

In the matter of St George, Donnington

Judgment

1. By a petition dated 12 February 2016, the priest-in-charge and churchwardens of St George, Donnington seek a faculty for (in the words of the Schedule) the following:

Erection of an extension to provide toilets, including disabled and baby change facilities, to make the church fully inclusive, together with some storage facilities to enable the nave to be cleared of essential but unsightly materials thereby enhancing the internal appearance of the historic building and creating more usable space.

2. St George's is a Grade I listed building dating from 1246. It lies within the Chichester Area of Natural Beauty, and is totally surrounded by farmland, the nearest settlement being about a mile away. Whilst the proposal itself may be relatively modest, it has been in development since at least 2012 and I have not found it easy navigating the voluminous material placed before me in no particular order spanning the intervening years.
3. Somewhat unhelpfully there is no Statement of Significance as such, but instead an undated document headed 'Planning, Heritage, Design & Access Statement' ('Planning Statement'). This seems to be directed more towards the secular planning authorities. The only information as to the church's significance was to be found at paragraph 2.6 which, in a woefully inadequate manner, reads:

There exist a mixture of architectural styles dating from the 13th century with a 16th century tower and more recent Trinity Chapel and south porch.

4. Although the Planning Statement indicates that the English Heritage List Entry Summary was to be found at Appendix 1, it was not in fact there; instead this Appendix comprised various letters of support. However I believe I have managed to locate the relevant listing statement online which provides as follows:

Parish church. Early C13 with early C16 tower, north chapel dated 1871 but replacing a chapel dating from 1542, refurbished after a fire in 1939, architect Frederick Etchells. Built of stone rubble with tiled roof.

PLAN: Four bay nave with aisles, three bay lower chancel, south west tower, south porch and north chapel.

EXTERIOR: Three stage tower with moulded plinth, buttresses of two stages with sloping offsets at the SE and NW corners, crenellated parapet (dismantled and rebuilt in 1966) and single light windows set under four-centred arches. The cinquefoil head of the west window is original but the remainder restored. The gabled south porch has a four-centred arch and buttresses. Behind in the south aisle is an early C13 round-headed doorcase and the south aisle has three C16 style windows, replacements following the 1939 fire. The north aisle has a C16 doorway with a renewed head and renewed three light window in C16 style. The chancel south side has three C13 lancets, the east end has three C13 taller lancets and the north wall of the chancel has two C13 lancets. There is a gabled north chapel

with lancet windows with a tablet below the east window inscribed "Charles Crosbie Esq. Anno Domini 1871".

INTERIOR: The south west tower contains the original C16 half-winder staircase with solid treads of triangular blocks and three bells, one mid C16, one of 1594 and one recast in 1858. The nave has north and south arcades of four bays but the westernmost south bay was walled up when the tower was built in the C16. The arcade arches are two-centred with plain chamfered mouldings and circular moulded capitals, alternate circular and octagonal piers and moulded bases. To the east of the south doorway is a stoup set under a chamfered arch. The chancel arch is similar to the nave arcades but the inner orders rest on corbels while the outer ones die into the walls. In the east wall of the nave, north of the chancel arch, is a small recess with a chamfered head and jambs decorated with a simple roll-moulding near the base to the south. The nave roof has oak ribs replaced after the 1939 fire. The octagonal stone font with wooden font cover is by Frederick Etchells and the pews and pulpit (the latter incorporating some older panels) are of the same date. The north or Trinity chapel is a C19 rebuilding of one which existed as early as 1542. In the centre of the north wall is a c1779 monument to John Page, MP for Chichester, and his two wives. This is in the form of a large sarcophagus of grey and white marble with a coved top surmounted by an urn. This has Ionic columns at the sides, a frieze of palm and oak sprays and a central oval medallion flanked with drapery. Against the south wall is another large monument to Katherine Page of circa 1795, a Classical style marble monument with a coved top surmounted by an urn and oval inscription panel flanked with drapery. There are two unnamed and unsigned marble busts c1840 of a lady and gentleman of the Crosbie family set on marble pillars. There are four C19 marble wall tablets to the Crosbie family and three C18 floor slabs to the Page family. The chancel has lancet windows to the north and south sides with chamfered rere-arches and deep splays. The east wall has three lancet windows set in roll-moulded openings with continuous heads and jambs and a continuous moulded label. There is a moulded stringcourse at cill height running around the north, east and south walls of the chancel and a double piscina with a trefoiled, roll-moulded head. The roof of three bays, possibly C16, has original pegged rafters, staggered purlins and two chamfered tie beams.

REASONS FOR DESIGNATION:

\* Despite the replacement of the nave roof and some internal woodwork after a 1939 fire this is a substantially intact early C13 parish church with early C16 tower and C19 chapel.

\* Interior features include medieval arcade and chancel arches, stoup and piscina, a rare surviving C16 solid tread half-winder staircase to the tower and good quality C18 and C19 monuments.

5. Section 5 of the Planning Statement is entitled Statement of Need. In addition, a separate Statement of Need (undated) is contained with the papers submitted to the DAC. The former records how the church is used on average of 1 hour per week for short weekly services and the occasional wedding. However in a separate document headed 'Criteria for the Design of an Extension to Provide Toilet Accommodation' produced by the PCC and annexed to a letter from the inspecting architect dated 28 February 2012, average usage is placed at 2-3 hours weekly.
6. Whichever figure is correct, liturgical use is limited and the stark choice for the PCC is either to provide proper facilities or to close the church for worship and conduct services in the modern parish hall. The Planning Statement records a process of some 6 to 7 years during which various iterations of the proposal were worked on in consultation with the amenity societies and others. I understand that although pedestrian access to the church is by historic footpaths, the vehicular route is permissive, and granted only for so long as the building remains a parish church. The same restriction applies in respect of an easement for the supply of water, which made possible the introduction of a 'kitchenette' in 2009 at the west end of the north aisle pursuant to an earlier faculty.
7. The church building is fully accessible for the purposes of disability discrimination legislation but lacks toilet facilities. This is inconvenient and presents particular difficulties at weddings

and funerals when attendees have often travelled long distances. When necessary, temporary facilities are brought in and this is not satisfactory.

8. Various internal locations were considered for the installation of toilet facilities, but none seemed appropriate. The site chosen for the extension involves the least disturbance of human remains and historic grave markers. A separate building elsewhere in the churchyard was not a workable solution for various reasons. Mention is also made of the need for additional storage space, as an incidental benefit of revising the plans so as to incorporate a higher double-pitched roof design in response to the advice from consultees that the original design would prove an allurement to children and vandals, risking damage to the fabric and danger to public. A staircase will give access to storage space above the new toilets and avoid having to negotiate access to unsatisfactory tower room as at present.

#### **Planning permission**

9. An initial application for planning permission was refused on 6 December 2013. The reason given, so far as is relevant for present purposes, was as follows:

The proposed extension ... would by reason of its size, design, massing and orientation result in development which would have a detrimental impact upon the significance of the heritage asset, its original character and the setting of this Grade I Listed Building without sufficient justification

10. However, Chichester District Council appropriately chose St George's Day (23 April 2015) to notify the parish of the grant of permission for a revised proposal which was considerably reduced in terms of scale, bulk and overall appearance. Building regulation approval followed on 12 February 2016.

#### **Diocesan Advisory Committee**

11. The DAC issued a Notification of Advice on 23 March 2016 which recommended the proposal subject to certain conditions on points of detail. It would appear that the DAC has worked with the parish over a number of years helping it to forge concept and design of the particular project now before the court. The papers do not disclose the full history of how the proposal developed over time, although I have been able to trace a letter dated 13 September 2011 in which the DAC gave a favourable response to each of two alternative designs. Details of a slightly scaled down version (responding *inter alia* to reservations expressed in the pre-application consultation of the local planning authority) were sent to the DAC on 25 June 2013. The DAC further wrote on 17 September 2013 suggesting a reduction to the ground floor lobby area and a corresponding increase to the size of the disabled lavatory to secure compliance with prevailing regulations. These suggestions were adopted by the inspecting architect and a subsequent letter from the DAC dated 18 November 2013 shows support for a revised design, although there is no indication as to what the letter refers.

#### **Church Buildings Council**

12. By letter dated 22 May 2012, the CBC indicated that it was grateful for the length the petitioners had gone to in answer of its comments on the previous scheme. It considered the rationale for the scheme which, by then, was well founded and gave its support for the revised version. The CBC had no comments to make on further revisions which were sent to it in July 2013.

### **Historic England**

13. In its former instantiation, English Heritage responded to a request for pre-application advice by letter dated 25 August 2011 indicating that it had no comment to make on the proposals, which at that stage (I assume) was for a more substantial development than that now proposed. A further letter dated 22 July 2013 dealt with revised proposals and stated as follows:

The scheme appears to be a sensible response to the needs of the congregation and would have a relatively low impact on the medieval fabric of the church, utilising the existing north door for access to the interior. The design reflects the architecture of the church employing a similar roof pitch to the south porch and existing Trinity Chapel while the fenestration is well conceived, including a contemporary lancet window and leaded lights. The chosen location is discreet and would not cause undue harm to the setting of the church.

The letter went on to require the external treatment of the extension to be clarified, preferring stonework to render.

### **Society for the Protection of Ancient Buildings**

14. There has been regular communication between the inspecting architect and Society, whose initial letter of response on 16 January 2012 complemented the parish on how discreet and harmonious the new kitchen looked with its cupboard design. Whilst the Society was sympathetic to the principle of providing lavatory facilities, it was not convinced that two lavatories or the sizeable lobby were really necessary, suggesting that one would suffice; it posited alternative locations within the church where it could be sited, and even ventured the construction of a free-standing structure outside the church instead. The letter concludes by noting that the setting of the church is memorable, open on all four sides though partly screened by trees. 'We feel', says the Society, 'that any addition to the church building should be small and discreet'.
15. When the papers were first submitted to me it was immediately obvious that special notice on the Society was required under rule 9.3 of the Faculty Jurisdiction Rules 2015. The Society responded promptly stating it did not wish to make a formal objection to the proposals and had nothing to add to the content of its letter to the inspecting architect dated 2 December 2014, which it asked the court to take into consideration in determining the petition.
16. I hope I do no injustice to the Society in summarising that letter as restating its acknowledgement of the need for lavatory facilities. It questions whether the need for storage space is properly made out. It commended consideration of siting an additional toilet (if one is needed) in or near the car park thereby reducing the size of any extension. Whilst agreeing that the north side of the building is the most suitable (not least by making use of the existing north door), is considered that it would be preferable to adopt the traditional east/west access to harmonise with the northeast chapel. The Society concludes:

As currently proposed we consider that massing of the extension would tend to dominate the north side of the church and detract from the 19th century Trinity Chapel. We believe that this could be addressed by reducing the size and scale of the proposed extension ... with reductions to the storage space requirements and the possible relocation of one of the lavatories in or close to the car park. Perhaps a smaller extension can be agreed on an east west access.

17. Noting the balance which must be struck between the needs of a congregation and community and the requirements of a Grade 1 listed building, the Society remains of the view that 'as currently designed, the proposed extension would have a damaging impact on the north side of the church'.

#### **The relevant law**

18. Proposed changes to a listed church building need to be addressed by reference to a series of questions commended by the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158:
- (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
  - (2) If the answer to question (1) is no, the ordinary presumption in faculty proceedings 'in favour of things as they stand' is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals. [...] Questions 3, 4 and 5 do not arise.
  - (3) If the answer to question (1) is yes, how serious would the harm be?
  - (4) How clear and convincing is the justification for carrying out the proposals?
  - (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building ... will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2\*, where serious harm should only exceptionally be allowed.
19. In considering whether the proposals, if implemented, would result in 'harm to the significance of the church as a building of special architectural or historic interest', there is always a degree of subjectivity. A differently constituted Court of Arches in *Re St John the Baptist, Penshurst* [2015] WLR (D) 115 clarified that question (1) cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church, and that in answering questions (1) and (3), the particular grading of the listed church is highly relevant. In *Re St Peter, Shipton Bellinger*, 19 November 2015 (unreported), the Court of Arches emphasised that no proper analysis of what constitutes the special architectural character and/or historic interest of the church can be undertaken, or a sound conclusion reached on whether harm would be caused without an examination of the listing description.

#### **Assessment**

20. I can set out my assessment relatively briefly in the light of the full summary of the background in the earlier paragraphs of this judgment. Notwithstanding the best attempts of the petitioners and inspecting architect to camouflage, conceal and confuse the situation, I have succeeded in finding amongst the jumble of papers a compelling need for the proposal to provide a modest extension with toilet facilities. This is a beautiful and much-loved church, set in open country, which struggles to provide for regular activity, both liturgical and ancillary. The congregation, though small, has not given up on the building and nor has the local community. Their commitment to the continued flourishing of the parish church is worthy of considerable praise. Their stoical pursuit of the complexities of the planning and faculty jurisdictions over six or more years and their engagement with consultees is commendable; and it is in recognition of this determination that I take a lenient view of the shortcomings in the presentation of the petition and its supporting documentation.

21. Undoubtedly there will be an impact on the church building but whether there will be any real harm to its significance as a building of special architectural or historic interest is questionable. The interior will be untouched, an existing doorway will be utilised to gain access to the extension thus there will be no harm to the historic fabric and, theoretically at least, the works will be entirely reversible.
22. On the basis that any extension to a Grade I listed building will cause some degree of harm, the court's responsibility is to balance the extent of such harm against the justification put forward by the petitioners. In this case, the balance clearly militates in favour of the grant of a faculty. Such a course finds favour with the DAC, the CBC, Historic England and the local planning authority.
23. I am not unsympathetic to the observations of the SPAB, expressed with concern, sincerity and moderation. I am, however, of the view that the petitioners have heeded the Society's principal concern by reducing the footprint and bulk of the extension. I do not consider it viable or wise to erect a separate facility in the car park. This is an isolated location and requiring visitors to go outside to make use of the lavatory is not appropriate, particularly in dark evenings or during adverse weather. If facilities are to be provided they should be accessed directly from the church, and providentially there is an existing doorway which can be used. For members of a congregation or concert-goers to queue for a single lavatory would be unseemly: the case for two is well made, one of which, quite properly, will be designed for use by those with a disability.
24. As to the additional storage space, I consider this to be an advantageous outfall of the re-design forced on the petitioners regarding the pitch of the roof. Clutter is as inimical to the appearance of historic buildings as invasive damage to fabric. What is proposed here is very sensible. I am not convinced that a smaller extension can be conceived, designed and delivered which will provide the parish with the facilities it needs whilst, in the words of Historic England, not causing 'undue harm to the setting of the church'. Both the axis and the bulk of this extension are, in my assessment, acceptable what is, in its current iteration, a sympathetic and impressive design. I am content that a faculty pass the seal.
25. This is an instance where a faculty will be granted in spite of, rather than because of, the presentation of the case by the petitioners and inspecting architect. I will not be this favourably disposed in the future and I wish to make a number of things clear:

*i. consultation*

The fact that planning permission has been granted notwithstanding objections from amenity societies does not mean that a faculty will automatically follow. Rule 9.3 of the Faculty Jurisdiction Rules 2015 provides that the consistory court is required to give special notice unless the consultee,

has previously been consulted on the works in question and has indicated that it has no objection or no comment to make. (emphasis added)

It follows: (a) that consultation must be on actual works proposed in the petition not some earlier iteration; (b) mere consultation is not enough – the consultee must have indicated to chancellor's satisfaction (whether expressly or by implication) that it has no objection or no comment to make; and (c) any intervening grant of planning permission does not invalidate

such comments which remain equally pertinent in the parallel jurisdiction exercised by the consistory court.

*ii. statements of significance and statements of need*

These are obligatory requirements, not optional extras.

*iii. burden of proof*

The burden of proof lies on the petitioners. The grant of planning permission does not constitute a pre-determination of the pending petition for a faculty. Petitioners have a tendency to invest time and energy in engaging with the DAC, whose function is merely advisory, and then dump a sheaf of disordered and incomplete papers on the registry in the hope that the DAC's Notification of Advice be rubber stamped, and expecting the chancellor to absorb a six year unexplained history by some form of juridical osmosis. It is the chancellor's decision which will prove determinative and time should be taken in presenting the petitioners' case in ordered and orderly form. Fortunately not every case is as bad as this – and many are immaculately presented – but the sooner this misapprehension is comprehensively disabused the better.

26. The costs of this petition must be borne by the petitioners: no works are to commence until those costs have been satisfied in full.

The Worshipful Mark Hill QC  
Chancellor of the Diocese of Chichester

10 October 2016