

Re St Dunstan Mayfield

Judgment

1. By a petition dated 2 February 2007, the incumbent and the churchwardens of St Dunstan, Mayfield seek a faculty for a reordering of the west end of this Grade I listed church and the treatment of death watch beetle. I have already given authority for the latter work to proceed as no objections had been entered in relation thereto – indeed it received active support from most quarters. This judgment therefore relates to the reordering.

*Procedural history*

2. In response to the public notice of these proposals approximately 60 letters were received in the registry. The writers of these letters were each informed in a pro-forma notice from the registry, sent pursuant to rule 16(3) of the Faculty Jurisdiction Rules 2000, that they may either leave the court to take their letter into account when determining the petition or become a party to the proceedings by serving written particulars of objection in Form 4. Three of them chose to become parties to these proceedings by completing and lodging Form 4. The others have either elected for me to take their letter into account or have not replied, the consequence of which is the same. I do not propose to identify each individual correspondent within this judgment, but their names are recorded at the registry, as are copies of their letters, each of which has been fully considered by me in reaching my conclusions in this judgment.

*The parties*

3. I issued directions on 10 May 2007. Having satisfied myself that all the parties had consented in writing to the determination of this petition on written representations under rule 26(1) of the Rules, I gave further directions on 19 June 2007 setting down a timetable for the service and lodging of evidence. The timetable has been the subject of revision both by the registrar (acting under my delegated authority) and by me. I need not record the detail. The timetable, as amended, has been adhered to.
4. The petitioners instructed Messrs Lee, Bolton and Lee to act on their behalf; Miss Naomi Glubb and Mr Albert Lodge retained Messrs Winckworth Sherwood; and Mr Rainer Plentl acted in person. I am grateful to them all for the clarity of their witness statements and documentation, and the written presentation of their respective cases. I have had the benefit of a considerable number of photographs of the interior of the building as well as architect's plans and computer projections. I considered making a visit to see the church but, having regard to all the material which I have seen, I concluded that I would be in no better position to determine this petition were I to do so.

*Other interested persons*

5. The Society for the Protection of Ancient Buildings elected not to participate in these proceedings; English Heritage did not reply to the enquiry made of them. Accordingly, I take into account the views expressed in correspondence by both organisations. I have also had the advantage of reading correspondence from the Council for the Care of Churches and a statement from the Diocesan Advisory Committee. I have been mindful that what is proposed is the reordering of a Grade I listed building and that in such circumstances there is a heavy presumption against change, articulated in different forms of words in the ecclesiastical courts, both at first instance and on appeal. The onus of proof lies on the petitioners, ie those who advocate change.

*Prefatory matters*

6. Criticism is made in various quarters about an insufficiency of consultation within the parish, a lack of transparency in relation to the proposals, and the dissemination of misleading or inaccurate information. The criticisms are rejected by the petitioners. I do not consider that I need to make any findings on these matters for the purposes of this judgment, and I expressly refrain from so doing. To the extent that there may have been insufficient candour and openness in the process leading to the lodging of the petition (about which I express no view) that has been overtaken by events including the correspondence to which I have already made reference and the detailed exchange of evidence. It has no bearing on the outcome of this petition, one way or the other. However, merely because certain individuals do not attend church regularly is not a reason for me to discount their evidence wholly or in part as the petitioners might appear to suggest. Further, those acting for Mr Lodge have voiced his concern that were the court to permit the removal of six pews, this would set a precedent for the complete removal of all the pews at some future date. Let me set his mind at rest, on this small matter at least. The Consistory Court does not function in such a manner. Each individual petition is considered on its own merits, and a decision is made on whether to permit or refuse the proposal before the court. There can be no question of this judgment being in any way determinative in relation to any putative application which may be brought before the court at some future date.

*The petitioners' case*

7. The petitioners rely upon a brief but clear Statement of Need. It speaks of replacing a cluttered and inflexible space with a more 'elegant arrangement'. This would provide additional worship space and a safe and well-equipped area for children, as well as accommodation for school activities, confirmation lessons, after service gatherings, village gatherings, exhibitions and informal meetings, together with the provision of a theological library. A separate 'Design Statement' produced by the parish's inspecting architect dated 25 July 2005 deals, from a practical point of view, with improvements which are considered necessary to the west end. This makes specific mention of improving the setting of the tomb in the north-west corner of the north aisle and improving the view of the window dedicated to St Dunstan, completing repairs to the north-west aisle and general removal of clutter, as well as the other matters which duly found their way into the Statement of Need.

8. The works which have been identified to meet this expressed need are as follows:
- i. the removal of six pews from the back of the church;
  - ii. the levelling of the floor in the west end;
  - iii. the provision of chairs for additional seating;
  - iv. the storage of surplus furnishings;
  - v. the construction of a purpose built library, with a suspended concrete floor, artificial lighting, and a glass balustrade;
  - vi. the introduction of a glass wall above the arch;
  - vii. the repositioning of the Royal Arms;
  - viii. the replacement of damaged plaster;
  - ix. the replacement of certain radiators;
  - x. the provision of a servery;
  - xi. the redesign of the vestry.

9. The parties are all in accord that the proper approach to petitions such as these is that endorsed by the Court of Arches in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1, and an assessment of the so-called *Bishopsgate* questions. I am wholly in concurrence with this and have been assisted by the specificity with which these questions have been addressed in the written evidence, both in principle and in practice. Although I may not mention in this judgment each and every matter raised by the parties, I have considered carefully all of their written evidence and the extensive documentation which accompanied it.

- Necessity*
10. The first matter for the petitioners to prove is that some or all of the proposed works are ‘necessary for the pastoral well-being’ of the parish or ‘for some other compelling reason’. By necessity is meant something less than essential but more than desirable or convenient. See *Re St John the Evangelist, Blackbeath* (1998) 5 Ecc LJ 217, *per* George Ch.
11. The petitioners’ evidence on necessity is to be found in the Statement of Needs, to which I have already made reference, and in the first two pages of their joint statement of evidence. In summary, they concern improved facilities for gathering of the choir, for baptismal services, for pram services, for a crèche facility with storage, for school activities involving parish schools, for confirmation classes, for social gathering, and for groups to meet. The keynote is one of flexibility and utilising the space for a variety of functions, some spiritual and others more secular. Disability access, an issue raised in recent legislation, is also a concern. There is a perceived need for a substantial theological library, for bringing order to haphazard storage facilities, for minimizing the obscuring of the Glubb window, and for creating a glazed aperture into the bell tower. The tidying up of the vestry in the base of the tower is seen as important and, unlike other elements of the proposals, has been the subject of a degree of support.
12. Mr Lodge, Miss Glubb, Mr Plentl and others whose letters I take into account assert that no case of necessity has been made out. In general terms the points made can be fairly summarized as follows:
- i. it is unnecessary to remove the in-fill from the tower arch and replace it with

- glazing;
  - ii. that there is no proven need for a library;
  - iii. it is unnecessary for the six pews to be removed;
  - iv. any revised liturgy for baptism is insufficiently thought through;
  - v. Mayfield has a variety of other venues at which community activities for the benefit of the village can take place. These include London House, which has recently been refurbished, a spacious Memorial Hall, and a modest Scout and Guide headquarters. The church building should remain a sacred space for quiet and reflection;
  - vi. there is no evidence of growth in church attendances and the number of communicants;
  - vii. the lower chancel is a sufficient and adequate open space for the gathering of children and adults, and no alteration to the fabric is required;
  - viii. the proposed increase in school usage, which is regarded as a laudable objective, can be accommodated elsewhere in the church as it is currently configured.
13. I have to resolve whether some or all of the proposed works are ‘necessary’, in other words, where do they fall objectively on the continuum between ‘essential’ at one extreme and merely ‘desirable’ at the other. The petitioners acknowledge that the proposed works are not essential: the life of the parish will continue whether or not the works are undertaken. I have come to the conclusion, however, that the petitioners have satisfied me that the works are nonetheless necessary. These are my reasons.
14. Significant liturgical and aesthetic benefits will accrue enabling the mission of the Church of England to be better served in the parish. I am mindful of the statutory articulation of this duty under section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, a duty which applies not just to petitioners but to all those carrying out functions of care and conservation under the Measure. I take into account what is said by the Right Reverend Wallace Benn, Bishop of Lewes, in his letter of support referring to the ‘Mission Statement’ of St Dunstan’s. The bishop’s view, however sincerely felt, can never be determinative in cases such as these: this would be to usurp the judicial function exercised in the consistory court. However, it is a weighty factor for consideration. I also have regard to the content of a letter dated 3 October 2007 from Patricia Deane, a reader at St Dunstan’s, until recently, and honorary secretary for readers for the diocese. It gives a helpful illustration of the needs of the various groups using the church from someone whose involvement with the parish has ceased and may therefore be able to offer a more detached and reflective opinion. Equally detached is the opinion of the Roman Catholic priest for Mayfield, Fr Mario Sanderson whose letter of 2 October 2007 I found illuminating.
15. I am satisfied that the petitioners have demonstrated the necessity for the versatile use of space. While some may deplore the expression ‘flexibility’ when applied to sacred space, contemporary liturgy militates in favour of variety as opposed to rigid homogenous conformity. Liturgical texts permit of variation, and the strict rubrics of the *Book of Common Prayer* no longer serve to constrict the manner in which the Church of England expresses itself through worship. Detailed scrutiny of attendance

figures and the demographic make up of those who support or oppose the proposal are of little assistance in determining the petition.

16. Additionally, commentators both from within and without the Church of England acknowledge the need for imaginative use of sacred space in the service of the community. This court cannot ignore views such as those expressed by Sir Roy Strong in his recent book, *A Little History of the English Country Church* (Random House, 2007) nor the policy and practice of national institutions of the Church of England. I have in mind both *Faith in the Countryside*, the Report of the Archbishops' Commission on Rural Areas (1990) and, more recently, *Building Faith in Our Future*, a statement on behalf of the Church of England by the Church Heritage Forum in 2004 about making church buildings available for multiple community uses, and for extending such uses throughout the week and not merely on Sundays. Note also *Wider Use of Part or Parts of a Church: A Guide to Section 56 of the Pastoral Measure 1983 (As Amended)* (Legal Office of the National Institutions of the Church of England, January 2007). Although no lease is proposed in this instance, the principle and practice of multiple use of sacred space is given meaningful discussion.
17. The clergy of the Church of England are called to preach the gospel afresh in every generation. The laity share in this responsibility. Fresh expressions of church, however inelegant that phrase may be, represents where the Church of England has currently positioned itself in relation to ministering to the community, whether churched or un-churched, in the twenty-first century.
18. I am satisfied in this instance that the petitioners have made out a case for the reordering. Flexibility of sacred space which permits of sacramental and other uses is a laudable aim and has become commonplace, not merely in this diocese but throughout the Church of England. The objectors have made representations as to how some or all of the proposals may not be necessary, in that provision can be made elsewhere in the church building or in other facilities in the vicinity. I accept that alternative provision may be made in certain specific respects, but this is to miss the point. The necessity is to have a versatile building capable of meeting each and all of the perceived needs and, presumably, adaptable to meet future unspecified needs. By seeking to break down the proposal into its component parts the objectors lose sight of the holistic vision for this church.
- Adverse effect*
  19. This proposal will self-evidently have an adverse effect on the character of this church as a building of special architectural and historical interest, although the degree of the adverse effect is a matter of subjective opinion. Certain of the letters from parishioners suggest that the building will be ruined by an act of sacrilege. I reject these assertions, but accept that there will be some adverse effect, a matter properly conceded by the petitioners.
- Balance of discretion*
  20. Thus one comes to the final element of the *Bishopsgate* questions, namely whether the necessity proved by the petitioners is such that in the exercise of this court's discretion, a faculty should be granted for some or all of the work. It may be helpful

if I repeat part of my judgment earlier this year in *Re St Margaret, Angmering* (10 May 2007) at paragraph 23, because it is equally of application in this case:

It is this third question which has proved most contentious, because its very nature involves making a value judgment on issues which are finely balanced. It concerns a subtle evaluation of two concepts, each of which have an element of elasticity. The manner in which the question is framed makes it apparent that there are degrees of necessity. It is not absolute. The level of necessity required to tilt the balance of discretion in favour of granting a faculty depends upon the nature of the works proposed. The greater the adverse effect, the more powerful and convincing the necessity to be shown by the petitioners in discharging their burden of proof.

21. In making this assessment, the consistory court must take into account the expert opinion which is made available to it as a matter of law under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. Expert local input comes from the Diocesan Advisory Committee. The DAC issued a certificate of recommendation on 15 December 2006, subject to a proviso that there be a programme of archaeological work put in place. In the course of written representations, the DAC submitted a brief written statement dated 27 July 2007. This records, amongst other things, an evolving process of consultation not merely with the DAC but also with English Heritage, the Council for the Care of Churches and the Society for the Protection of Ancient Buildings. It also documents the manner in which the proposals were adapted as the parish took on board the suggestions emanating from the DAC.
22. On a national level, expert opinion has been made available from the Council for the Care of Churches. The CCC was invited to submit representations and by letter of 30 July 2007, adopted its advice contained in letters sent to the parish's inspecting architect on 22 June 2006 and 30 January 2007 respectively. Even when the plans were in embryonic form in the first half of 2006, the CCC considered the principle of creating an open space at the west end as 'not controversial' and it did not regard the removal of the pews as problematic. The CCC was cautious with regard to proposed sections of carpet and tiling, and thought that the use of bookshelves to mark the east-west divide might not be necessary. It felt it could not support the loss of the historic floor in the west end, whether taking it up or covering it over. By January 2007, the CCC felt able to welcome some of the changes to the scheme which had emerged from the CCC's earlier comments. It was content with the revisions to the tower arch elevation and happy to fall in line with the DAC. However the CCC still did not think that there was justification to remove and relocate the floor.
23. By letter dated 4 April 2007, the Society for the Protection of Ancient Buildings, indicated that it did not wish to become a party to the proceedings but invited the consistory court to take into account the content of its letter of 8 February 2007. SPAB drew my attention to the 1953 listing which describes St Dunstan's as 'Good mediaeval church, little restored'. It recommended an appropriate structural and archaeological survey of the infill to the tower arch. It identified the floor at the west end as being of historic importance, even if some or all may have been moved during the church's history. It asserts that the floor 'adds much in terms of colour, texture and beauty to this part of the church and to the unrestored character of the building

- emphasized in the listing description'. It concludes that the floor should be retained in situ.
24. English Heritage did not respond to the enquiry as to whether it wished to become a party. However I take into account its letter of 20 November 2006 addressed to the parish's inspecting architect dealing with revisions to the proposals, together with the inspecting architect's response to a letter from Dr Richard Morrice dated 24 October 2006. Its November letter advocates keeping the tiled floor in place, and makes suggestions for the glazing of the tower arch being less invasive to the fabric, and in consequence reversible.
  25. The most contentious part of the proposal seems to relate to the floor, and the lifting of tiles at the west end. A report by Archaeology South East dated September 2006, and a further letter of 28 November 2006 indicate the tiles to be of seventeenth century origin. I am satisfied that the floor is damp and that this presents a number of problems, not least as the site of a library area where children will sit upon the floor. I am also satisfied that, as is so often the case with proposals such as these, a level floor is a necessary ingredient for the flexible use of this space which has been identified by the petitioners. I note from the inspecting architect's letter dated 4 October 2007, that the original clay tile floor will be retained in and around the tomb at the west end of the north aisle and beyond the area of the library. Equally, I have regard to the comments, for example, of Mr Jonathan Jones, Chairman of Music in Mayfield Limited, who regards the proposals as aesthetically disastrous for the building and not in the interests of the Mayfield Festival.
  26. I am however satisfied that the current proposal in this regard, which has the backing of a skilled and experienced ecclesiastical architect whose work on Grade I listed buildings elsewhere in the diocese has earned him considerable acclaim, satisfies the third *Bishopsgate* factor by a considerable margin. The necessity for a level floor for the theological library and for the other various purposes to which this space will be put is such that the work should be permitted. The amelioration of the damp problem will be of lasting benefit to the fabric of the church generally. The discretion of the court must therefore be exercised in favour of the petitioners.
  27. As to the tower arch, a report from RJ Bunney of EAR Sheppard, consultant civil and structural engineers, dated 2 March 2007 confirms that the arch was originally open and reports that there are no current structural issues surrounding stability of the tower to give cause for concern. It further asserts that there are no structural implications relating to the removal of the infill from the tower arch. I note also the content of the report of Mr Mark Samuel of Archaeology South East on the infill. The suggestion is that the work was done in the eighteenth or (at latest) early nineteenth century.
  28. The benefits of substitution of the masonry infill with acoustic glazing, in my opinion, have been amply demonstrated by the petitioners. For the reasons they advance, I am not convinced that the effect of this element of the work will be 'adverse' to the character of the building. Admittedly part of the history of the church will be lost, namely the infill, but in reality this will serve to restore the

integrity of the building to an earlier period of its history, albeit tempered by the more modern medium of plain glass. I am not persuaded that there is anything of substance in the objections, nor do I propose to reconcile the apparently conflicting expert evidence concerning light transmission, although I note the readings of Mr Jim Berry of Walco Electric in his letter of 10 October 2007, and those of Mr J Healy in his of 30 August 2007. Undisputedly there will be more natural daylight reaching into the interior of the church, but the exact amount may be subject to debate and may vary depending upon the time of year and the weather conditions. Increased visibility into the tower as well as outwards from the ringing chamber is consistent with openness in contemporary liturgy and if our church buildings are to speak of anything, it is making known the redeeming love of Christ in a medium which speaks of transparency and openness. I am mindful of the written support of the Tower Captain and Deputy Tower captain. Equally, though noting the practical reservations of Mr Lodge and Miss Glubb, I am persuaded that there is advantage in improving the visibility of the west window.

29. In the light of the foregoing findings, it follows that the less controversial elements of the reordering are also such that the court's discretion should be exercised in favour of the grant of a faculty. A sound case is made for the theological library, both as a central part of the mission of the parish and as a resource available throughout the week. The alternative venue of London House is not suitable, in my opinion, because the premises are generally locked and unmanned save when it has been hired out. I am satisfied that in considering the selection of chairs which are a little higher than the standard design (to compensate for the loss of the wooden pew platform) the petitioners have shown proper concern for the best achievable sightlines in the church.
30. I should like to deal specifically with the Glubb window because it was erected to the memory of the late father of Miss Naomi Glubb, Lt Gen Sir John Glubb who, amongst many other marks of distinction, was churchwarden at St Dunstan's from 1960 to 1974. His concern for the fabric of the building, in which he was not alone, was considerable. No work is proposed to the Glubb window but its setting will to a degree be affected by the proposed re-ordering. Miss Glubb is particularly concerned that the window may be obscured by the placing of objects on contiguous shelving and furniture. I consider that Miss Glubb's genuine fears are likely to prove groundless. Indeed from my reading of the papers I have no hesitation in concluding that the tidying up of what is currently a very haphazard section of this church will, if anything, enhance the setting of the window and afford it greater dignity. A suitable condition to ensure the window is not obscured ought to put Miss Glubb's mind at rest.
30. As to the cost of implementing the proposals, the issue of funding is one with which the consistory court is loath to interfere. As I put it in *Re St Mary Magdalene, South Bersted* (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.

I understand that as at October the sum of £117,912 has been raised or promised for the funding of the project. That such a figure has been reached whilst the petition is hotly contested and the prospect of success is uncertain is testimony to the support which it has both within the PCC and a section (at least) of the community. I am not prepared to take the highly unusual step urged upon me by the objectors and to adjudicate upon wisdom of spending this amount of money on the project. Whether or not it represents value for money is not for this court to determine, nor does it feature amongst the *Bishopsgate* questions.

31. I therefore order that a faculty pass the seal subject to the following conditions:
- i. that a sample of at least ten tiles and six eighteenth century bricks be retained in the church archive, and that all other useable tiles and bricks be cleaned then safely and securely stored in the cellar boiler house (or such other suitable location as the parish's inspecting architect may certify in writing) for use in making good and improving the aisle floors in the nave and north and south aisles;
  - ii. that the clergy chairs and desks which are to be removed from the west end of the nave be stored safely and securely at the direction of the parish's inspecting architect;
  - iii. that a proper archaeological watching brief be put in place to the satisfaction of the inspecting architect and that in the event that mediaeval finishes be revealed the services of a conservator be retained;
  - iv. that items are not to be stored in the vicinity of the Glubb window or placed on top of surrounding cupboards such as to obstruct the window or otherwise detract from its setting;
  - v. that every practical step is taken in the design and installation of the glazing to the aperture in the tower arch to minimise noise transmission from the ringing chamber to the main body of the church;
  - vi. the works are to be completed within 18 months of the grant of the faculty, or such extended period as the court may determine;
  - vii. the works are to be carried out under the direction of Mr Peter Pritchett RIBA;
  - viii. no contract is to be entered into in relation to the works until the Registrar has confirmed in writing that he is satisfied that the petitioners have demonstrated that they have sufficient monies either given or pledged to carry out the works in their entirety;
  - ix. the works are not to commence until the order for costs has been complied with.
32. Finally I turn to the question of costs. The invariable practice in the consistory court is for the petitioners to pay the court costs even where proceedings are contested and for there generally to be no order in respect of the parties' costs, each paying their own. This principle is only departed from in the case of unreasonable conduct on the part of a party which leads to additional or unnecessary costs. Regrettably, Mr Lodge and Miss Glubb fell foul of the extended timetable prescribed for the service

and filing evidence and were compelled to make a retrospective application for the extension of time. I ruled on this application on 28 September 2007 and gave a provisional indication as to the costs of and occasioned by it. I invited written representations from the parties before making any final order. Those acting for Mr Lodge and Miss Glubb filed representations on 3 October 2007. No other party has done so. The representations comprised an apology (which the court accepts unhesitatingly) and an explanation for the oversight based upon a misunderstanding as to the terms of the order and, more particularly, personal circumstances concerning Miss Glubb and the instructing solicitor retained, which would be inappropriate to rehearse in this judgment. In the circumstances I am satisfied that my proposed disposal would not be appropriate. Allowing the deadline to pass without making a prospective application for an extension of time, though regrettable, cannot in the circumstances as now known amount to unreasonable conduct. Therefore the court costs of and occasioned by the application to extend time will be costs in the petition. Accordingly, the petitioners will pay all the court costs of the petition and there will be no order as to the costs of the parties.

33. I cannot fail to be aware of the tensions that these proceedings have engendered. Much of the correspondence has generated more heat than light and there seems to have been a tendency, to adopt a football analogy, 'to play the player and not the ball'. Differing opinions have been expressed as to the merits of a proposal upon which I have been called to adjudicate. I trust my determination will be accepted with good grace by all concerned and that a line will now be drawn under the matter for the good not merely of the worshipping community at St Dunstan's but for the village of Mayfield as a whole.

The Worshipful Mark Hill  
Chancellor

30 October 2007