could be a more attractive feature were it to be better lit. Mr and Mrs Wright endorse this and speak of the favourable comments made by visitors over the years. The Victorian Society regard the screen as being of 'high quality' although this is based upon an assessment of photographs rather than seeing the screen in its present location. The CCC has no objection to its removal, nor has the DAC, English Heritage, SPAB or the local planning authority.
17. The value of the screen as a matter of aesthetics is very much a subjective opinion about which legitimate opposing views may be held. The woodwork is

competently fabricated as is the linen-fold panelling. The glazed panels depicting saints, however, show a naivety of form bordering on the simplistic. For my part, I can see nothing in the style or structure of the screen which makes it special and I am inclined to accept the majority expert opinion which militates against its retention. In doing so I have regard to the desire of the parish to bring more light into and around the narthex which forms an important part of its statement of needs which has been carefully and thoughtfully worked out in a continuing dialogue dating back to 1996.

18. I have considered with care the suggestion from the Victorian Society that the screen be relocated forward of its current position in line with the front of the existing gallery. Whilst this is no doubt viable from an architectural point of view, it would frustrate the intention of the parish to bring greater light and openness into the narthex and, if anything, make more pervasive the gloom and dinginess which greets those entering the church. Equally, I have given thought to the proposal from the CCC that the font be moved to the west end so that it be nearer the entrance, thus complying with the canonical norm. There is considerable merit in this suggestion, not least because the view through the proposed glass doors would encompass both the font and the altar thereby symbolising both baptism and eucharist. I am however satisfied that the parish's decision not to adopt this suggestion is based upon a considered evaluation of the merits and demerits and I do not consider it appropriate for me to interfere with it, save to indicate that I would look favourably upon any future application to re-site the font as indicated.
19. As to the other works under the balcony, the Victorian Society accepts the desirability of creating a larger entrance area and the CCC endorses the raising of the floor level to improve disabled access. The comment on the floor finish is noted, although Mr Goodchild very fairly indicated during the visit that the CCC's preference for a wood block floor as opposed to carpet or matting was not something which he wished to become contentious.
20. Further, Mr and Mrs Wright make the point that it is the responsibility of the present caretakers of the church to preserve our inheritance for future generations. They assert that the proposed plans will turn the west end of the church into a 'modern building'. I regret I cannot accept this argument in the context of these proposals. The church dates from 1472 but has not remained static since then. It has been enlarged and altered on a multitude of occasions since to reflect changing forms of worship and to accommodate the needs of the community which it serves. The inheritance of the Church of England is a diversity of ancient buildings which represent the accretion of architectural styles over many generations. In this instance the plans have been drawn up by an experienced ecclesiastical architect. They are sympathetic to the building and incorporate materials and workmanship of very high standard. Indeed they are infinitely to be preferred to some of the low cost works which were performed in this and other churches in the last century. None of the professional bodies involved has voiced criticism of the quality of the proposed works, only their appropriateness.
21. Again, on balance, I incline to the view that the case is made out for the removal of the screen and for the related works to the entrance, narthex and gallery.

The kitchen and toilet

22. The Victorian Society has no objection to this part of the works. Mrs Mitten is concerned about the replacement of the stone staircase with a wooden one, whereas Mr and Mrs Wright actively support the flower room and kitchen extension styling it 'a priority'. The most forceful opposition, however, comes from the CCC. Acknowledging that the proposal is on a small scale, the CCC asserts that its implications are considerable. It affects one of the main aspects of the church, where it is viewed from the market square, and protrudes beyond the south aisle blocking a path and the steps into the churchyard. These are all valid points but they must be seen in context. First, the existing flower room is something of a 'lean to' structure being itself an addition to the church. The extension would be sympathetic to what is already there. Secondly, it would appear that this point of access is little used, there being a better path and covered gate to the south of the churchyard where some limited car parking is available. There is nothing to suggest that the path in question is a public right of way as opposed to an historical means of access to the church building. Certainly the view of the church from the market square would be marginally different. However, I do not consider that the protrusion of the extension beyond the south wall will be any less appropriate than the slightly haphazard impression now prevailing. I bear in mind also the support of the local planning authority, English Heritage and SPAB.
23. The stronger point urged on me by the CCC is that the construction of the extension is unnecessary in that the required kitchen and toilet facilities can be accommodated within the existing footprint of the building. There was disagreement between the inspecting architect and the CCC as to whether room could be found for a disabled toilet in the existing flower room. The CCC, who relied upon the opinion of an architect member Mr Oliver Caroe RIBA, thought that it could whereas the parish's inspecting architect thought otherwise. He pointed out that by raising the floor level as proposed there would be insufficient headroom due to the presence of the stone staircase which would have to be removed. I do not think it necessary for the purposes of this judgment to determine which of these views be right. I assume, for the sake of argument, that such a toilet could just be fitted in.
24. That being so, the central question that remains concerns the location of the kitchen. The CCC asserts that its general policy is for facilities such as these, wherever possible, to be provided internally. I confess that I have difficulty in accepting a rigid policy such as this. I am not aware of such a policy having been adopted or approved in a consistory court and I was not referred to any authority. In my opinion, each case should be examined and resolved on its own particular facts. There may be strong reasons which militate in favour of internal siting in one church, whereas for another the erection of an extension is more appropriate. The point made by the parish as to intrusive cooking smells is legitimate but not, in my opinion, determinative.
25. During my visit we considered the alternative locations identified by the CCC in its letter. It was obvious that the parish had given meaningful consideration to these suggestions but had found them unacceptable for pastoral reasons and because they were inconsistent with the current and envisaged future use of the

church building. The thinking behind the proposed reordering encompasses the uncluttering of the church. More natural light and simpler furnishings will contribute to the serenity of the interior. To introduce a kitchen into the body of the church – albeit enclosed in high quality cabinetwork – would detract from this laudable aim.

Finance

26. Concerns have been voiced by Mr and Mrs Wright and by Mrs Mitten as to the cost of the proposed works, although it is conceded that certain elements, such as the decoration, lighting and provision of disabled toilet facilities are necessary. The parish has rightly decided not to skimp on the cost of the works having learned the lesson of accepting cheaper options in the past. The project, though costly, will be well done and represents considerable value for money for many years to come. As I have already mentioned, the adaptation of church buildings for use by the disabled will shortly become obligatory as a matter of law.
27. I am assured that sufficient funds can be raised for this work. Much has already been promised. There can be a moratorium on commencing the works or specified parts of the works until an adequacy of funding can be proved.

The Bishopsgate questions

28. In every case concerning alterations to a listed church I must approach the exercise of my discretion adopting the *Bishopsgate* questions as expressly approved by the Court of Arches in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1. I have covered much of the ground already so I do so now in summation only, taking the questions in turn:

- (1) *Have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of the parish or for some other compelling reason?*

Taking the component elements separately as I have done so above, but also looking at the scheme in the round, I am satisfied that the case of necessity is made out. What is proposed is modest but well thought out and essential for the future worship, mission, ministry and outreach of this faith community.

- (2) *Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?*

There will be a minor adverse effect but it will not significantly change the character of the church as a building of *special* architectural and historical interest (emphasis added). One external view will be different and a Victorian screen of questionable merit will be removed.

- (3) *Is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?*

It is implicit from my findings that the necessity is proved such that in the exercise of the Court's discretion a faculty should be granted for all of the works. I am confident the vision of and for the parish will be lived out in its worship,

witness and ministry, as enhanced by the modest re-ordering of the west end, to the continuing glory of God and in the service of His church..

29. I therefore order that a faculty pass the seal. It will be subject to the following conditions:
- (1) that the works are supervised by Mr John Bayley, the parish's inspecting architect;
 - (2) that no works are commenced or orders placed until the registrar has certified in writing that he is satisfied
 - (i) that sufficient funds are in place or have been promised to cover the works or a specified and severable part thereof;
 - (ii) that the planning permission granted by Chichester District Council extends so as to include the replacement of the doors at the west end;
 - (3) that the works are completed within eighteen months of the issue of the faculty or such extended time as the court may order;
 - (4) that the proviso on the DAC certificate concerning frost protection is adhered to;
 - (5) that the final scheme be subject to an archaeological evaluation and mitigation strategy, to be monitored by the inspecting architect;
 - (6) that in the event that one or more of the headstones identified during the course of my visit have to be moved either temporarily or permanently they be reverently and seemly re-erected at the closest convenient place to their original position at the direction of the vicar;
 - (7) that in the event of the disturbance of human remains, the same be reverently reinterred elsewhere in the churchyard by the vicar or his delegate.
 - (8) that the coloured glass panels from the screen are not damaged but carefully retained pending proposals being made for their ultimate disposal, such matter to be referred back to the chancellor for approval.
- As is customary, the costs of the faculty will be borne by the petitioners.

Mark Hill
Chancellor

13 September 2002