

In the matter of St John the Baptist, Findon

Judgment

1. By a petition bearing the date 15 January 2011, the incumbent and churchwardens of St John the Baptist, Findon seek a faculty for the construction of a small extension and related works which I summarise as follows:
 - i. Construction of a single storey extension to incorporate kitchenette and disabled toilet;
 - ii. Adoption of existing external door for access to proposed extension;
 - iii. Install services including drainage and cesspit;
 - iv. Connect heating and electrical services;
 - v. Relocation of affected grave and headstone.

The church dates from the twelfth century and has a Grade I listing. Whilst the proposals affect its external appearance, there is minimal invasion into the fabric of the building and the works may properly be categorised as reversible.

2. Planning permission was granted by Arun District Council on 15 May 2008. This was time limited, expiring after three years. A further permission was granted on 11 April 2011 subject to certain conditions, none of which is material to the present determination. The proposals have been the subject of consultation with the DAC, CBC, SPAB and English Heritage. In the light of the reservations voiced by the CBC, I directed that the matter proceed to a hearing but upon application by the petitioners I concluded a determination on written representations would be satisfactory and would avoid additional cost to the parish.
3. I have had the advantage of considering the following material:
 - i. The petition and supporting documents including a Statement of Significance and a Statement of Need;
 - ii. The following witness statements filed on behalf of the petitioners namely:
 - a. The Reverend Robin Whittle and Mrs Irene Adams dated 13 March 2012;
 - b. Andrew Goodwin dated 10 March 2012;
 - iii. DAC certificate;
 - iv. The planning permissions mentioned above;
 - v. Correspondence with SPAB;
 - vi. Correspondence with English Heritage;
 - vii. Correspondence with the CBC.
4. I summarise the positions adopted by the various interested parties as follows.

Diocesan Advisory Committee

5. The DAC issued a certificate on 8 September 2011 recommending the proposals subject to a condition concerning an archaeological watching brief.

Church Buildings Council

6. The CBC gave advice in a letter of 6 December 2007 which it amplified in a further letter dated 28 February 2012. In short, the CBC considered that the proposal would have a significant impact on the south elevation of the church and yet would provide only basic facilities. The specific points of objection may fairly be summarised as follows:
 - i. The extension would amount to an unattractive lean-to, being an unsightly addition to the south elevation with the roof of which projecting above the base of the windows in the south wall;
 - ii. The timber boarding finish would contrast unsuccessfully with the existing flint walls;
 - iii. The proposal to line the church walls with plasterboard is inappropriate;
 - iv. The gutter where the extension meets the existing wall will create a maintenance problem;
 - v. Exhumations will require a Secretary of State's licence in addition to a faculty;
 - vi. The opening of the lavatory directly into the kitchenette would be undesirable for hygiene reasons;
 - vii. The kitchenette is too small to be of any practical use.

The CBC commended instead an extension on the style of a porch to house a lavatory which would mirror the north porch for which there seems to be some form of historic precedent on the south side. A small kitchen might then be sited along the walls in the large vestry space behind the organ console.

English Heritage

7. As the letter from David Brock dated 16 February 2012 makes clear, English Heritage does not actively support the petition, but it does not wish to pursue an objection. It generally adopts the assessment of proposals made by SPAB.

Society for the Protection of Ancient Buildings

8. SPAB's position on the proposals is to be found in a letter of 3 October 2011 and a further letter of 1 February 2012. It generally favours provision for toilet and kitchen facilities being made within the interior of a church rather than by means of an extension. It pointed to the fact that acoustic separation could properly be achieved in spite of the parish's concerns.
9. In relation to the extension, SPAB stated, 'We consider that the proposed extension would have a very significant impact on the architecture and character of the south side of the building and on its downland setting'. It particularly deprecated the use of Hey'Di on the existing walls and stonework as it would not allow the walls to breathe. SPAB's objection might not be as strong as it first appeared, however, since it became very animated at the prospect of a hearing. This, I suspect, resulted from a misapprehension as to a potential liability to costs. I should make it clear that even if a petition is determined at a hearing (which remains the default position) an amenity society which expresses a view cannot be the subject of an order for costs unless it has chosen to become a party to the

proceedings, and even then an award of costs will only be made if a party has been shown to have acted unreasonably.

The law

10. Where, as here, we are concerned with a listed building, the Court of Arches has prescribed an approach which consistory courts are to follow in determining whether or not a faculty should issue. See its judgment in *Re St Luke the Evangelist, Maidstone*, [1995] Fam 1, which adopts what are generally styled the 'Bishopsgate Questions', first posed in the unreported decision of *Re St Helen, Bishopsgate*, (26 November 1993, London Consistory Court, noted in (1993) 3 Ecc LJ 256). Those 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) If the answer to (2) is yes, then 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?

I shall address each of the *Bishopsgate* questions in turn.

(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?

11. On one issue everyone having input into this petition is unanimous, namely that lavatory and kitchen facilities are necessary at this church. I note in particular what is said in this regard both by SPAB and by the CBC. The clear and fulsome statement of Mr Whittle and Mrs Adams supports an overwhelming case of necessity. The only issue is whether the particular works as proposed are the right ones to meet the proven necessity. That being the case, this is best considered when it comes to the balancing exercise under question 3.

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

12. The proposals will undoubtedly affect the southern aspect of the church and, for present purposes, I am prepared to classify that as being adverse.

(3) If the answer to (2) is yes, then 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?

13. I have considered these papers with care. I have been impressed by the measured and reasoned content of the two witness statements filed on behalf of the petitioners. I have given considerable weight to the manner in which Mr Goodwin has addressed in turn the various options considered over several years by the parish and the fact that very serious consideration has been given to each and every observation of all interested parties and to the detailed and technical objections of the CBC in particular.

14. In the circumstances, I consider that this is a case where a faculty ought to be granted. I have particular regard to a number of factors which strike me as being particularly

persuasive. First, I note the view of Mr David Brock of English Heritage whose experience of listed churches and their settings is considerable. He states, 'the proposed extension is relatively small and would be located on the "up" side of the church where long views cannot easily be had'. Partial concealment of a former porch gable would not constitute a significant loss of interest and if the gully up against the feet of the windows can be made to work technically without risk to the fabric this compromise to the nave's appearance could be accepted. As I understand the proposals, the roof of the extension would not project above the windows in the south nave wall and I am confident that Mr Goodwin has done everything possible to reduce any such impact to the very minimum. I also note that Mr Goodwin would be agreeable to a condition that the stone mullion of the vestry window would not be cut into during the building works and I consider that an appropriate condition to impose.

15. The proximity of the lavatory to the kitchenette is not ideal but getting the best use out of listed buildings is the art of the possible. I note that planning permission has been granted for this extension and I will make it a condition that building regulation approval is also obtained before works commence. If the local planning authority has not raised objection then it would be inappropriate for the consistory court to do so.
16. I am satisfied that Mr Goodwin has made appropriate and adequate provision to ensure 'breathability' in the provision of a ventilated void between the flint wall and new plasterboard in the vicinity of the kitchen workshops and in the disabled toilet. This was introduced to meet SPAB's concern with regard to the use of Høy'Di.
17. The CBC performs a valued function in the care and conservation of sacred buildings especially those of particular architectural, aesthetic and historic interest. However it needs to exercise caution and restraint in the proffering of what might appear to be definitive legal opinions. I am not convinced that a Secretary of State's licence will be required for the exhumation of human remains from the Twyneth (or Tugwell) graves. Section 25 of the Burial Act 1957 provides that such a licence is required save where the exhumation is for the purpose of removal from one consecrated burial place to another. In the *Legal Opinions Concerning the Church of England* (page 251, paragraph 27) it is recorded as follows (underlining added for emphasis):

'The removal of remains from one consecrated place to another such place, whether or not in the same churchyard or cemetery, does not require a licence under section 25 of the Burial Act 1857. All such removals may be undertaken solely on the authority of a faculty. This interpretation of section 25 was agreed by the Home Office in 1985.'

The interpretation of the Home Office continues to hold good notwithstanding that the jurisdiction is now exercised by the Secretary of State for Justice. I respectfully consider that the CBC's statement of the law in this regard is wrong.
18. I am satisfied that the proposed location for the Tugwell grave is sufficiently clear and subject to adequate enquiries being made to seek the concurrence of the next of kin for the re-siting of the headstone and for the exhumation and reinterment of any human remains, this is not a matter which ought to militate against the grant of a faculty.

Conclusion

19. In my opinion, the case advanced by Mr Whittle, Mrs Adams and Mr Goodwin compels the resolution of both the first of the *Bishopsgate* questions and the third in favour of the petitioners. I have no hesitation of accepting this evidence as to necessity and in excluding each and all of the possible alternatives advanced by SPAB and the CBC in relation to lavatory and kitchen facilities. In the absence of meaningful arguments to the contrary, this court ought to give due deference to the considered views of the worshipping community as to the way in which their premises are used both liturgically and for ancillary purposes such as refreshment and comfort. When such a case is undergirded by compelling technical evidence from an experienced ecclesiastical architect, it becomes particularly compelling.

20. It therefore follows that a faculty will be issued subject to the following conditions which I have expressed in the course of this judgment. The costs of the petition are to be borne by the petitioners. The faculty will be subject to the following conditions:
 - i. That the works are to be completed within twelve months or such extended time as this court may permit;
 - ii. That the stone mullion of the vestry window will not be cut into during the building works;
 - iii. That building regulation approval is obtained from the local authority before any works commence;
 - iv. That with regard to the Twyneth (or Tugwell) graves adequate enquiries be made to seek the concurrence of the next of kin for the re-siting of the headstone and for the exhumation and reinterment of any human remains. In the event that the next of kin cannot be located with due diligence, the matter is to be referred back to the Chancellor for further directions;
 - v. That the works are to be carried out under the direction of Mr Andrew Goodwin ARIBA;
 - vi. That no works are to commence or contract placed until the Chancellor has certified in writing that the petitioners have satisfied him that sufficient funds have been given or pledged to cover the costs;
 - vii. That no works are to commence or contract placed until the costs of these proceedings have been paid in full.