

In the matter of St Mary, Newick

Judgment

1. These proceedings relate to the installation of an etched glass screen and are brought pursuant to a petition dated 2 November 2007. After a somewhat troubled procedural history, the petitioners' evidence was finally lodged with the registry under cover of a letter from the incumbent dated 10 June 2008. There had been considerable delay, for which no explanation was provided, in complying with a series of interlocutory orders made by the court on 3 January 2008, 28 February 2008, and 7 March 2008.
2. Since the petitioners seemed to be under a misapprehension as to how the consistory court carries out its statutory function, it may assist other parishes in the diocese if I were to restate at the outset of this judgment that there is a presumption against change in relation to church buildings which are listed. The ecclesiastical exemption, which applies to the Church of England as well as a number of other denominations, continues only for so long as the Government is satisfied that there is in place a system of control which is equal to that which pertains to heritage buildings in secular use. See generally Hill, *Ecclesiastical Law* (Third edition, Oxford University Press, 2007) at para 7.05 – 7.07.
3. Where, as here, we are concerned with a listed building, the Court of Arches has prescribed an approach which consistory courts are to follow in determining whether or not a faculty should issue. See its judgment in *Re St Luke the Evangelist, Maidstone*, [1995] Fam 1, which adopted what are now generally styled the 'Bishopsgate Questions', first posed in the unreported decision of *Re St Helen, Bishopsgate*, 26 November 1993, London Consistory Court, noted in (1993) 3 Ecc LJ 256. Those questions are:
 - (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?
4. The consistory courts of both provinces have been 'loyally applying' this approach, to quote Chancellor McClean QC in *Re Wadsley Parish Church* (2001) 6 Ecc LJ 172, Sheffield Consistory Court, such that it is now regarded as having universal application, but as I stated as Deputy Chancellor of the Diocese of Winchester in *Re St Mary, Longstock*, [2006] 1 WLR 259, at para 11,

‘there is a danger of descending into too sophisticated an analysis of the *Bishopsgate* questions. They derive from a first instance decision of the highly experienced Cameron Ch (as she then was); were readily adopted by the Court of Arches in *Re St Luke the Evangelist, Maidstone*; and have been consistently applied subsequently by the appellate court and consistory courts of both provinces. They have brought about a welcome consistency of approach. But ... they are not a catechism nor a mantra. I do not think it would be helpful for me to reformulate the questions. Nothing is gained by different chancellors articulating subtly nuanced variations of principles of general application ...’

5. The order in which the questions are approached is significant. In *Re St Mary the Virgin, Sherborne* [1996] Fam 63, the Court of Arches stated the following at pp 77-78:
‘... by the questions and their order we wish to stress the fact that with listed buildings the presumption is so strongly in favour of no alteration that the first question which must be asked is: are the alterations necessary? The present order of questions emphasises that for listed buildings the presumption is heavily against change. To change the order of the questions would, we believe, cause confusion and might seem to some to indicate a relaxation of the requirements before change will be authorised. No such relaxation is intended or desired by this court’.

Contrary to this unambiguous prescriptive guidance, in a number of cases determined on their own particular facts, the order in which the first two questions were asked has been reversed, most particularly in *Re St Gregory, Offchurch* [2000] 1 WLR 2471, Coventry Consistory Court, a case concerning a memorial window. This approach was followed in *Re St Peter, Walworth* (2002) 7 Ecc LJ 103, Southwark Consistory Court; *Re Parish of Stourbridge, St Thomas* (2001) 20 CCCC No 39, Worcester Consistory Court, *Re All Saints Church, Crondall* (2002) 6 Ecc LJ 420, Guildford Consistory Court, and *Re Dorchester Abbey* (2002) 7 Ecc LJ 105, Oxford Consistory Court. For an insightful discussion, see W Adam, ‘Changing Approaches to the *Bishopsgate* Questions’ in (2003) 7 Ecc LJ 215. In each of these cases, even though the order of the first two questions was reversed, the strong presumption against change was not in any way displaced. As I stated in *Re St Mary Longstock* (above) and as I adopt in relation to the present matter:

‘... for the purpose of disposing of this petition, I take as my starting point the fundamental premise upon which the ecclesiastical exemption is based, namely that in the case of listed buildings, there is a powerful presumption against change. The burden of proof lies on the proponent of change, and the burden is not easily discharged. However, where the interests of justice so demand, a consistory court ought not to be compromised in its analysis by too rigid an adherence to the strict order in which the guideline questions are set out.’

6. The word ‘necessity’, although a very convenient shorthand which carries a clear meaning that is well understood by those who practise in the ecclesiastical courts, needs to be read in context. As the judgment of Chancellor Cameron QC in *Re St Helen, Bishopsgate* makes clear, what petitioners are required to demonstrate is that any proposed works ‘are necessary for the pastoral well-being of [the parish] or for some

other compelling reason'. In *Re St John the Evangelist, Blackbeath*, (1998) 5 Ecc LJ 217, Southwark Consistory Court, Chancellor George QC ventured that 'necessity' and 'necessary' in the context of the *Bishopsgate* questions meant 'something less than essential, but more than merely desirable or convenient; in other words something that is requisite or reasonably necessary'. While this is undoubtedly correct, the word 'necessity' should not be taken in isolation as an abstract concept. Rather it should be read in its clear context which imports the wider concept of pastoral well-being or some other compelling reason. Seen in this way, the meaning and effect of the *Bishopsgate* approach is readily comprehensible, continuing to impose a high standard of proof on those who seek to discharge the presumption against change applicable in the case of all listed buildings, yet admitting of factors concerning the role of the church as a local centre of worship and mission. This is central to the operation of the faculty jurisdiction in consequence of the overriding consideration set out in section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

7. Following that lengthy, but I hope helpful, discursus I turn to the facts of this particular petition. The petitioners comprise the Reverend Peter Francis, the incumbent of St Mary, Newick, together with Mrs Catherine Francis and Mr Geoffrey Clinton, who were the churchwardens at the time the petition was signed; Mr Clinton has subsequently stood down but Mrs Francis is serving a further term. The Schedule of Works or Proposals reads:

'Infilling an open internal stone arch situated between the nave and the tower with an etched glass family memorial screen.'

The petitioners rely upon witness statements from Mr Andrew Goodwin, an architect, although not the inspecting architect for the parish; Mr John Sclater who, together with his family, have a very long connection with the parish; and Mr Francis, the incumbent.

8. The history can be shortly stated. The church currently benefits from two recent commissions, the work of the distinguished glass artist, Sally Scott. The first is an engraved glass window in memory of Emma Mary Sclater (1972-1993) and the second a Millennium Window given by the people of Newick to commemorate 2000 years of Christianity. The quality of the design and fabrication is apparent from the two post cards exhibited to the witness statements. The parish's Statement of Need is dated 10 June 2008, and appears as Exhibit C to Mr Francis' statement. Its thoroughness and persuasiveness does much to compensate for the extreme lateness of its production. Generally a Statement of Need should come at the very earliest stage of the gestation of a project as it focuses the mind of the parish and of all future consultees on what is animating the vision of the community in the pursuit of its project. The Council for the Care of Churches, whose representatives visited the church and who supplied helpful comments on the proposal, was rightly critical of an earlier draft of the Statement of Need. I am pleased to record that the obvious deficiencies of that earlier draft were more than remedied in the revised document produced by Mr Francis.
9. A number of specific needs are identified in the Statement. First there is reference to the benefits which would derive from erecting a glass screen between the nave and the tower in terms of reducing heat loss. The Council for the Care of Churches

suggest that any benefit would be minimal and, to be fair to the petitioners, this matter is not pursued on the basis that it would reduce heat loss leading to smaller fuel bills, as the statement of Mr Andrew Goodwin makes plain.

10. The main argument advanced by the petitioners relates to spiritual and other needs, which, if proved, would be matters concerning the pastoral well-being of the community within the broad definition of the first *Bishopsgate* question. The following matters are relied upon:
 - i. the proposed inscription 'Glory to God in the highest' would complement and complete the wording 'Peace on earth' from the Millennium window, both phrases deriving from the Gospel of St Luke, Ch 2 v 14.
 - ii. the inscription proclaims the Glory of God to which and for which all worship in the Church should be made. It is (in the words of the Statement of Need) 'a spiritual message of great significance';
 - iii. the window would be consistent with other memorials to the Selater family, not only the recent work of Sally Scott but also other older windows which record the links which the family has had with the parish church for some two centuries. It would also be in keeping with other memorial windows of stained or coloured glass which I have been able to view on the parish's website;
 - iv. the commissioning of contemporary art for churches in general (and at St Mary's in particular) has a long and distinguished tradition and should not be allowed to die out. Philanthropy should be encouraged in any Christian community and the contribution of high quality new glass work which is aesthetically attractive and spiritually uplifting adds dignity to the spiritual space where the people gather and serves visually to inspire and to nurture together with word and sacrament;
 - v. the etched glass would enliven an otherwise dark and obscure part of the building, and might provide opportunities for the enhanced use of the tower area at a future date.
11. It seems to me having regard to all these matters that the petitioners have made out a case of necessity, namely that the installation of the etched glass screen is reasonably necessary or requisite for the pastoral well-being of the community and proclaiming the Glory of God powerfully and meaningfully. That it also commemorates the continuing connections of a particular family with the church is a highly relevant and persuasive factor since regard must always be had to the parish church as a local centre of mission and worship. The continuation of centuries of benefaction from within the parish promotes each of these aims.
12. The second of the *Bishopsgate* questions concerns adverse effect. Self-evidently the introduction of any significant feature into a church building will have an effect on the character of the church as a building of special architectural and historical interest. Whether or not such effect might be characterised as 'adverse' is a matter for subjective judgment. I note in this regard that English Heritage, who were served with the papers, replied by letter dated 21 November 2007 stating that it did not wish to offer any comments on the proposals.

13. I tend to the view that this screen would in fact enhance this building and I therefore answer the second *Bishopsgate* question in the negative. I note in particular the following features which were all very helpfully covered in Mr Goodwin's witness statement:
- i. that the frame for the screen is to be fabricated of oak and not of metal as originally proposed;
 - ii. that the revised proposal does not require the screen to be recessed into the arch and thus any intrusion into the stonework will be avoided, as had been commended following informal consultation with the Diocesan Advisory Committee. In particular there is to be no cutting into the capitals, which had been a cause of concern for the Council for the Care of Churches. It follows that this project might properly be classed as reversible, which is of some significance;
 - iii. that the expanse of the etched engraving has been significantly reduced in extent since the original draft. The Council for the Care of Churches regard this revision as 'now more fitting' and I respectfully agree;
 - iv. that there is adequate support for each and all of the four panes of glass which will make up the panel. It would appear that the petitioners and the Council for the Care of Churches may have been at cross-purposes on this matter, and I am grateful for the clarification provided by Mr Goodwin's witness statement.
14. In the light of my view on the second question, it is strictly unnecessary for me to proceed as far as the third, but I do so for the sake of completeness. Were I to have concluded that the glass screen would have had an adverse effect on the character of the church, I would have had to have asked myself whether the necessity proved by the petitioners was such that in the exercise of the court's discretion a faculty should be granted for some or all of the works.
15. Had I reached that stage, I would have exercised the balancing discretion of the third *Bishopsgate* question in favour of the petitioners. Any mildly adverse effect resulting from the introduction of the screen would be offset by the presence of a high quality screen of aesthetic and artistic merit, in harmony with other glass in the church, both traditional and contemporary. I record here that Sally Scott is to be assisted by Madeleine Dinkel in the professional design of the calligraphy. Mr Goodwin, who is an accomplished ecclesiastical architect, justifiably maintains 'that the proposals will enhance and enrich the historic nature of the Church by providing an elegant and understated memorial in keeping with the fine traditions of this church'.
16. An installation which proclaims the Glory of God in a project made possible by the munificence of a family which has contributed to the church for 200 years may be an 'old way of being church' but it is valuable and appropriate nonetheless. The message of the Church Universal lived out by the church local is something to which this court should afford appropriate weight in the exercise of its discretion.
17. I come finally, and for the sake of completeness, to the legal issues raised in consequence of the particular nature and intention of the glass screen. There is a consistent line of authority in English ecclesiastical jurisprudence to the effect that

the grant of faculties for the erection of memorials should be ‘sparingly exercised’: see *Dupuis v Parishioners of Ogbourne St George* [1941] P 119. The *ratio decidendi* of a leading decision of the Court of Arches (on appeal from my distinguished predecessor in this diocese Chancellor Quentin Edwards QC) indicates that a case of exceptionality must first be made out in relation to the character or service of the person to be commemorated: see *Re St Margaret’s Eartham* [1981] 1 WLR 1129.

18. As I stated in *Re St Mary, Longstock* (above) memorials generally comprise simple plaques or more elaborate funerary monuments. Objects which adorn or beautify the church and comprise part of its fabric are not memorials in this strict sense, albeit they may be erected in memory of a particular individual: see *Re St Peter, Oundle* (1996) 4 Ecc LJ 764 concerning stone likenesses of an incumbent and former bishop as label stops on nave arches. I concluded in the *Longstock* case that since the petition was for the installation of a stained glass window, the test was inappropriate. It was therefore unnecessary to undertake the invidious task of ruling upon whether or not a case of exceptionality was made out in relation to the character or service of the person to be commemorated.
19. The position here is slightly different because the personal element forms so significant a part of the proposed installation, with the engraved lettering in the lower section of the window being visually very dominant, although reduced in scale from that of an earlier draft. Mr John Sclater, in his very full and helpful witness statement, informs the court that his family has owned the Newick Estate for approximately two hundred years, although he himself resides a few yards into a neighbouring parish. I shall not embarrass him, or his family, by rehearsing in this public document the highly significant contribution made by himself and his family to the church locally and nationally. The case of exceptionality, if it needed to be proved, is amply demonstrated.
20. Mr Sclater sets out his three main objectives in commissioning this glass screen. First to enhance the beauty of the church; secondly to conserve energy; and thirdly to provide a fitting memorial to his parents and grandparents thus maintaining something of a family tradition. I have commented on these matters in earlier parts of this judgment and afforded them appropriate weight. One matter which troubles me, however, is the inclusion on the public face of a memorial of words which carry a particular and private meaning. To Mr Sclater, the words ‘With thanks for prayers answered’ are intended to relate, amongst other things, to the collapse of potentially costly litigation brought against him and others in connection with the Equitable Life Assurance Society. Whilst undoubtedly of immense importance to Mr Sclater personally they are not directly relevant to his parents or his grandparents and could turn the focus away from the memorialized and towards the benefactor. The words and the particular private intention they convey might be said to detract from the larger inscription higher in the window which glorifies God. It may also be that a number of individuals fared rather badly as a result of the events concerning Equitable Life.
21. This glass screen is intended to last for centuries and an eye must be had for posterity. A wording which is enigmatic and which carries a particular meaning

known only to the benefactor ought to be avoided. I would therefore urge some further thought and reflection upon this part of the inscription and would invite specific additional representations in confidence on this issue. Having regard to what I see as shafts of sunlight radiating from the dove in the excellent design of Sally Scott and to the expressed objective of enhancing what might otherwise be a dark part of the building, I venture that the inscription 'Let Light Perpetual Shine Upon Them' written in English or Latin might be worthy of consideration as a fitting and appropriate sentiment which will stand the test of time.

22. I therefore order that a faculty pass the seal subject to the following conditions:
- i. that fabrication of the glass screen is not to commence until the court has approved in writing a full scale mock-up of the proposed lettering to incorporate (i) the points of detail raised by the Council for the Care of Churches and (ii) such revisions to the inscription as may be approved in writing by the chancellor;
 - ii. that the details of assembly, glazing and fixing be the subject of further consultation with a representative of the Diocesan Advisory Committee and referred to the chancellor for determination in the event of disagreement;
 - iii. that the work be completed within 12 months of the issue of the faculty or such extended period as the court may authorise;
 - iv. that the work be carried out under the direction of Mr Andrew Goodwin in consultation with the parish's inspecting architect, Mr Patrick Crawford.

The Worshipful Mark Hill
Chancellor

4 July 2008