

Re St Mary, Ticehurst

Judgment

1. By a petition dated 23 June 2008, the vicar and churchwardens of St Mary, Ticehurst, seek a faculty for the construction of an extension to the church to form a children's chapel and meeting room with kitchen facilities, toilet and wheelchair access. St Mary's is a medieval building which is listed grade II*. Planning permission for an extension was granted by Rother District Council on 14 September 2006, condition 1 of which requires the commencement of the development within three years. The petition was not lodged at the registry until December 2008.
2. As might be apparent from the date upon which planning permission was granted, the project has a long and not altogether straightforward history. This is a substantial proposal in which there has been a good deal of consultation. I am reminded of what I said in giving judgment in *Re St Mary Magdalene and St Denys, Midhurst* (2002) 7 Ecc LJ 764, at paragraph 5 of the judgment.

Consultation must not be confused with subjugation. A parish should not feel obliged to take on board each and every comment from an amenity society or other consultee. It should, of course, give such comments the careful and considered weight which they deserve being the professional views expressed by persons with considerable expertise and experience. They should not, however, unquestioningly incorporate every aspect of sometimes mutually contradictory advice, since, in doing so, the essence of a valid project may be compromised.

In this matter, the evolving scheme of the parish led to it securing backing of English Heritage (as appears from its letter of 18 April 2006), the acquiescence of the Victorian Society (note of 2 April 2007), and the support of the then Council for the Care of Churches (letter of 2 April 2007).
3. Where the petitioners were unsuccessful (and despite considerable endeavour on their part) was in winning over the Society for the Protection of Ancient Buildings. I have sought to trace the matter through the substantial bundle of papers submitted with the petition and those drip fed to the registry subsequently. It would appear that Mr Richard Crook wrote to SPAB on 16 February 2007, in like terms to his correspondence with other statutory consultees. Mr Crook wrote again on 5 April 2007, which elicited a substantive reply from SPAB dated 19 June 2007, to the content of which I shall return later in this judgment. Whilst the tone of the letter was constructive, SPAB was opposed to the proposals. Mr Crook acknowledged SPAB's letter on 2 July 2007.
4. This was the state of play when the papers reached me in December. The discretion exercised by the Chancellor in the Consistory Court is circumscribed, amongst other things, by both the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 and by the Faculty Jurisdiction Rules 2000. Rule 13(3) of the Rules provides:

... where it appears to the Chancellor on preliminary consideration of the petition that the

works ... involve ... extension of a listed church to such an extent as is likely to affect its character as a building of special architectural or historic interest ... then, unless it appears to the Chancellor from the available information that each of the following bodies has previously been consulted about those works **and has indicated that it has no objection or comment to make** the Chancellor **shall direct** that English Heritage, the local planning authority and such of the national amenity societies as appears to be likely to have an interest in the church or the works shall be specially notified in accordance with the criteria applicable to consultation ... (emphasis added)

5. I should emphasize that this is a mandatory provision. Where the requirements are met, the court has no option in the circumstances but to give formal notification. The terms of SPAB's letter are clear, both in terms of express objection and general comment, and I directed that the petitioners clarify what further correspondence there had been with SPAB, since the way in which the petition was advanced was suggestive of the fact that SPAB's objection had either been met by the petitioners or had been withdrawn.
6. Enquiries revealed that there had in fact been no contact at all with SPAB subsequent to the exchange recorded above. Mr D W Billingham wrote to SPAB on 2 January 2009 but his letter, though well-intentioned, did not go far enough to resolve the issue under rule 13(3). Mr Crook wrote to the Registry in strong terms on 13 January 2009 setting out the history of the consultation and asserting 'we trust now that the Chancellor will see fit to grant a Faculty for this project'. What Mr Crook ought to have known, and what he ought to have advised his petitioner clients, was that the granting (or indeed refusal) of a faculty would be unlawful unless and until the provisions of rule 13(3) had been complied with. The special notification procedure in rule 13(3) gives to relevant amenity societies and others a twenty-eight day period within which to lodge a written notice of objection in Form 4 or to send comments to the registry in respect of the proposed works: see rule 13(6). This clear and unambiguous legal requirement cannot be dispensed with or ignored merely because an inspecting architect considers the opinion expressed by an amenity society to be without merit, or to be merely a minority viewpoint. To do so would be illegal and would bring the faculty jurisdiction into disrepute, and call into question the continuance of the ecclesiastical exemption.
7. The petitioners, properly advised, ought to have been aware by July 2008 when they received the Diocesan Advisory Certificate, that they had not won over SPAB whose opinion could not simply be ignored or marginalised. It is immaterial that the DAC had issued a certificate recommending the works because the DAC's collective assessment of the proposal is merely advisory and is simply one of a constellation of considerations which this Court takes into account when exercising its statutory function in relation to every petition. Likewise it is also immaterial that the local planning authority has seen fit to grant planning permission. The legal position is clearly set out in Hill, *Ecclesiastical Law* (Third edition, Oxford University Press, 2007) at paragraph 7.66

The chancellor generally expects planning permission to have been granted, in outline at least,¹ prior to a petition being lodged for a faculty. It is generally considered that if issues are

¹ Or a written declaration that planning permission is not required.

raised with the local planning authority by objectors, such as car parking, access, traffic flow and the effect of proposals on the views and the privacy of neighbouring landowners, 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.²

8. The appropriate course, on receipt of the DAC certificate, would have been to write to SPAB asking it to withdraw its letter of 19 June 2007 in the light of further developments and then to lodge the letter of withdrawal at the same time as the petition. Alternatively, or in the event that no withdrawal was forthcoming, to invite the Court to give special notice to SPAB under rule 13(3). Had this been done in July 2008, the matter would have been resolved long ago and the parish would not now be faced with a tight timetable and potential cost ramifications for the sourcing of the stone. As it happens, by letter dated 4 February 2009, SPAB stated that it did not wish to raise a formal objection but stood by the content of its letter of 19 June 2007. SPAB's letter reached me on 9 February 2009 and I have expedited the determination of this petition. I should record the court's gratitude to SPAB for its constructive and pragmatic response at this stage, and observe what will be obvious to all concerned, namely that this matter could have been resolved several months ago had appropriate steps been taken. The tone of some of the more recent letters from the inspecting architect to the registry has been a little unfortunate.

9. I come therefore to the merit of the proposals themselves where I have regard to the following:
 - i. a very detailed and careful statement of significance dated 2 February 2006;
 - ii. an equally well presented statement of need of the same date outlining the shortcomings of the present structure and its impediment to the mission of the church community;
 - iii. a very helpful note setting out the consideration given to various alternative proposals and stating the reasons why they were rejected in favour of the present proposal;
 - iv. the level of attention given to all relevant consultative bodies (including the provision of a scale model) and the manner in which the petitioners have sought to amend the original proposal while remaining true to their original scheme;
 - v. the detailed and clearly prayerful consultation with parishioners and the pastoral assimilation of a wide range of views;
 - vi. the support given to the proposal by English Heritage in its letter of 18 April 2006, expressly removing its previous objection to an earlier scheme which was substantially revised by the petitioners;
 - vii. the positive and highly constructive support from the Council for the Care of

² 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'.

- Churches (now the Church Buildings Council) contained in its letter of 2 April 2007 acknowledging that it would not be appropriate to try and create a meeting room within the existing envelope of the church and its considered view that ‘there was good justification for an extension’;
- viii. the absence of any objection or other observations from the Victorian Society, as is apparent from the note of 2 April 2007;
 - ix. the certificate of recommendation from the DAC dated 14 July 2008, being the culmination of a lengthy period of dialogue;
 - x. the grant of planning permission from Rother District Council on 14 September 2006, again after a lengthy process of consultation including the rejection of an earlier proposal;
 - xi. that no objections were received at the registry following public notice. This may be testimony, in part, to the sensitive and inclusive manner in which the parish went about the consultation process.
10. The concerns of SPAB, as detailed in its letter of 19 June 2007 are:
- i. that the proposed extension would have a major and detrimental impact on the setting of the church. It was particularly concerned at the ‘link’ section and considered that a more conventional method whereby the extension was fully attached would be both preferable and achievable.
 - ii. that there is potential for placing the additional facilities within the envelope of the present structure, a view which is starkly at odds with the other professional opinion volunteered in this case.
 - iii. that the extension would compromise the symmetry of the ensemble represented by the mass of the spire, tower, aisles and porch which give the building ‘great distinction and nobility’ situated, as it is, at the heart of a Conservation Area and in an Area of Outstanding Natural Beauty.
11. I consider that the first and last of these objections are properly planning considerations which could have been, and I suspect were, considered by Rother District Council. During the hiatus necessitated by compliance with rule 13(3), Mr Crook kindly supplied to the court copies of the submissions made by SPAB to the planning authority and I am satisfied that it would be improper of this court to revisit the determination of Rother District Council reached after lengthy and experienced consideration.
12. The second objection, as I have summarized them above, though entirely legitimate, I do not find persuasive largely because it is so much at variance with the preponderance of opinion held by other individuals and bodies who have been consulted in this matter. I have particular regard to the view the Church Buildings Council (as recently reconstituted) which has considerable experience of major work on listed church buildings throughout the Church of England. I suspect that it would always lean towards the accommodation of additional facilities within existing structures and I consider that the fact that it does not in this instance to be significant.
13. The practice of the Consistory Court in all cases where changes to a listed church are concerned 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. This is not the same as the approach adopted by secular planning authorities but the core considerations are common to both. The 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) 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?

14. I mean no disrespect to SPAB in taking these matters fairly shortly. The case of necessity is well made out in the papers submitted by the parish to which I have already made reference. Indeed, so great is the necessity in this instance, that it may have bubbled over on occasions into frustration at the long and Byzantine processes to which all applications of this type are subject. Of course there will be an adverse effect on the character of this building, but in undertaking the balancing exercise which I am required to do in answering the third question, I come unhesitatingly to the conclusion that the proved necessity justifies the adverse effect. In this regard I commend the architect, highly experienced in work of this type, in adapting and improving the design in response to the consultation process so as to mitigate the adverse effect as much as possible and to produce an extension which will complement the historic building.
15. I therefore order that a faculty pass the seal. I note that the provisos contained in the DAC certificate have all been addressed by the inspecting architect and I therefore do not consider it necessary formally to include them as conditions to the faculty. The works are to be completed within 18 months (subject to any extension which may be granted) and are to be carried out under the direction of the inspecting architect. Adapting buildings to serve the Church of England at its most local level is crucial to the living out of the Gospel. This worthy project has a long and complex past, but with God's grace it now has a future which properly befits the mission and witness of the followers of Christ for the benefit of the whole community of Ticehurst.

The Worshipful Mark Hill
Chancellor

13 February 2009