

Re St Mary the Virgin, Battle

Judgment

1. By a petition dated 17 August 2010, the Dean and Churchwardens of St Mary the Virgin, Battle seek a faculty for the construction of a new extension on the north side of the building to form a new meeting room, disabled access, accessible lavatories and kitchen, together with a ramp between the north aisle and the Lady Chapel.
2. The church is listed Grade I and situated in the Battle Conservation Area. The petitioners have engaged Mr Richard Crook, an experienced ecclesiastical architect to draw up its proposals (as appears from the Design and Access Statement dated 14 September 2009) and have drafted a detailed and perceptive Statement of Significance and Statement of Needs.
3. The proposals have been subject to statutory scrutiny in the usual way:
 - i. consultation with the Diocesan Advisory Committee led to a certificate of recommendation dated 16 August 2010, subject to certain provisos as to matters of detail;
 - ii. by letter dated 7 May 2010, the Church Buildings Council commended the proposal in principle but raised a number of concerns, the bulk of which were subsequently addressed by the petitioners through Mr Crook;
 - iii. by letter dated 18 August 2010, the Society for the Protection of Ancient Buildings stated that it had no comments to make on the proposal;
 - iv. by email dated 27 August 2010, the Ancient Monuments Society made helpful comments on detail to which Mr Crook responded sympathetically;
 - v. by letter dated 9 June 2009, English Heritage indicated that it was happy with the proposals;
 - vi. by a notification dated 5 May 2010, the Victorian Society stated that it did not wish to comment on this case.
4. The proposal was subject to scrutiny by Rother District Council in relation to both planning permission and building regulation approval: the former was granted on 19 November 2009, the latter on 11 May 2010. The planning permission is subject to conditions which (amongst other things) require it to be implemented within three years of November 2009 and also require an archaeological investigation.
5. In addition to the mandatory public notice, I ordered that a notice be published in a local newspaper, in accordance with rule 13(4) of the Faculty Jurisdiction Rules 2000 following the guidance of the Court of Arches in the appeal of *Re Holy Trinity, Ecdeshall*, (2011) 13 Ecc LJ 123. This led to letters of objection being received at the registry from Ms Paula Fisher, Mrs Wilma Hodge (and additional comments from

her husband, Mr Michael Hodge), Ms Jenny McMillan, Ms Marie-Louise Neill. A letter from Mrs Shirley Massy stated that she hoped that the new extension would be successful. None of the objectors elected to file a formal objection using Form 4, and I have therefore taken their letters into account in reaching my decision, in accordance with rule 16 of the Rules. This includes the letters which were technically out of time. The petitioners responded to this correspondence in a very full letter dated 6 November 2010 and I have had regard to these observations.

6. I hope I do not do injustice to the letters of objection in taking their content thematically:
 - i. *Funding*: (a) that this would amount to an improper use of a legacy from Mrs Benedicta Whistler intended for the maintenance and upkeep of the fabric, and exhausting the legacy would leave nothing for future maintenance costs; (b) that the PCC is not sufficiently financially secure to embark upon such a project; (c) a parish which cannot discharge its parish share ought not to be expending significant capital on grandiose building projects.
 - ii. *Extent of the works*: (a) the project is unnecessarily ambitious when all that is required are extra toilets; (b) the excess of lavatory provision will lead to a reduction in cupboard space; (c) encroachment over the churchyard is not justified;
 - iii. *Attendance*: attendance is falling and extra space is not needed;
 - iv. *Consultation*: there was inadequate consultation with the PCC, congregation and community;
 - v. *Alternatives*: no consideration has been given to alternative suggestions such as converting the Lady Chapel;

7. This petition, in common with all petitions concerning significant alterations to listed churches, must be evaluated in the context of a heavy presumption against change. The onus of proof lies with the proponents of change. The burden is not readily discharged. The practice of the consistory court 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.

(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?

8. There is no doubt in my mind that they have. The content of the Mission Action Plan and legislation for the provision of facilities for the disabled weigh heavy in making churches fit for purpose in the twenty-first century. I have been impressed by the measured and sincere way in which the petitioners have articulated the need to provide appropriate and flexible facilities for the mission and witness of the church community having particular regard to youngsters and families. I am satisfied that the attendance figures are more favourable than one objector suggests and that any lesser provision for lavatories would frustrate the laudable aims of the proposal. Equally I am satisfied that these proposals have been formulated in the light of a holistic evaluation of the use of the entire church building in the course of which other alternatives have been given such consideration as they deserve. I consider the criticisms regarding the lack of consultation misplaced, and in any event, have been

overtaken by the public notice and newspaper advertisement which have allowed matters to be ventilated in the consistory court.

(2) *Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?*

9. The answer to this second question is self-evidently in the affirmative.

(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?*

10. Having reflected on all the material before me, I am satisfied that a faculty should be granted. In doing so, I am fortified by the detailed assessment given to the proposals by consultative bodies such as the DAC, CBC, amenity societies and local planning authorities. The lack of professional objection from these highly qualified organisations (all of which are very familiar with the *Bishopsgate* approach to cases of this nature) is very persuasive and coincides with the independent evaluation of this Court.

11. I accept what is said by the petitioners that there is no restriction on the use of the legacy and, as I observed in *Re St Mary Magdalene, South Bersted* (19 March 2002), and have repeated in a number of subsequent judgments:

‘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.’

None of the objectors suggests bad faith, merely that they would have struck the balance differently. It seems to me that this PCC has made a reasoned and careful consideration in a time of austerity which properly takes into account its resources and future needs in the context of promoting the mission of the church in the parish.

12. Certain of the letters from objectors refer to the parish share. It is unthinkable that a parish would pursue a petition for a major building project if its parish share were not up to date and if it were not tolerably confident that it would be in a position to continue to meet the parish share in future years, albeit by encouraging parishioners to be more generous in their giving. Should there be any doubt in this regard, I propose adding the customary condition to the grant of this faculty. If, on reflection, the Dean and PCC do not feel sufficiently confident, then, in the exercise of proper Christian stewardship, they will refrain from implementing the faculty or seek permission from the Court to defer implementation. A faculty is a permissive right and the grant of a faculty does not compel petitioners to act upon it.

13. It therefore follows that a faculty will pass the seal. It will be subject to the following conditions:

- i. that the works are not to commence until:
 - (a) the registrar has certified in writing that the petitioners have satisfied him that sufficient money has been raised or pledged to cover the entire costs of the works including all professional fees; and
 - (b) the Diocesan Board of Finance has certified that the parish is up to date with

- its payment of the parish share;
- (c) the additional fees arising from the determination of this petition have been paid in full.
- ii. that the works are to be completed within 18 months, or such extended period as the court may permit;
 - iii. that the works are to be carried out under the supervision of Mr Richard Crook;
 - iv. that detailed proposals for the re-siting of the table tomb are to be submitted to the Chancellor for approval prior to this aspect of the work being undertaken.
 - v. that the Dean and PCC use their best endeavours to continue to discharge their parish share in future years.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

21 December 2010