

Re St John the Baptist, Tidebrook

Judgment

1. There is a lengthy procedural history to this matter, the papers for which were not sent to me by the registry for final determination until April of this year. I very much regret that it has taken some eight weeks for me to consider the matter and write this judgment, far longer than the swift adjudications that this diocese has rightly come to expect. I apologise at the outset and without reservation for any inconvenience occasioned to those concerned.
2. By a petition dated 18 August 2007, the vicar and churchwardens of St John the Baptist, Tidebrook seek a faculty for the construction of a parish room at the west end of the church nave; the construction of a new entrance, entrance lobby, kitchen and toilet at the west end; and the construction of an elevated walkway to access the new entrance. The petition is opposed by the Victorian Society, and I granted an extension of time in order that a formal notice of objection might be lodged. I then issued directions on 17 December 2007 for the exchange of evidence and consequential matters. This has taken place and the relevant consents in writing have been lodged enabling me to determine the matter on written representations.
3. I have had the advantage of considering a statement of evidence from the petitioners supported by appendices; a similar statement of evidence from Mr David Garrard, the historic churches adviser of the Victorian Society also with appendices; and a statement in response from the petitioners. In addition I have considered a statement from the Diocesan Advisory Committee. In accordance with my directions the Council for the Care of Churches, Wealden District Council (the Local Planning Authority) and English Heritage were each afforded the opportunity of submitting a statement containing any facts or matters that they wished the court to take into consideration when determining the petition. None has chosen to do so, although there is other material from them in the papers.
4. The church, which is the work of Thomas Henry Rushforth, was built between 1856 and 1858 and is listed Grade II. Mr Garrard describes how Rushforth ‘used his spectacular but challenging site on the steep valley-side to create an unexpectedly monumental and powerful building’ which becomes more palpably massive as one descends the slope to the west. I need not rehearse the fuller description of this elevation which is so amply set out by Mr Garrard in his statement. The extent to which the topography of the site compelled Rushforth to make a virtue out of a necessity is a matter of subjective judgment.
5. The Victorian Society objects in principle to the construction of the extension proposed by the petitioners. He-It speaks of the ‘cliff-like effect of height’ being negated by the intrusion of a bulky structure thereby compromising the character of the building. However, the objection pursued by the Victorian Society is carefully measured and sharply focused. It concedes the need for new facilities (including a

- kitchen and lavatories) and raises no objection to the internal aspects of the scheme which introduces ~~a~~ meeting room into the western end of the nave. It considers that siting the kitchen and the lavatory in a 'lean to' structure against the north wall would be far less damaging.
6. I interpolate to observe that I consider it regrettable that the parish delayed significantly in taking up the Victorian Society's offer of a site visit. Many parishes are reluctant to engage with the amenity societies because they perceive (wrongly) ~~a~~ deeply rooted culture of opposition. I do not know whether that was the case here. However, for the benefit of putative petitioners in the diocese, I wish to make it clear that I will expect evidence of meaningful and timely engagement with relevant amenity societies and the taking up of bona fide offers of assistance where major projects are contemplated. At the very least, in this particular instance, a dialogue between the parish and the Victorian Society would have revealed at a much earlier stage the mixed messages emanating from the local planning authority ~~at a much earlier stage~~.
7. So far I have focused on the precise nature of the objection. I remind myself that the burden of proof in this and all petitions lies on the petitioners and, in relation to listed buildings, a high standard is required to discharge the burden. Various articulations of the appropriate test have been propounded over the years, but the Court of Arches, in its judgment in *Re St Luke the Evangelist, Maidstone*, [1995] Fam 1, has declared that the correct approach is to adopt what are generally styled the 'Bishopsgate Questions', first posed by Chancellor Cameron in the unreported decision of *Re St Helen, Bishopsgate*, 26 November 1993, namely:
- (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?
 - (2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?
 - (3) If the answer to (2) is yes, then 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?
8. I must therefore examine the evidence which has been placed before me adopting this three-staged approach.
- (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?*
9. In this instance the case of necessity in respect of some (at least) of the proposed works is clearly made out, as Mr Garrard very fairly and properly concedes. I need not address the issue further, save to commend the parish on the thoroughness and thoughtfulness of its carefully crafted Statement of Need.
- (2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?*

10. Although not formally conceded by the petitioners, it is self-evident that the proposed works would have an adverse effect on this building, the special architectural and historical interest of which is apparent from its listing statement.

(3) If the answer to (2) is yes, then 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?

11. The key matter for me to determine within this petition is this balancing question and the proper exercise of the court's discretion. In doing so I observe that although the ecclesiastical exemption removes churches from listed building consent, planning permission is still required in respect of operational development including the extension of a church building. If issues are raised with the local planning authority by objectors and planning permission is nonetheless granted, those matters cannot be re-litigated in the consistory court in the absence of some sound and compelling reason. See *Re St Peter and St Paul, Upper Teddington* [1993] 1 WLR 852, London Cons Ct; *Re St Mary, Kings Worthy* (1998) 5 Ecc LJ 155, Winchester Cons Ct; *Re St James, Stalmine* (2000) 6 Ecc LJ 81, Blackburn Cons Ct; *Re St Kenelm, Upton Snodsbury* (2001) 6 Ecc LJ 293, Worcester Cons Court; and *Re All Saints, Hordle* (2002) 7 Ecc LJ 238, Winchester Cons Court. In *Re St Laurence, Alvechurch* (2003) 7 Ecc LJ 367, Worcester Cons Court, Mynors Ch stated at paras 63-64:

‘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. 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’.

12. On 8 August 2007, Wealden District Council granted planning permission in relation to proposed development at the church comprising ‘the construction of single-storey extension and access walkway’. Amongst the conditions attached to the grant was a time limit of three years within which the works were to start. I note the observations of the conservation and design officer of the District Council to the effect that an innovative solution has been ‘dumbed down’ and that the revised proposal was a considerably truncated version of what had previously been proposed (and in relation to which planning permission was apparently granted in 2005) and was considered to be poorly proportioned. The initials PNB are suggestive of the author of these comments being Mr Paul Barker. Nonetheless planning permission was granted and in the absence of any suggestion of *mala fides* or procedural error, I cannot treat this petition as a back door appeal against the grant of planning permission.

13. Before leaving the issue of planning permission, consideration must be given to the conversations between Mr Garrard of the Victorian Society and Mr Paul Barker, conservation officer for Wealden District Council. An e-mail from Mr Barker dated 6 March 2008 reduces into writing the view of Mr Barker that:

‘... as the size of the original addition was a governing factor in resisting its being located to the side of the existing church, a significant reduction in functional requirements within the ‘new’ space means that – with appropriate design and detailing – an extension adjoining the side of the church could be practical.’

Mr Garrard urges the court to stay an immediate determination of this matter so that the petitioners might consider amending their proposals and to re-site the proposed facilities to the north side of the church, a location which the Victorian Society would regard as not ideal but certainly less objectionable.

14. I do not think it appropriate to delay the resolution of this petition which has been long in its gestation. Whilst I am mindful of the comments made earlier in this judgment about the adequacy of consultation, I am similarly aware that ultimately a time must come when a parish makes an informed decision and pursues it. This point is made in the inspecting architect’s letter to the Victorian Society of 30 November 2007. I am troubled by the fact that one or more officers of Wealden District Council seem to have been saying different things at different times. The Council has elected not to place facts and matters before me in the form of a statement despite being invited to do so. The court is therefore in some difficulty in resolving what may have been said at various times in the lengthy consultation period. I am also cautious in making any findings in this regard since it seems from a reading of the limited papers which I have seen that Mr Barker’s professional views as an officer of the council may not necessarily in the past have been entirely coterminous with those of the elected members of the planning committee.

15. It is not for this court to speculate whether or not planning permission might be granted for alternative schemes offering different solutions for the needs of this parish. It is required to adopt the *Bishopsgate* approach toward the specific proposal placed before it, in respect of which planning permission has been granted. The inspecting architect, Mr Richard Andrews, is a highly respected ecclesiastical architect with considerable experience of listed churches in the Diocese of Chichester and elsewhere. I am satisfied that Mr Andrews has worked with the conservation officer of the District Council in formulating the proposals for which planning permission was granted and that he has explored with his parish client alternative means of meeting the needs of the worshipping congregation and wider community. The current petition emerges from those wider considerations and I do not believe that a further round of consultation at this stage would be proportionate or [of](#) beneficial.

16. Having considered all the matters placed before me, I am of the opinion that the balancing exercise militates in favour of the petitioners and that the court should exercise its discretion in granting a faculty. My principal reasons are as follows:
- i. planning permission has been granted for the proposals by Wealden District Council and it is not open to this court to re-visit issues which were or could have been [made raised](#) in such process;

- ii. the proposals have the support of the Diocesan Advisory Committee as appears from its certification and the more detailed statement submitted to the court evidencing the extent of consultation over a lengthy period;
- iii. the proposals have the support of the Council for the Care of Churches [as](#) set out in its letter of 11 May 2005 commenting, inter alia, that ‘the combination of the viewing platform and the meeting room promised to be beneficial to the church’. I note the continued support of the Council following further refinements to the proposals as [appears](#) from Mr ~~Jon~~ Nathan Goodchild’s e-mail of 21 May 2007;
- iv. there are no objections from English Heritage as its letter of 8 May 2007 confirms;
- v. the Statement of Need advances an overwhelming case for lavatory and kitchen facilities;
- vi. various means of meeting such need have been investigated since 2000;
- vii. in considering the meeting of need, the parish has been assisted by a highly experienced ecclesiastical architect;
- viii. no concern has been voiced by local residents and ~~that~~ Wadhurst Parish Council observed that it had no objection in principle although in certain respects more suitable materials should be considered in the construction of the walkway;
- ix. an assessment of the specific contribution of the west elevation to the integrity of Rushforth’s overall design was a matter of subjective [judgment](#) and the valuable opinion of the Victorian Society, though a weighty consideration, cannot be considered to be determinative;-
- x. the actual visibility is limited in that it faces onto nothing but woodland, and therefore the opportunity for appreciating its aesthetic and architectural appeal requires a degree of determination;
- xi. the listing statement, which is also a weighty consideration, is somewhat less fulsome with regard to this aspect, merely stating ‘West end is very tall because of sloping ground with gable with cross-shaped saddlestone and end buttresses. Top has arched window with triple trefoiled lancets and two single trefoiled lancet windows below. The undercroft below this has two triple mullioned windows under relieving arches and central arched doorcase under relieving arch.’
- xii. the western aspect has already been compromised by the introduction of a large oil tank and an unsightly chimney, although both these items would be readily removable;
- xiii. I accept Mr Garrard’s contention that the nature of the proposals are such that the work cannot properly be categorised as readily reversible, but I do not consider that the works would intrude physically and visually to the particular extent that the Victorian Society contends;
- xiv. I am satisfied that this specific proposal satisfies by a fair margin the guideline approach propounded by way of the *Bishopsgate* questions. That there may be an alternative method of proceeding (as to which I am unable to make any express findings, nor to speculate on whether or not planning-~~g~~ permission would be granted) is not a legitimate ground for refusing a faculty.

17. For each and all of these reasons I order that a faculty pass the seal. It will be on condition that the works are undertaken under the supervision of Mr Richard Andrews and completed within twelve months or such extended period as the court may permit, and that the works are not to commence until the petitioners have satisfied the registrar in writing that sufficient funds are available or pledged to meet the entire costs of the project including all professional fees.

The Worshipful Mark Hill
Chancellor

6 June 2008