

In the matter of Lyminster, St Mary Magdalene

Judgment

1. By a petition dated 8 February 2011, the churchwardens of St Mary Magdalene, Lyminster seek a faculty for works of repair to a roof beam in the nave. The benefice is currently in interregnum. The church is Grade I listed.
2. The petition has a troubled history. It has been presented to the court by way of an emergency application and I have sought to expedite this judgment.
3. As I understand the background, in August 2010 certain works of redecoration were being carried out in the nave of the church. A thorough search of registry records and DAC files revealed no trace of the faculty or other consent pursuant to which this work was undertaken. It now transpires that it had been carried out following receipt of a letter from the Archdeacon of Chichester dated 4 August 2010. Due to the urgency of the matter, I do not propose to delay the determination of this petition to investigate the propriety of such authority: it suffices for present purposes that the parish had apparent authority to proceed.
4. It would appear that the then incumbent and the inspecting architect, Mr Robin Nugent, took the sensible step of taking advantage of the scaffolding to conduct a thorough inspection of the roof and tie beams. A degree of misalignment and cracking had been observed in and around the fourth tie beam and this had apparently been noted in Quinquennial Inspection reports (although I have not been shown copies).
5. The inspection took place on 1 November 2010. A significant defect in the beam was noted and a report emailed to the churchwardens and to the DAC secretary and the Archdeacon. I do not think a copy of this email is with my papers. Mr Nugent recommended immediate closure of the church. I make no criticism of him for this. On the contrary, I commend him for his diligent concern for public safety.
6. Where I do, however, criticize both Mr Nugent and the churchwardens is in causing or permitting a scaffold shore to be erected to secure the beam. This was done without permission of this court and, to my mind at least, set in train a sequence of events which led to a hiatus last week in contractors turning up at the church to carry out works for which no permission had been sought or given.
7. I want the message to go out loud and clear throughout all three archdeaconries of the Diocese of Chichester that once an emergency presents itself concerning the fabric of a church building (be it the effect of arson, tempest, flood, theft, structural movement or whatever else) the first port of call should be the registry. By all means

copy in the archdeacon and the DAC, but no work should be undertaken without the authority of the consistory court. This can come from me, as chancellor, from the deputy chancellor in my absence, or from the registrar or deputy registrar in extremis. With modern electronic communication, one or other of us can be contacted, at home or abroad, and a response can be given within less than an hour if the circumstances so demand. It is hard to conceive of a set of circumstances which makes contacting the registry impossible. The need for authority to vest in the consistory court is central to the continuance of the ecclesiastical exemption which allows the faculty jurisdiction to operate. If it is flouted, sidelined or ignored, lobbying for its continuance by third parties with legitimate interests will gain currency, to the detriment of the mission and witness of the Church of England.

8. Had that fundamental rule of practice been followed in this instance, not only would permission have been granted for the erection of a scaffold shore, but detailed directions would have been given prescribing a timetable for professional investigation and a scheme of work being put in place allowing for timely remedy with full consultation. Instead, crossed wires developed between inspecting architect, parish and others leading to three months being wasted and to the flurry of emails which led to me making urgent directions when contractors were on the brink of executing unauthorized work.
9. What happened between 1 November 2010 and early February 2011 is far from clear. The petitioners blame the inspecting architect for not producing a specification. The inspecting architect says he was not instructed. I am not in a position to rule on this conflict of recollection, and it would delay the determination of this petition were I to do so. It is an unhappy and unsatisfactory situation which was wholly avoidable, but for present purposes I will say no more on the subject.
10. I come then to the merits of the petition. I have regard to the specification produced by the inspecting architect in collaboration with a consulting engineer. I have regard to the favourable comment Ms Zoe McMillan, an architect member of the DAC, in a brief email of 7 February 2011. I thank her for the speed with which she turned around the consultation, which is testament to swiftness with which the consistory court can move in appropriate circumstances.
11. Having regard to the urgency of the situation (a state of affairs largely occasioned by the petitioners delay from early November until now in bringing the matter before the court) and to the largely uncontroversial nature of the proposals, I am prepared:
 - i. to dispense with formal consultation with the DAC and obtaining of a certificate;
 - ii. to dispense with public notice;
 - iii. to dispense with notification with the CBC, amenity societies, English Heritage and the local planning authority.
12. On the evidence I have seen I am satisfied that these are works of repair, required for the safety of those using the church, whose impact on the structure of the church building will be minimal. Since the first of the *Bishopsgate* questions is not engaged, the subsequent balancing exercise is unnecessary.

13. I therefore order that a faculty pass the seal, subject to the following conditions:
- i. that the additional costs occasioned by the referral for directions on 7 February and in expediting this judgment are paid by the petitioners within 21 days;
 - ii. that all of the works are undertaken. I can see no sensible reason for deleting the removal of nesting material and fixing nylon bird net protection and it would be a false economy not to do so at this stage;
 - iii. that the works are supervised by Mr Robin Nugent;
 - iv. that the works are completed within three months;
 - v. that all necessary insurance conditions are met;
 - vi. that proper fire precautions are implemented to avoid combustion of dust or dry material.
14. I shall give the petitioners 7 days within which to apply in writing to vary conditions ii. and iii. above. There may be a reason for omitting these particular matters (of which I am not aware) and/or it may be that the petitioners have lost trust and confidence in Mr Nugent. However, in the latter case, I shall expect them to name a suitably qualified architect to supervise and sign off the works in substitution for Mr Nugent. In the absence of written application within 7 days, the conditions will automatically come into effect. I am content to authorize the immediate engagement of suitably qualified contractors.

The Worshipful Mark Hill QC
Chancellor

13 February 2011