

Re St Mary, Ticehurst

Supplemental Judgment

1. On 13 February 2009 I delivered a written judgment in this matter pursuant to which a faculty was issued 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. Planning permission for the extension had previously been granted by Rother District Council on 14 September 2006.

Stay of proceedings to determine adequacy of public notice

2. By letter dated 26 February 2009, Mrs Elizabeth Howard wrote to the registry raising a procedural matter. The letter was referred to me and on 5 March 2009, I made the following direction which I set out in full, correcting some minor typographical errors in so doing:

A question has arisen (contained in a letter from Mrs P E Howard) concerning the adequacy of the formal notice given of the petition which I recently determined. I order an immediate stay to the implementation of the faculty which has been issued while the matter is investigated. The key issue (it seems to me) is whether both faces of the Notice were displayed or merely the front. Mrs Howard says the latter, whereas Mr David Billingham says the former. The originals which I have seen (which apparently come from the Church porch and the Church notice board in Church Street respectively) each have drawing pin marks to top and bottom indicating where they were affixed with only one face visible. If what Mr Billingham says is correct, for each of these notices there must be a second sheet in existence showing the reverse face which was presumably affixed next to the sheet which has been returned to the registry. I should like to see a copy of that second sheet in each instance (if it still exists) and to have a note from whoever put the notices up stating whether the reverse of the notice was in fact photocopied and affixed next to the parts which have already been sent to the registry.

Without prejudice to the above matter which I will need to determine, I should like to have a further letter from Mrs Howard indicating the views which she would have wished to have expressed.

I ask for responses to each of the above matters within 7 days.

3. In compliance with those directions, Mr David Billingham wrote to the Registry on 5 March 2009 and Mrs Howard on 11 March 2009. I am grateful to each of them for their assistance in the matter.

The legal position

4. I remind myself of the legal requirements for public notice. These are contained in rule 6 of the Faculty Jurisdiction Rules 2000 which requires the petitioner to fill in a public notice in Form No 3 in Appendix C (rule 6(1)) and to display it (rule 6(3)(b)) in accordance with the provisions of rule 6(4) which refers to a continuous period of 28 days on a location *inside* the church on a notice board or in some other prominent position as well as on a notice board *outside* the church or in some other prominent position so that it is readily visible to the public (rule 6(4)(b)(i) and (ii) respectively).
5. The importance of the timing and content of public notice under rule 6 was recently re-emphasised by the Court of Arches in giving judgment in *Re Emmanuel Church*,

Bentley [2006] Fam 39, at paragraphs 20 to 25 in particular. I have merely summarized the rule in a short-hand fashion because, as I read Mrs Howard's objection, it is not the location or duration of the public notice with which she takes issue but that, on her contention, only the face and not the reverse of the Form 3 was visible. It follows, so she says, that although it gave details of the proposed plans and the place where documents might be examined, it did not state that a person who wishes to object may do so, nor did it give an address to which any objection may be sent, nor a deadline by which such objection was to be received. Each of these crucial pieces of information was on the reverse.

6. I also remind myself of rule 33 of the Faculty Jurisdiction Rules 2000, entitled 'Non-Compliance and Setting Aside' which states as follows:

33(1) Non-compliance with any of these Rules shall not render any proceeding void unless the chancellor so directs, but the proceedings may be set aside, either wholly or in part, as irregular, or may be amended or otherwise dealt with in such manner and upon such terms as the chancellor thinks fit.

It was with this provision in mind that I ordered an immediate stay to the implementation of the faculty while further information was submitted to enable me more fully to consider the matter and make a ruling.

Evidence regarding public notice

7. Having regard to issues of cost and proportionality, I have not convened a hearing in order to take evidence on oath nor have I required formal witness statements to be served. I accept in good faith what is set out in correspondence. Mrs Howard says that on 24 February she saw the notice but no name or address. The next day she telephoned the Secretary of the Diocesan Advisory Committee (whom she names) who told her to write to the Registrar which she duly did. It was that letter, dated 26 February 2009, which persuaded me to grant the stay. It was apparently posted on 27 February 2009. She states that to her amazement a photocopy of the reverse appeared on the notice board and in the church porch on the day she posted her letter.
8. Mr Billingham, in his letter of 5 March 2009, states that he has been categorically assured by Mrs Sheila Minet, a churchwarden, that both sides of the original formal notice were clearly visible on the Church Street notice board, the back having been photocopied. He himself, so he says, took down the notice from within the church porch and affirms that both sides were clearly visible, and apparently the vicar confirmed to him that this notice comprised two sheets and not one. The originals have been lodged.
9. I cannot make findings of fact based on contradictory assertions contained in correspondence. There is a degree of credibility in each but I cannot evaluate the comparative merits. The rusty drawing pin marks suggest to me that it is highly likely that the reverse of at least one of the notices was facing outwards and therefore visible. However, it would be wrong for me to determine the matter upon forensic conjecture.
10. Equally it would be wrong for me narrowly to construe the provisions of rule 6 and to conclude that there had been technical compliance with its terms because 'the

notice' had been displayed, albeit (on Mrs Howard's account) the reverse was not visible. To my mind, the only legitimate reading of 'the notice' in rule 6 must be a reference to all the notice. Thus the non-display or other obscuring of the reverse would, if proved, amount to non-compliance.

The nature and weight to be afforded to Mrs Howard's views

11. For present purposes I intend to make no factual findings as to the manner in which the notices were displayed, but to proceed on the hypothesis that Mrs Howard might be correct and that the reverse (in either or both cases) was not visible. She tells me that were she to have known to whom and by when she should have objected, she would have made the following points:
 - i. that St Mary's is a large and beautiful church which will be marred forever by the addition of a mock Norman extension connected by an ugly corridor;
 - ii. the cost is out of all proportion to the meager size, being able to accommodate fewer than 50 people;
 - iii. that the morality of a charitable organization such as the church spending so much on what she styles an extravagance is a source of anger in the village;
 - iv. that the facilities could be sited elsewhere in the large churchyard or in a cottage which backs on to the churchyard and is currently for sale for £190,000.

12. I have considered each of these representations with some care, but I have come to the conclusion that they would not have persuaded me to have determined the petition differently. I prepared an extensive written judgment when considering the matter initially and the petition was opposed by the Society for the Protection of Ancient Buildings, albeit on the basis of written representations. This was not a faculty which was granted 'on the nod' in the absence of objection but after a careful evaluation of the evidence and of competing arguments and following a reasoned judgment. Taking each of Mrs Howard's points in turn:

Impact on existing structure

13. I specifically considered this objection as it had been relied upon by SPAB, albeit slightly differently articulated, as summarised in sub-paragraphs 10(i) and 10(ii) of my judgment. If issues are raised with the local planning authority 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. Likewise 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.

It would be futile to set aside a faculty merely to allow an argument to be run which, as a matter of law, could not amount to a legitimate ground of objection.

Cost

14. I take together items ii. and iii. above which have been raised by Mrs Howard. Questions concerning the cost of particular projects are not lightly interfered with by the Consistory Court. 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.

It follows that the question of the cost/benefit analysis of the expenditure to be made to provide increased accommodation is a matter for the judgment of the Parochial Church Council. The fact that Mrs Howard may not share the decision of the PCC and that she, and others of a similar mind, might regard the expenditure as something of an extravagance would have carried little, if any, weight in the balancing exercise when considering whether or not a faculty should be granted. It cannot amount to a ground for setting aside the faculty.

Alternative means

15. This final matter reflects a ground advanced by SPAB as recorded in paragraph 10(ii) of my earlier judgment, which opined that the additional facilities could be accommodated within the existing envelope of the church building. Mrs Howard seeks to enlarge this argument by pointing out other alternative methods of achieving the objectives of the PCC, either in the form of a freestanding structure in the churchyard or by the acquisition and conversion of a neighbouring cottage. That there may be alternative ways of making provision for the needs of a church community is not, of itself, a reason for refusing to sanction the particular project chosen by the petitioners, provided a sound case can be made for that project mindful of the *Bishopsgate* questions and the strong presumption against change. My assessment of the proposed works to which the petition related would not have been any different even if I had considered the additional alternatives which Mrs Howard now seeks to advance.

Conclusions

16. It therefore follows that even if I had been satisfied that the public notice was irregular and that there had been non-compliance with rule 6 of the Faculty Jurisdiction Rules, and even if Mrs Howard had been afforded the opportunity of placing before me material to advance each of the objections which she would have wished to have raised, the determination of the petition would have been no different and the faculty would still have been granted.
17. I must also weigh two further features in the balance. First, Mrs Howard speculates (as do I) that there may have been others in the village who would have written to object but did not because (as she alleges) the reverse of the notice was not displayed. I accept that possibility and for the purposes of this determination I do not categorize Mrs Howard as a lone voice but I proceed on the assumption that there might have been others who shared her views. To my mind it is the strength and the persuasiveness of the opinion which matters, not the number of people who happen to subscribe to it. For the legal reasons summarized in the preceding paragraphs, I anticipate that my assessment and conclusion would have been the

same even if a substantial number of people had similarly voiced objection.

18. Secondly, I am aware that had Mrs Howard (and indeed others) written to the Registry within the 28 day notice period, the provisions of rule 16 would have come into play giving to those persons the right (should any so wish) to lodge formal written particulars of objection in Form 4 and to become a party to the proceedings. Such persons or persons would have been legitimately entitled to withhold their consent to the determination of the matter by written representations thus requiring a hearing in open court. Absent agreement in writing from all parties, the consistory court cannot dispose of a matter on written representations. It would, of course, be highly exceptional for an objector to pursue a matter to a hearing in open court and experience demonstrates the rarity of such a procedure. However it is a course open under the Rules and to the extent that it may have been denied this raises matters of procedural and substantive justice in addition to the possible application of Article 6 of the European Convention on Human Rights relating to fair trials.
19. The discretion given to Chancellors under rule 33 is very broad and is designed to meet the justice of any individual case which might arise, of which there will be an almost infinite variety of circumstances. Taking into account all relevant factors which I have sought to identify separately in this judgment, but which overlap to a large degree, I do not consider that it would be justified in this instance to set aside the proceedings as irregular. Disregarding the uncertainty as to whether Mrs Howard has satisfied me that there was non-compliance in the first place (which is expressly left undecided), I am compelled to conclude that even were I to re-visit my determination in the light of her putative representations and those of other hypothetical objectors of a similar mind, the end result would be unaltered and a faculty would still issue in precisely the same terms.
20. The earlier matter was not summarily disposed of but considered on the merits, and judged against the demanding yardstick of the heavy presumption against change. The additional objections from Mrs Howard, and I venture any differently articulated objections from others, would not have raised the hurdle higher than that which the petitioners succeeded in clearing when I delivered my first judgment. I also take into account the fact that the planning permission includes a condition for the commencement of the works prior to September of this year and that there is a substantial lead-time for the ordering of stone. A further delay were this matter to be re-visited would seriously prejudice the petitioners in circumstances when, viewed objectively, there is no realistic prospect of a different conclusion being reached. Common sense and pragmatism militate in favour of leaving the judgment undisturbed.
21. Accordingly I order that the stay which I imposed on 5 March 2009 be lifted with effect from Monday 6 April 2009 and give liberty to the petitioners to resume the implementation of the terms of the faculty from 10.00 am on that date. I have allowed this short period of grace in case Mrs Howard wishes to take advice upon a possible appeal from my adjudication. I commend to her that if she is dissatisfied with my decision she contacts a solicitor experienced in ecclesiastical law as a matter of urgency.

22. I consider that Mrs Howard's application to this Court was made in good faith and do not consider that she should be penalized in relation to the additional court costs incurred, which will inevitably fall to be borne by the petitioners.
23. A copy of this judgment is to be sent to the Chairman of the Rule Committee established under section 25 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 in case the matter raised is of general application and a re-wording of any part of the Faculty Jurisdiction Rules might be deemed expedient to ensure that both sides of Form No 3 are routinely displayed whenever public notice takes place in accordance with the provisions of rule 6.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

30 March 2009