

Re St Mary, Slaugham

Judgment

1. By a petition dated 17 June 2003, the honorary curate and the churchwardens of the parish of St Mary, Slaugham seek a faculty for the construction of a toilet extension outside the south door of the Covert Chapel together with associated works. This is to be the first phase of a project to reorder this Grade I listed church.
2. The plans which accompany the petition have been revised and thus the size of the proposed extension is smaller than that originally envisaged. This was done in response to a recommendation of the Council for the Care of Churches. The proposal has also been framed and modified in response to observations made by English Heritage and by the Diocesan Advisory Committee. All three of these bodies recommend the grant of a faculty. Planning permission has been obtained from the local planning authority, namely the Mid Sussex District Council. The proposed modification has also been approved.
3. Following public notice, 21 letters of objection were received from individuals or groups of individuals. A formal objection in Form No 4 was lodged by one individual but this was later withdrawn. Accordingly, I have taken the contents of those letters into account as provided for in rule 16(3)(a) of the Faculty Jurisdiction Rules 2000. I have also been provided with a letter dated 28 November 2003 from the petitioners in response to the letters of objection; a petition containing some 107 signatures which calls for further negotiations particularly with regard to an alternative location for the toilet facilities within the church; and 7 letters of support from individuals or couples.
4. The proposal is modest, particularly in its amended form. The objections, which I take generally without ascribing them to particular individuals, may be summarized as follows:
 - i. the proposed extension will be an eyesore;
 - ii. it is an unwarranted intrusion into the churchyard;
 - iii. it will adversely affect the visual amenity of the southern aspect of the church;
 - iv. it will damage the fabric of the Covert Chapel;
 - v. the churchyard will be affected by the introduction of a septic tank and by damage to established trees;
 - vi. toilet facilities (which it is universally conceded are necessary) can be accommodated within the south west corner of the church;
 - vii. this alternative location would be cheaper, more convenient for access by

- the disabled, and would have the benefit of mains drainage obviating the need for a septic tank;
- viii. the cost of the project is disproportionate to its benefit and a poor use of limited parochial resources.
5. Many of these objections have already been considered by the local planning authority. It is apparent that those who object to the proposal, not least members and officers of the Slaugham Society, have been diligent in having their opinions heard at all stages of the process. In cases such as these, where there is a duality of regulatory authority, the law is clear. Where planning permission has been granted for a proposal prior to the determination of a faculty petition, the decision maker under the secular jurisdiction will, or undoubtedly should, have taken into account the effect of the proposal on the listed building and its setting: see *Re St Laurence, Alvechurch* (Worcester Consistory Court, June 2003) citing *Re St Mary's King's Worthy* (1998) 3 Ecc LJ 133 (Winchester Consistory Court) and *Re St James, Stalmine* (2000) 6 Ecc LJ 81 (Blackburn Consistory Court). Reference might also be made to *Re All Saints, Hordle* (2003) 7 Ecc LJ 238 (Winchester Consistory Court) and to *Re St Kenelm, Upton Snodsbury* (2001) 6 Ecc LJ 293 (Worcester Consistory Court).
6. The clearest statement of principle is that of Chancellor Bullimore in *St James, Stalmine* in which he states:
‘I think the proper approach ... is to say that if [points] can be raised with the local planning authority, and permission is nonetheless granted, they cannot be raised again in the consistory court.’
Chancellor Clark in *King's Worthy* put it this way:
‘I shall assume the planning authority made the correct decision in this respect, unless there is convincing evidence to the contrary.’
This principle was developed by Chancellor Mynors in the *Alvechurch* case as follows:
‘[63] ... a consistory court should not reconsider matters such as the bulk, height and scale of an extension, or its architectural relationship to the listed building to which it is to be attached, since those matters must have been considered by the planning authority when it granted planning permission. Indeed the very fact that listed building consent is not required means that the authority would (or should) have been all the more likely to give thorough consideration to such matters, since it would not have a second chance to do so. [64] Further, the result of allowing a consistory court to revisit these matters following an earlier decision by the planning authority to grant planning permission would in effect be to grant to those dissatisfied by that decision a right of appeal – a development that has been steadfastly resisted by Parliament in spite of much pressure in certain quarters.’
7. I consider that these decisions in other consistory courts properly state the law on this subject and I regard myself bound by them. It therefore follows that the

grounds of objection which I have summarised as items i. to v. in paragraph 4 above are not matters which may be raised in these faculty proceedings. They have been conclusively determined by the local planning authority in accordance with the statutory framework under which it operates.

8. As to the remainder of the points of objection, the practice of the consistory court is to follow the *Bishopsgate* questions as expressly approved by the Court of Arches in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1. These apply in all cases where alterations to a listed church are proposed. I take the questions in turn:

9. *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?*

This question must be answered in the affirmative. The objectors, without exception, accept that toilet facilities are necessary.

10. *Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?*

This modest extension will inevitably have some effect on the character of the church as a building of special architectural and historical interest. Whether such effect may properly be classified as 'adverse' is a matter of perception and judgment. In common with most church buildings, St Mary, Slaugham, represents the accretion of a variety of architectural tastes and styles over many centuries. For the purposes of this adjudication, however, I am prepared to accept that the proposal would adversely affect the character of the church.

11. *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?*

In considering this matter, I take into account the objections raised which were beyond the remit of the local planning authority. Chief among these is the argument that alternative provision may be made within the church itself. Specifically, the south west corner is suggested as a legitimate location where the facility might be constructed. One of the letters of objection was accompanied by an artist's impression of what might be built. Faced with wooden panels, it looks not unlike a large confessional box.

12. There are a number of aesthetic and architectural reasons why this alternative site might be considered inappropriate. More importantly, however, the medium term plan for the church is to utilize the Covert Chapel for childrens' activities during Sunday services. A contiguous toilet facility is vastly to be preferred to having the children enter the church proper to use a toilet on the other end of the building. Not only is this intimidating for the children, it would also serve to detract from

the liturgy and sacramental worship of the community. The loss of space for seating is a relevant though not determinative factor. There is little to distinguish between the sites with regard to disabled use, although the extension does provide greater privacy. Equally, I do not consider that the provision of mains drainage should influence any decision, particularly when the provision of a septic tank has been approved by the local planning authority. I am convinced from what I have read that the proposed location of the toilet has more advantages and fewer disadvantages than the alternative suggestion.

13. As to the cost of the proposal, it must be borne in mind that a proportion of the expense is brought about by the need for a design and materials appropriate to the age and character of the existing building. However, the issue of funding is one with which the consistory court is loath to interfere. As I put it recently in *Re St Mary Magdalene, South Bersted* (Chichester Consistory Court, 19 March 2002):
- ‘The PCC, being an elected body, is entrusted, *inter alia*, with the financial administration of the parish. It must act in accordance with ecclesiastical law and the requirements of the charity commission. In the absence of bad faith, it would be a usurpation of the PCC's function for this court to interfere in its decisions on the use of its resources.’
- The petition indicates that the cost of the works will be met from the PCC's current balance of general funds. The figure is put at £50,000 although it may be less in the light of the reduction in size of the proposed extension.
14. I am satisfied that in the exercise of the court's discretion a faculty should be granted in this instance. All involved in the faculty jurisdiction are under a duty to have due regard to the role of the church as a local centre of worship and mission. See section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. The worshipping space of any Christian community needs continually to adapt to the needs and aspirations of successive generations. Unless young families are attracted to services, congregations will wither and the redeeming work of Christ will be compromised. This modest and tasteful extension is a necessary step in the process of adapting the church for worship and mission in the twenty-first century. I do not doubt the sincerity nor the strong feeling of those who have voiced objection. However, a good case has been made out both before the local planning authority and before me.
15. I therefore order that a faculty pass the seal, subject to the following conditions:
- (i) that before any works are commenced the parish confirms in writing to the registrar that it has sufficient funds in place to meet the costs of the works as identified following tender;
 - (ii) that defects identified on the electrical test certificate be remedied at the same time as the works are carried out;
 - (iii) that in the event that any human remains be disturbed in the course of the works that they be reburied elsewhere in the churchyard in a seemly manner as directed by the first petitioner;
 - (iv) that the works be carried out under the direction of Mr Nicholas Rowe;

- (v) that the works be completed within twelve months of the grant of the faculty or such later date as the court may order.

The Worshipful Mark Hill
Chancellor

13 January 2004