

In the matter of St Mary, Westham

Judgment

1. By a petition dated 6 January 2009, the incumbent and churchwardens of St Mary's, Westham seek a faculty for what appears to be a perfectly anodyne proposal, namely the erection of a storage shed in the old churchyard. Two letters of objections, each from a near neighbour, were received in the registry but neither has elected to become a formal objector and, to respect their privacy, I do not name them in this judgment. On behalf of the petitioners, the incumbent wrote a letter on 23 April 2009 addressing the specific points raised. Accordingly, in making my determination I take into account all of this correspondence as well as the helpful Statement of Need.
2. A certificate of 'no objection' was issued by the Diocesan Advisory Committee on 13 February 2009. Planning permission was granted by Wealden District Council on 4 November 2008. During the planning process, English Heritage indicated that it had no comment to make.
3. The grounds of objection, taken generically, are as follows:
 - i. that it is inaccurate to style the shed a 'replacement' since there has not previously been one on this site;
 - ii. the shed might detract from the visual amenity of those using the benches in the old churchyard for seated contemplation;
 - iii. metal is inappropriate for a shed within the curtilage of a Grade 1 listed church sited in a conservation area. Would wood be preferable (it is suggested that the planning officer was not content with the choice of materials but this is not borne out by the grant of planning permission);
 - iv. the noise resulting from the opening and closing of the metal doors would be a nuisance for those in neighbouring gardens;
 - v. the removal of decaying trees at the proposed location would be detrimental to wildlife in the churchyard;
4. I think I need first deal with one matter of law, and a couple of possible misunderstandings. As I set out fully in my judgment in this court in January 2004 in the case of *St Mary, Slaugham*, where matters have been considered in relation to planning permission and such permission has duly been granted, it is not open for this court to revisit the matter. I consider each of the objections outlined above are genuinely planning matters and, since the grant of planning permission is not impugned on the grounds of bad face or otherwise, it would be contrary to binding precedent for the Consistory Court to re-litigate those matters and I decline to do so.
5. I note that much is made as to whether the shed is a replacement or a new introduction. This may have been a relevant consideration for planning purposes but

it is not for the purposes of this court. I accept the content of the incumbent's letter (albeit hearsay) to the effect that there was a shed in a position more proximate to the church some years ago. But even if this were not the case, and the application was to put in a shed for the first time, I would look upon the matter favourably. It is hard enough to press gang volunteers into helping in the upkeep of the churchyard without the additional burden of having to trundle the mower from the vicarage a quarter of a mile away and back again. One of the objectors speaks of the old churchyard being in "a dreadful state" seemingly oblivious to the fact that the proposal to which he objects is intended to go some way to address the matter.

6. It may be that the objectors were not aware of the intended location of the shed, but I note from the plan that it is to be sited as discretely as possible and beyond the immediate vicinity of the church and the original churchyard, in a location where any possible noise nuisance will be *de minimis*. The fact that prudent arboricultural management of the churchyard may require the removal of dangerous dead or dying trees is not a factor which should be determinative of this petition.
7. In the circumstances the petitioners have made a convincing case for the grant of a faculty which will therefore issue on condition:
 - i. that the work (including the construction of the concrete base upon which the shed will rest) is to be undertaken at the direction of the parish's inspecting architect and is to be signed off by him;
 - ii. that in relation to the dead or dying trees in the vicinity, the parish is to seek and act upon the advice of the relevant officer of Wealden District Council, and in the event of any disagreement, the matter is to be referred back to the Chancellor for resolution.

The Worshipful Mark Hill QC
Chancellor

24 June 2009