

Re St Mary, Slaugham (No 2)

Judgment

1. By a petition dated 5 October 2005, the rector and churchwardens of the parish of St Mary, Slaugham seek a faculty for the reordering of the interior of this Grade I listed church. This represents a further phase of a project in relation to which I delivered a judgment on 20 January 2004.
2. The proposed re-ordering comprises:
 - i. new glazed screens to enclose the Covert Chapel;
 - ii. raised stone floor to nave and south aisle;
 - iii. stone floor to choir;
 - iv. carpeted floor to Covert Chapel;
 - v. new heating, electrics and lighting;
 - vi. removal of existing pews and pew platforms.
3. There has been consultation with the Council for the Care of Churches, English Heritage, the Society for the Protection of Ancient Buildings, the Victorian Society, and the Local Planning Authority (namely the Mid Sussex District Council) as well as the Diocesan Advisory Committee. Public notice has resulted in a letter of objection from Mr Jeremy Smith, which he invited me to take into account under rule 16(3)(a) of the Faculty Jurisdiction Rules 2000. In addition six individuals or couples have written letters of support concerning the proposals.
4. Mr Smith and his late wife have a long connection with this church. His objection is twofold: first that reducing seating capacity to 160 will prove insufficient for major festivals and for certain weddings and funerals; and secondly that the pews should not be removed from the choir as a future incumbent may wish to re-introduce them.
5. The letters of support make various points which I need not ascribe to individual correspondents. They speak of the provision of warmth, light and flexibility in worship; enhancing provision for families, for youth work, for church meetings, and for concerts and other community and school use; and of encouraging new members to join the congregation.
6. As to the statutory and other consultees, I think I may fairly summarise their positions as follows:
 - i. The Diocesan Advisory Committee issued a certificate of recommendation on 18 July 2005, subject to three relatively minor provisos.
 - ii. Comments from English Heritage were made in a letter from Mr David

Brock dated 11 July 2005 to which Mr Nicholas Rowe, the parish's inspecting architect, replied by letter of 20 September 2005, indicating that where possible the suggestions made have been incorporated by way of revision.

- iii. The principal planning officer of Mid Sussex District Council by letter dated 21 October 2005 made no adverse comments, save in relation to concern at the heavy handed design (at that stage) for the screen. He indicated that the council would defer to the church authorities but expressed the hope that the community would have a full opportunity to comment, which indeed it has.
 - iv. The Victorian Society was given details of the proposals under cover of a full letter from Mr Rowe dated 16 September 2005. No reply was received from the Victorian Society. I did not consider it appropriate formally to cite the Society as I considered that it had been afforded the opportunity of commenting both by this letter and a telephone conversation between Mr Rowe and the Society's Mr Edward Kitchen.
 - v. The Council for the Care of Churches, in an email of 23 September 2005, expressed pleasure at the recent completion of an extension to the church which had been the subject of an earlier determination by this court. The CCC recommended that care be taken in the choice of chairs, and that further thought be given to the layout and appearance of the chancel, particularly from a liturgical point of view. The CCC noted that the screen to separate the Covert Chapel from the rest of the church would have an adverse effect on the character of the building but that there was no reasonable alternative that would provide the facilities needed. The CCC therefore supported the proposals.
 - vi. The Society for the Protection of Ancient Buildings responded to a consultation from Mr Rowe with a very full letter dated 9 June 2005. It raised a number of concerns and, in consequence, I asked the registry to enquire whether SPAB wished to enter a formal objection to the faculty. They decided not to do so but asked instead that they be allowed to make written representations and I was happy to extend time to allow this. I have found their ensuing letter of 8 December 2005 to be of considerable assistance in determining this application, as have the responses by the Revd Kenneth Habershon and by Mr Nicholas Rowe, the inspecting architect. SPAB question the need for a single unified floor level which will cause the loss of the existing Victorian floor and transform the inherent hierarchy of the church architecture. They nonetheless welcome the change in the specification from Travertine to Purbeck, and the consideration of creating a breathable floor construction using lime concrete. SPAB also regards the screen as heavy and inelegant and would prefer plain or obscured glass in the lower section as well.
7. There is inevitably a balancing exercise involved when deciding petitions of this type. In a previous judgment involving this very church I observed that:
- 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 sacred space of any Christian community needs continually to adapt to meet 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.

These remarks remain pertinent in this particular case as well as in numerous others both in this diocese and beyond.

8. The thrust of the professional opinion in this case militates in favour of the grant of a faculty. There are nonetheless the several concerns which I have noted above. These concerns are to be evaluated in the context of the presumption against change which is the governing principle where, as here, changes to a listed church building are proposed. The onus of proof lies with the proponents of change. The burden is not readily discharged. The practice of the consistory court is to follow the so-called *Bishopsgate* questions as expressly approved by the Court of Arches in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1, which I propose to address in turn below:

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?

9. In my opinion they have. Necessity, in the context of pastoral well-being, is something of an amorphous yardstick, but in this instance for the reasons set out above and canvassed in my previous judgment on an earlier petition concerning this church, I consider that a case of necessity is made out. I have regard to the levelling of the floor for the better use of the church building both liturgically and for secular purposes. I also consider the sealing off of the Covert Chapel as a discrete area for children, close by (but insulated from) the worship space is essential for the vision of mission and growth so clearly articulated by the petitioners.
10. The letter from SPAB raised the issue of whether what was proposed was a requirement of the Disability Discrimination Act 1995. This is comparatively new legislation which has created a changed landscape in relation to public access to buildings. The novelty of the legislation merits a discussion of its ramifications for church building and I am happy to borrow from the evaluation of Mynors Ch, Chancellor of the Diocese of Worcester, in *Re St John the Evangelist Dudley Wood* (6 June 2005, unreported). I append to this judgment an edited version of a passage from Chancellor Mynors' decision which merits a thorough reading by all involved in the faculty jurisdiction in this diocese. I readily adopt his analysis as part of my reasoning.
11. It may well be that in this case there is no legal requirement for the levelling of the floor. Nonetheless this court cannot ignore the fact that the alterations, objectively necessary for the pastoral well-being of the worshipping community

(as I so find), will also have the benefit of enhancing accessibility for wheelchair users and others with impaired mobility. It would be wrong to ignore the altered landscape following the coming into force of the Disability Discrimination Act 1995.

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

12. Self-evidently they will. However, I am impressed by the way in which the parish has sought to work with the amenity societies, the CCC, and the local authority to ameliorate the impact of the work. Materials have been selected with care and changes (too numerous to set out individually) have been made to the proposals to accommodate the helpful comments and suggestions which have been made. I remain concerned at the 'heavy handed' design of the screen but am satisfied that the design cannot reasonably be improved without compromising the underlying vision and purpose of the project. In particular, I am far from satisfied that glazing the lower portion of the screen would be appropriate, even assuming the safety issue could be addressed. It would be distracting to those in the church to observe the concurrent and distracting activities of youngsters beyond the glass. The reverse might also be the case. In addition the proposed screen is designed so as to provide an effective acoustic barrier whilst, in the upper section, permitting appropriate sight lines through clear glass of the stained glass windows beyond. The plan for fixed cupboards at this location would be compromised were the lower section of the screen to be glazed.

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?

13. On balance, I am convinced that in the particular circumstances of this case, the necessity is made out to the required standard. The case for a level floor is well made, and convincingly argued. It is an integral part of the move towards flexibility and cannot sensibly be divorced from the removal of the rigid pews. The proposal is sympathetic and retains the existing Victorian tiled floor, with infill only where the pew platforms are to be removed. The advantages in terms of comfort, utility and economy in relation to under-floor heating are self-evident. The 'inherent hierarchy' of the church architecture will be transformed, as the SPAB properly observe, but I do not regard this as determinative in this instance. The orientation of the church remains, as does its liturgical focus, in the chancel and altar. The major work is the removal of the pew platforms and consequent leveling which strikes me as largely neutral in relation to the overall hierarchy.
14. I accept that it may be that occasionally for major festivals or certain weddings or funerals there may be times when the proposed seating is insufficient. I appreciate the strong view held by Mr Jeremy Smith in this regard. I do not however consider that this difficulty outweighs the other advantages. I anticipate that many would prefer to stand – on these rare occasions – in a position where they can observe the particular service rather than being seated in an uncomfortable pew with poor visibility. However, I am persuaded of the importance of reversibility in

re-ordering cases and I will therefore accede to Mr Smith's entreaty that the pews from the choir be retained in case a future PCC wishes their re-introduction.

15. In relation to the Covert Chapel, for the reasons given above and fortified by the opinion expressed by the CCC, I consider that the case is made out. I am also satisfied that the design of the screen in its revised form is acceptable and appropriate, even though it may not have completely overcome the objection of 'heavy handedness' voiced by certain of the consultees. If in the construction process it emerges that a further revision could further ameliorate these concerns, I would encourage the parish to apply to the court for a variation to the faculty to achieve this aim.
16. I therefore order that a faculty pass the seal subject to the following conditions:
 - i. that the works are completed within 18 months of the issue of the faculty or such extended period as the court may order;
 - ii. that the works are supervised by Nicholas Rowe DArch, RIBA;
 - iii. that the pews removed from the choir are stored in safe weather-tight conditions and not disposed of without a further application to this court;
 - iv. that the parish, through its inspecting architect, explores the option of creating a breathable floor construction using lime concrete with the omission of a damp-proof membrane and implements the same, and that the under-floor heating system be designed to run at a low background temperature. Liberty to apply to the court for further directions on the technical aspects of this condition;
 - v. that the provisos in the DAC certificate dated 18 July 2005 be followed, to the extent that they have not already been incorporated into revisions made by the inspecting architect;
 - vi. that appropriate provision is made for a low level rail for the protection of the memorials in the Covert Chapel in accordance with the exchange of correspondence with the amenity societies. Liberty to apply to the court for further directions on the technical aspects of this condition;
 - vii. that the Diocesan Liturgical Adviser is consulted with regard to the best use of the chancel area;
 - viii. that the parish explores all available options for chairs of a design and quality suitable for long-term use following the re-ordering, and consults the DAC and CCC in this regard. No chairs are to be purchased or introduced (save for samples on an experimental basis) without the prior written approval of this court.
17. Finally I wish to express my appreciation to all those who have given of their time and their experience in expressing opinions in relation to these proposals. Whilst for some no change is acceptable, the process of informed consultation and of prayerful listening has led to an improved final proposal. Everyone is to be commended for the mature and sensitive manner in which this has been undertaken. I should also wish to add a personal apology that the time taken in producing this judgment has exceeded the tight schedule to which I generally

work. I wished to afford additional time for SPAB to make its observations, and for the parish to reply. This led into the Christmas break and to competing professional and personal demands on my time. I have fallen short of the standards I set myself, and I trust that the resultant delay has not caused too much inconvenience to the petitioners and to the others who have made such helpful submissions in this case.

The Worshipful Mark Hill
Chancellor

16 January 2006

APPENDIX

COMMENT ON THE DISABILITY DISCRIMINATION ACT 1995

The following is a slightly amended version of a passage of a judgment of the Worshipful Charles Mynors, Chancellor of the Diocese of Worcester, in *Re St John the Evangelist Dudley Wood* (Petition 04-81, 6 June 2005, unreported). It is of general application throughout this diocese and beyond.

The requirements of the Disability Discrimination Act 1995

1. It is helpful to go back to first principles, so as to be clear precisely what the 1995 Act does and does not require. Much of the Act – including the duty on the part of employers not to discriminate against disabled people – came into force in December 1996. By contrast, Part III of the Act – which relates to those who provide goods, service and facilities to the public – was brought into force gradually. In order to give everyone time to get ready, its most stringent requirements were not introduced until October 2004.

‘Providers of services’ and ‘disabled people’

2. Several concepts that are fundamental to the scheme of the 1995 Act. The first is that of a ‘provider of services’. This is the subject of section 19(2) of the 1995 Act, which effectively defines it as a person or organisation who provides almost any service to the public – whether for payment or otherwise – and certainly includes a church. Thus the term ‘services’, obviously, has a wider meaning than church services, although it includes them. Part III of the Act is concerned with the provision of services generally, not specifically with (for example) buildings or procedures. Thus, the key question is not, for example, whether wheelchair users can get through a particular door into a church or church hall, but rather whether everyone (including wheelchair users, the blind and those with reduced hearing) can benefit from the various services offered by the church as a whole, including liturgical worship, children’s and other special groups, social and ancillary activities, whether spiritual or secular.
3. The second key concept is that of a ‘disabled person’. This is defined in Part I of and Schedule 1 to the 1995 Act. Paragraph 4 of that Schedule makes it clear that ‘disability’ is broad and all-embracing, in that it is
any physical or mental impairment which has a substantial and long-term effect on the ability of the person concerned to carry out normal day-to-day activities, with reference to mobility, manual dexterity, physical co-ordination, continence, ability to lift, carry or otherwise move everyday objects, speech, hearing or eyesight, memory or ability to concentrate, learn or understand, or perception of the risk of physical danger.
It therefore extends not just to people in wheelchairs, the totally blind and the deaf, but also to those with arthritis, partial sight, progressive Alzheimer’s Disease, and many, many others. See also the Appendix to the *Code of Practice*

produced by the Disability Rights Commission (DRC), the body set up by the Government in 1999 to supervise the operation of the Act.¹

4. The number of such people is not certain. The DRC estimates that there are 8½ million disabled people in the UK, or around 14% of the population. This includes a substantial number who go to church – or who would if they could. Changes specifically for the benefit of those who are given rights by the Act will also benefit many others, including the elderly, the heavily pregnant, infants and those in charge of them, the sick, and the temporarily injured

'Discrimination'

5. Thirdly, it is crucial in the present context to understand that the key provision in the 1995 Act is section 19(1), which renders it unlawful for a service provider to discriminate against a disabled person. The term 'discrimination' is then defined in section 20, so as to encompass a situation in which there is an objectively discernible act of discrimination, but without a subjective belief (at the time) that the act is justified.
6. It should be noted that the discrimination can take two forms: (i) generally discriminatory treatment in the course of providing services; and (ii) failure to comply with the duty under section 21 to make adjustments. The first, essentially negative duty has applied since December 1996. Again, note the emphasis on services, and not on buildings. The duty under Section 21 of the 1995 Act, by contrast, imposes positive duties. It was brought into force in two stages. The easier part (subsections (1), (2)(d) and (4)) came into force in October 1999. That essentially required the making of 'reasonable' adjustments to procedures and practices, and compliance was not too expensive or difficult in practice. Thus, where for example a physical feature of a church building made it impossible or unreasonably difficult for disabled people to make use of the service being offered, it has been since then the duty of the church 'to take such steps as it is reasonable, in all the circumstances of the case, for [it] to have to take in order to provide a reasonable alternative method of making the [services offered by the church] available to disabled people'.
7. As to what is a 'physical feature', this is the subject of the Disability Discrimination (Services and Premises) Regulations 1999, which provide that more or less anything is capable of being a feature attracting the duty under the Act.² A simple example of complying with this first stage duty, in relation to physical features, would be where a church that holds a meeting in a first floor room chooses to hold it instead in a room at ground floor level, accessible without steps. That change is simply a reallocation of rooms, and costs nothing.

¹ *Disability Discrimination Act 1995: Code of Practice: Goods, Facilities and Services and Premises*, available from the Stationery Office, or at www.drc.gov.uk

² SI No 1191, regulation 3.

Overcoming barriers created by physical features

8. The second, more taxing, element of section 21 came into force on 1 October 2004. This required that:
 - (2) Where a physical feature [of a service provider's premises] (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to—
 - (a) remove the feature;
 - (b) alter it so that it no longer has that effect; [or]
 - (c) provide a reasonable means of avoiding the feature.”
9. This is a much more demanding (and potentially expensive) requirement. Thus an example of complying with this second stage duty would be where a church that holds meetings in a building to which access is only possible up some steps, in a room that has a narrow entrance door, ensures that the meetings are accessible to disabled people by installing a permanent ramp at the entrance to the building, and widening the door to the room. Unlike complying with the first-stage duty, installing a permanent ramp and widening a door will involve expenditure – and such changes may be difficult to achieve satisfactorily where buildings and their surroundings allow little space for adaptations, or are of historic interest.
10. However, the duty is still qualified by the requirement to take only such steps as are ‘reasonable, in all the circumstances of the case’. What, in practice, is likely to be considered reasonable? One key factor will be the guidance in the *Code of Practice* (see section 53A of the Act). In particular, the *Code* at paragraph 4.21 states that
 - what is a reasonable step for a particular service provider to have to take depends on all the circumstances of the case. It will vary according to:
 - the type of service being provided;
 - the nature of the service provider and its size and resources; and
 - the effect of the disability on the individual disabled person.It will not be necessary to do something that alters the very nature of the service being provided (section 21(6)); nor must a service provider spend more than the prescribed maximum amount (section 21(7)); although no amount has as yet been prescribed.
11. By way of example, steps are obviously difficult for those in wheelchairs – but also for those with children in pushchairs, and those who are generally less agile. So a ramp can be provided. But a ramp must not be too steep, or it may cause as many problems as it solves; and some disabled people positively prefer steps to ramps, so it is best to have both; and the top step of a flight should have a tactile surface to alert the blind to a potential falling hazard. To avoid the problems caused by external steps, it may be easier to alter the ground level around the

- building – although care should be taken not to impair the operation of any damp proof courses.
12. It is better wherever possible to arrange for all who use the building to be able to do so in the same way, rather than to provide an alternative for the disabled. This is the approach known as ‘inclusive design’. The *Code of Practice* points out at paragraphs 5.38-5.39 that:

Although the Act does not place the different options for overcoming a physical feature in any form of hierarchy, it is recognised good practice for a service provider to consider first whether a physical feature which creates a barrier for disabled people can be removed or altered. This is because removing or altering the barriers is an ‘inclusive’ approach to adjustments. It makes the services available to everyone in the same way. In contrast, an alternative method of service offers disabled people a different form of service than is provided for non-disabled people.
 13. As far as possible, the best way to comply with the requirements of the Act is for access to and within a church building and a church hall to be provided in the same way for all – old and young, physically or mentally disabled or otherwise. This is correct both legally, as a result of the 1995 Act and the *Code of Practice*, and theologically – we are all part of the one body. This may not always be possible. The best compromise must be worked out. In the absence a problem being identified, a disabled person may be able to claim that he or she was being discriminated against if the facilities offered by a church were offered to him or her on a different basis from that on which they were offered to others, and could bring an action accordingly in the county court. Whether in practice such an action ever would be brought, and with what result, remains to be seen, since Part III of the Act has only recently come fully into force. The Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001 (SI 3253), regulation 3(2) specifically that where consent is required for the carrying out of works that may reasonably be required under the Act, there is no duty to carry out those works before that consent has been obtained.