

Neutral citation number: [2017] ECC Swk 3

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF ST PETER'S CHURCH, PETERSHAM

AND IN THE MATTER OF PETITIONS BY REVD CANON TIM MARWOOD, CATHARINE BURDOCK AND BRIAN WILLMAN

## JUDGMENT

### Introduction

1. This is the petition of Revd Canon Tim Marwood, Catherine Burdock and Brian Willman, who respectively are the Vicar and Churchwardens of St Peter's Church, Petersham. It was received in the Registry on 23 February 2015. By it they seek a faculty for the construction of a parish room (by way of extension) to the south of the church.
2. At a meeting held on 26 March 2015, the PCC resolved to seek a faculty in respect of the proposals. The petition was subject to publicity in the usual way by way of notices: a notice on the notice board inside the church and a notice displayed in the porch leading to the principal door, each notice being displayed for a period of 28 days. Notice of the petition was also given on the Diocesan website. The advice of the DAC dated 15 December 2014 recommended the proposals to me. Planning permission was granted by Richmond LBC on 21 September 2016<sup>1</sup>.
3. There are two objections to the proposals: one by Mr Jonathan Kingan and one by Mr Richard and Mrs Joan Esterhuysen. Neither Mr Kingan nor Mr and Mrs Esterhuysen wished to become formal parties opponent to the petition but wish me to take their objection into account in reaching my decision<sup>2</sup>.
4. I deferred my consideration of the petition until after the grant of planning permission. It is likely that I would have done this in event, but it seemed particularly appropriate in the light of the objections before me. Both Mr Kingan and Mr and Mrs Esterhuysen were objectors to the grant of planning permission.
5. I visited the church on 18 November 2016.

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<sup>1</sup> Richmond LBC has also granted listed building consent. On the face of it, the proposals benefit from the ecclesiastical exemption and there was no need for such consent to be granted.

<sup>2</sup> Mr Kingan's objection was out of time. It appears that he did not observe the notice (which in the usual way in the Diocese of Southwark was coloured yellow) in the church porch. I do not think that it would be appropriate to exclude his representations as being out of time. No prejudice has been caused to the Petitioners; and I am satisfied that Mr Kingan would have objected had he observed the notice. On the other hand, I am satisfied that there was nothing defective in the publication of the notices by the Petitioners. I note in this context also that this was a proposal which was subject to publicity in respect of the grant of planning permission. (I do appreciate that Mr Kingan has concerns about the extent of the consultation exercise carried out by the local planning authority. Nonetheless he was personally aware of the planning application and the local planning authority must be taken to have some appreciation of what is the appropriate publicity in respect of an application).

## **The facts**

6. St Peter's Church, Petersham will be familiar to many people, described in Pevsner<sup>3</sup> as *a church of uncommon charm*. It is a small church, about a mile from the centre of Richmond, across a water meadow beside the River Thames. It is listed Grade II\* and lies within the Petersham Conservation Area. Petersham dates back to Domesday Book and the oldest part of present church building to 1266. It contains significant work from each century from the sixteenth to the nineteenth. This of course is not untypical of an historic church but the outcome is decidedly untypical: the interior has never been "tidied up". Thus the historic east end no longer provides the liturgical focus and the church is furnished with box pews. In the event the church is interesting and attractive. It also has a pipe organ (installed in 2009). The churchyard is a pleasant open space and contains memorials to two famous navigators, Captain George Vancouver and Rear Admiral Lidgbird Ball.
7. Turning what might in other circumstances be disadvantages to advantages and building on a musical tradition, the Church has a small congregation which is growing. Canon Marwood, the churchwardens and the PCC want to provide better facilities – both for the existing congregation, to encourage the growth of the congregation and to provide better community facilities in Petersham. The proposals have general although not universal support.

## **The Proposals**

8. It is proposed to create a new doorway in the south transept. This will provide access to a short glazed link to a church room, which will be built in the churchyard. The room will contain a small kitchen for refreshments and two WCs (one for those whose mobility is impaired which will also contain baby changing facilities). The room will be glazed along its elevation to the south side of the church, and the elevation to the east (to the churchyard) is proposed to contain a pamment glazing. The room will have a sedum (that is, green) roof. It will be built on piles so that it will not be necessary to disturb any burials, although it will be necessary to relocate a number of memorials within the churchyard. The southern elevation of the room will be hard up against the wall of the churchyard, a party wall which forms the northern elevation of Mr and Mrs Esterhuysen's house.

## **The Need**

9. The reasons for wanting to build a parish room extension to the church are familiar ones. There is no very conveniently accessible WC in the church. Refreshments after the service happen in an *ad hoc* way in the body of the church, which is not well suited for this. There are limited facilities for a Sunday School<sup>4</sup>. Church hall facilities on site generally would enable the church better to be used in conjunction with social activities; the room would facilitate community activity on the church site which will encourage members of the community who are not members of the church to come to the church.

## **The Objections**

10. Mr Kingan has four objections to the proposal.

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<sup>3</sup> Ie *The Buildings of England: London 2 (South)* by Bridget Cherry and Nikolaus Pevsner (1983): see p514,

<sup>4</sup> A room at the foot of the tower has some scope for providing facilities to enable children to be in the church with their parents while enjoying separate activities for part of the time.

11. First, he objects to the design of the new building. He says that it will *block off the southern aspect of the church with a brick rectangle rather than an architecturally attractive extension*. He says that he would in fact support the construction of a sensitive new building that *could be looked on by future generations as an enhancement* but he does not consider that what is proposed can be so regarded. Second, he considers that there will be a loss of amenity to the churchyard. Third, he is concerned that noise will be transmitted from the church to the neighbouring property. Fourth, he considers that other options to meet the parish's requirements have not been explored.
12. Mr and Mrs Esterhuysen have written to the Court to say that they **strongly** object (in their letter, they emphasise the word *strongly*). They, like Mr Kingan, consider the proposal to be detrimental to the Conservation Area. They are concerned that their security will be reduced by virtue of a flat roof being installed next to their property. They do not want the party wall which they share with the churchyard (and to which their kitchen is attached) to be rebuilt. They are concerned that the value of their house will be reduced

### Consideration

13. No-one in the material that I have seen suggests that the new building will be an aesthetic improvement or enhancement of the existing building and it seems to me that, from an aesthetic point of view, it is likely the ideal course would be to make no changes to the existing building or its setting (that is, not to build an extension). I think that it is likely to be very difficult to design a new building that positively enhances the existing one. As it is, it is evident that the concern of the architect (following the guidance of Historic England and the local planning authority) has been to seek to ensure that the new building respects the existing one and has the most limited impact possible. The siting has been selected so that the new building will not feature in significant views and will, so far as possible, be "tucked away" at what may be considered the rear of the building (Historic England and the local planning authority will not contemplate an extension anywhere else). Further, its height has been kept as low as possible. The result is that, if it does not positively enhance the existing building and the Conservation Area in which it sits, it may be said essentially to preserve it.
14. I think that, to a degree, an extension of the existing building into the churchyard, even on the basis as described above, does result in harm to the existing building, However I consider that such aesthetic harm will be limited. I think that this view reflects that of the DAC, which recommended the proposals to me. It also reflects that of the local planning authority, which would not have granted planning permission if it had taken a different view. For its part, English Heritage (now Historic England) considered that the "modest extension" was acceptable. Finally I note that the Church Buildings Council considered that the proposal represented the best option for providing the new facilities and considered that it would be a modest building situated to the south where the impact of the sensitive context would be much reduced<sup>5</sup>.
15. In terms of the loss of amenity of the churchyard, I think that, insofar as one can separate this from the aesthetic concern as regards the building itself, there would be limited loss of amenity. I think that the focus of the churchyard is on the other parts of it; in any event, it is only a small part of it that is affected by the proposals.

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<sup>5</sup> It seems that the Society for the Protection of Ancient Buildings did not wish to comment.

16. From the perspective of “need”, I think that the Petitioners’ proposals are intrinsically reasonable and would provide public benefit which could not otherwise be secured. The Petitioners would ideally like a bigger extension on the eastern side of the church. I think that this has properly been discounted. A smaller extension on the same site would not meet the need. It sound as if Mr Kingan would prefer something less permanent, since he objects to a brick/glass/concrete building. This might have had the benefit of being “reversible” (in theory) but, on the basis that there is a need, it would be permanent in practice and likely to be aesthetically unsatisfactory. I note that neither the DAC, the local planning authority, Historic England nor the Church Buildings Council have suggested that there are other possible options that should be pursued in preference to the present proposals.
17. In considering whether public benefit outweighs any harm to a listed building caused by a proposal, the Court of Arches suggests that I ask a series of questions, identified in *In re St Alkmund, Duffield*<sup>6</sup>. I set out these questions below, together with my answers<sup>7</sup>:

*(1) What is the special architectural interest of this church, and especially the character of that special interest?*

The exterior of the church contains work of a number of periods which form an attractive and charming combination in an attractive setting.

*(2) What is the special historical interest of the church, and especially the character of that special interest?*

The exterior of the church contains work of a number of periods which and is both of intrinsic historic interest and also as illustrating the historical development of a building.

*(3) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?*

I consider that there would be some harm to the architectural significance of the building as described at paragraph 14 above. I do not think that its historical significance would be harmed.

*(4) If the answer to question (3) 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: see Peek v Trower (1881) 7 PD 21 , 26–28, and the review of the case law by Bursell QC, Ch in In re St Mary's Churchyard, White Waltham (No 2) [2010] Fam 146, para 11. Questions 3, 4 and 5 do not arise.*

The answer to question (3) is not “No”.

*(5) If the answer to question (3) is “yes”, how serious would the harm be?*

Although significant, I do not think that that the harm can be described as intrinsically serious.

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<sup>6</sup> [2013] Fam 158.

<sup>7</sup> There may be cases where it is necessary to consider the questions in relation to both the interior and exterior of the building. In *In re St Alkmund, Duffield* itself it was only necessary to consider the interior of the building. In the present case it is the exterior of the building that is relevant.

*(6) How clear and convincing is the justification for carrying out the proposals?*

I think that there is a clear and convincing justification for carrying out the proposals as set out at paragraph 9 above and considered at paragraph 16 above.

*(7) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see In re St Luke the Evangelist, Maidstone [1995] Fam 1, 8), 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 I or II\*, where serious harm should only exceptionally be allowed.*

I give weight to the strong presumption against proposals which will adversely affect the special character of a listed building. I do not think that the further presumption arising in respect of serious harm to a Grade II\* building arises<sup>8</sup>. Nonetheless I am clear that the public benefit arising outweighs that harm. My view on this matter co-incides with that of Historic England, the local planning authority, the DAC and the CBC.

18. I fully understand that Mr and Mrs Esterhuysen will be concerned about any proposal which they consider has the potential to reduce the security of their property. Nonetheless that concern was not considered to be of sufficient weight to amount to a reason for refusing planning permission. The aspiration of the Petitioners is to improve the security of the church building and the churchyard; and this does not seem unrealistic. More specifically, the Petitioners intend to install CCTV. Its presence will act both as a deterrent and, if there are any problems, help identify anyone doing things which they should not. If there are any further practical steps that could be taken so that the security of Mr and Mrs Esterhuysen's house is not reduced, I am sure that the Petitioners will want to assist. Mr and Mrs Esterhuysen have not taken a point about noise; and, although the amenity of neighbouring properties was a matter that was specifically considered by the local planning authority, it was not identified as giving rise to concern. I have no reason to think that noise will be a problem. Although there will need to be a party wall award, it is not envisaged that it will be necessary to rebuild the party wall.
19. No-one has objected because of the need to relocate the memorials. It seems to me that it is not ideal that the memorials will no longer mark the place where the remains of those whom they commemorate are buried. Nonetheless this disjunction comes about because it is not necessary to remove the remains themselves, which is a good feature of the scheme. I think that the need to move the memorials is a disadvantage of the scheme which is much outweighed by its significant benefits.
20. Finally I need to note a comment of the Church Buildings Council. On design grounds, the Council does not like the pamment screen on the eastern elevation of the extension and suggest that the security of the building can be achieved with toughened glass units. From a lay perspective, I have sympathy with the CBC's view. I also note its concern that the screen could

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<sup>8</sup> At paragraph 213 of my judgment in *In re St John Waterloo* [2017] ECC Swk 1 I consider the effect of the requirement not to permit serious harm to Grade I or Grade II\* building save exceptionally; a situation that does not arise in the present case.

potentially affect Mr and Mrs Esterhuysen's security. However despite the CBC's doubts about whether planning permission would be granted for this feature, planning permission has been granted.

21. I am going to leave the matter in this way. I shall ask the Petitioners to look again at this detail with the CBC's criticism and suggestion of an alternative in mind. It will be appropriate for Mr Cullum, the architect, to speak to Ms Emerson, the appropriate officer of the CBC. It may be that, on reflection, the Petitioners remain unpersuaded and they might also persuade the CBC of the merits of their view. Alternatively, the process could be the other way around. I take this approach because, against the background of the grant of planning permission, it seems inappropriate to insist on a different treatment of the eastern elevation.

### **Determination**

22. I direct that a faculty should issue. Before the works are begun, a scheme of appropriate archaeological investigation is to be agreed with the DAC (or failing agreement, as determined by the Court) and the works are to be carried out in accordance with that scheme. The work affecting the fabric of the existing church shall be monitored to record any surviving ancient fabric and any re-used decorative architectural material that survives shall be identified, recorded and salvaged. This is in order to assist an understanding of the architecture of the earlier phases of the building. The work is to be completed to the reasonable satisfaction of the Church's Inspecting Architect

### **Concluding observations**

23. It is always unfortunate when neighbours disagree about a development which one or other of them proposes – a situation that often arises in the secular context. I know also that this can leave residual bad feeling. It would be particularly unfortunate were such a situation to arise in the present case, where the developer is the church. I hope that it does not sound like a pious platitude if I express the hope that Mr and Mrs Esterhuysen find that, in the event, the extension to the church is not as objectionable as they now fear and that it does not impair their relations with the Church. However this may be, I hope that they will appreciate that their concerns have been taken seriously.
24. It has taken a long while to prepare this scheme and to obtain permission for it and I am sure that the Petitioners will, at times, have found frustrating the length of time that it has taken, However I hope that they will recognise that the process seeks to achieve the very best for their building, which I know they value as something very special. It also seeks to achieve the very best from the point of view of the mission of the church, which of course lies at the heart of their proposal. I hope that the new church room is a great success.

PHILIP PETCHEY  
Chancellor

3 April 2017