

**Re: ST HELEN, STAPLEFORD  
EXTENSION OF CHURCH**

**JUDGMENT AND  
DIRECTION TO ISSUE FACULTY**

The Proposals

1. By a petition received by the registry on 26 November 2015 the petitioners seek a faculty to build an annex to St Helen's Church Stapleford. The petitioners are The Rev'd Peter Huxtable, vicar, and Mrs Elizabeth Vila and Mrs Nicola Daykin, the churchwardens.
2. The annex is to be sited to the north of the present building, connected via link corridor through a new opening in the north wall. The opening will make use of an existing window at the west end of the north aisle. The extension will include toilets, a kitchen and a community room/classroom. An enclosed courtyard, with the covered walkway on one side of it, will fill the space between the existing church and the proposed new room. The application included plans drawn up by Peart Bradley Architects of 12 Regent Street, Nottingham NG1 5BQ.

The Church

3. St Helen's Stapleford is a Grade II\* listed church dating back to the mid 13<sup>th</sup> century. It is in the Church Street Conservation Area within Stapleford and has a Saxon Cross in its churchyard. The churchyard was closed to burials by Order in Council in 1881. A faculty dated 5<sup>th</sup> February 1952 permitted all headstones to be removed to the perimeter of the churchyard.
4. The Statement of Significance confirms that this is an ancient place of worship, with an established church at the time of the Domesday book. The current building, whilst dating back to c.1250 has been altered on many occasions. The spire and tower parapets were added in the 15<sup>th</sup> century. The clerestory windows were added in the 16<sup>th</sup> century. A suspended ceiling and 'horsebox' pews were added in 1784.
5. The building was substantially re-ordered in 1870s, when the Chancel was largely rebuilt, the north aisle extended, the 18<sup>th</sup> century pews removed and

replaced with pine pews, and an organ loft and vestry were added. The north wall through which the new doorway is proposed was built at this time.

6. In the 20<sup>th</sup> century change continued. A World War One memorial chapel was added in 1923 and in 2008 another re-ordering took place with a new stone floor, under floor heating, the removal of pews and replacement with chairs and new glass doors to replace the tower arch screen.

#### Impact of the proposed extension on the Church and Churchyard.

7. The impact upon the interior of the church whilst significant is limited, in that an existing window will be transformed into a door. The wall and window in question are of Victorian construction as identified above.
8. The external impact will be much more significant. An additional building will be created to the north side of the existing building. The new building will have approximately one quarter of the footprint of the existing church, and it will be attached to the existing church by means of a covered walkway of approximately the same length as the width of the new building.
9. This additional building is lower than the existing church building, roughly half the height of the main nave and three quarters of the height of the side aisles.
10. The visual impact of this new building is limited from some directions. From the main entrance to the churchyard from the south east it will not be seen. From the southwest entrance to the churchyard it will be visible but partially obscured by the 20<sup>th</sup> century church hall. It will be clearly visible from the west end entrance to the church itself.
11. There will be some impact upon the trees in the churchyard, and there may be some impact on ancient graves dating from before the churchyard was closed in 1881.

#### Parish support

12. These proposals are supported by the PCC and wider parish community. The PCC decision on 23<sup>rd</sup> November 2015 to apply for a faculty for the proposed works was unanimous. This followed significant work identifying the needs of the worshipping community and wider parish and the consideration of the various options set out in the "Options Appraisal" document dated 10<sup>th</sup> September 2014.
13. Formal public notice was given between 10<sup>th</sup> February and 9<sup>th</sup> March 2016 and no objections were received.

14. Prior to the formal notice the church has made efforts to communicate their plan, including a detailed glossy brochure entitled "A Brand New Community Annex at St Helen's Church, Stapleford" dated October 2015. This set out the needs, the vision, the plans, the funding and the community support.
15. Attached to the statement of needs were nine letters of support from a range of people, including the leaders of groups using the existing facilities and local dignitaries such as the mayor and MP.

#### Planning Permission

16. Broxtowe Borough Council granted planning permission for these proposals on 25<sup>th</sup> March 2015.
17. This is significant not only because it is necessary for the proposed building to be lawful, even with the grant of a faculty, but also because English Heritage (as they then were) objected to the proposals by letter dated 29<sup>th</sup> October 2014 and recommended that planning permission was refused.

#### Third Party Views

18. Church Buildings Council On 2.4.16 I directed that the advice of the CBC should be sought. They visited the church on 14<sup>th</sup> June 2016. Their letter of 15<sup>th</sup> June 2016 expresses support for the proposals stating, "The Council was convinced that a good case had been made for the proposed extension. Although it will cause some harm to the listed building it agreed that the benefits of the proposals were sufficient justification." This was despite an expression of regret that they had not been consulted earlier in the process.
19. The CBC recommended that an archaeological strategy be in place in the light of the likelihood of the disturbance of sites of Christian burial. They further recommended that there is an assessment of the significance of the trees in the churchyard and the impact upon them of the building works.
20. An Arboricultural Survey Report was accordingly obtained by the petitioners and I have a copy of it before me.
21. Victorian Society Also on 2.4.16 I directed that the Victorian Society be given special notice of the petition. This was because the wall through which the door was to be made was Victorian. However, they indicated via email dated 23<sup>rd</sup> May 2016 that they were content to defer to the views of the Society for the Protection of Ancient Buildings.
22. Society for the Protection of Ancient Buildings. SPAG were also given special notice pursuant to my direction of 2.4.16. They have not responded.

23. Heritage England English Heritage (as they then were) were consulted at an early stage in respect of these proposals and object to them. The letter from Ellis Scott to Jonathan Pickett of the DAC dated 24<sup>th</sup> January 2014 identified the following objections:
- a. He was convinced by the need for toilet but considered it should be accommodated within the main building.
  - b. He did not accept the need for the new community building as (i) there was a kitchen in the church (ii) the church space is flexible and (iii) there is an existing church hall that could be adapted.
  - c. If further space is required the extension should be in the form of an additional aisle, built of stone and of traditional ecclesiastical design and does not extend beyond the alignment of the existing buttressing.
24. In his letter dated 29<sup>th</sup> October 2015 to Mr Thompson of Broxtowe Borough Council Ellis Scott articulated the following objections to planning permission be granted for the scheme.
- a. The extension is harmful to the significance of the Grade II\* listed church.
  - b. The extension is not justified under the NPPF
  - c. The options appraisal document does not thoroughly explore and demonstrate the impact of all options on the significance of the church and achieving the needs of the community.
  - d. The design feature of the glazed link is at odds to the architectural form of the church and incongruous to the architectural, historic and aesthetic appearance of the church.
  - e. He sees no precedence [*precedent?*] for a cloister type arrangement.
  - f. The proposed extension will compete with the west end, diminishing and detracting from its architectural prominence.
25. In my direction of 2.4.16 I directed that Historic England also be given special notice of the petition in light of their known objections.
26. On 19<sup>th</sup> October 2016 Historic England wrote to confirm they did not wish to become a party opponent, and were content for me to take their written representations set out above into account and give them due weight. I have accordingly dealt with this matter on an unopposed basis, giving due weight to the concerns raised by Historic England.

The petitioner's case for the need for the proposed extension is as follows

27. First, the church needs proper toilet facilities. There are currently no toilet facilities in the main church building. The only toilets are in the old church hall, which is down a steep gradient in a separate building with no protection from the elements between it and the church. It is not a practical solution to

the needs of either the regular congregation, or visitors attending events or clubs at St Helens.

28. Second, the church needs an extra space including better kitchen facilities to meet the needs of its users, both congregation and visitors. It needs a preparation area for large services and drama productions, a post-service (and other events) hospitality area. It also has sufficient activities and events taking place that an extra meeting room is needed, in addition to the body of the church and the old church hall. For example a crèche space, the old church hall being currently full to capacity with older children's Sunday School groups.

#### The legal test to be applied

29. The test to be applied in a case such as this was set out by the Court of the Arches in *Re St Alkmund, Duffield* [2013] Fam 158 namely:
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 (see *Peek v Trower* (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in *In re St Mary's, White Waltham (No 2)* [2010] PTSR 1689 at para 11). 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 (see *St Luke, Maidstone* at p.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 2\*, where serious harm should only exceptionally be allowed.
30. In applying that test to this case I make the following determinations:
31. First, the proposals will result in harm to the significance of the church as a building of special architectural or historic interest. As set out above, this is a

Grade II\* listed building of although I have been unable to find its listing page on the Historic England website. All grade II\* buildings however, are particularly important buildings of more than special interest. The Anglo-Saxon cross and 19<sup>th</sup> Century gates and gate piers in the churchyard have their own separate listings.

32. This new extension will be a sizeable modern addition to an historic building. It will substantially change the footprint of the church building. Ellis Scott of English Heritage (as it then was) claims in his letter dated 29.10.14 that the harm will be as follows:
  - a. The design feature of the glazed link is at odds to the architectural form of the church and incongruous to the architectural, historic and aesthetic appearance of the church.
  - b. He sees no precedence [*precedent?*] for a cloister type arrangement.
  - c. The proposed extension will compete with the west end, diminishing and detracting from its architectural prominence.
  
33. It is clear both from these objections and my own consideration of the plans that the harm to the significance of the historic church itself is limited. Whilst turning an existing window into a door will have an impact, it will not substantially harm the significance of the building itself. Further such impact is mitigated by the fact that the wall in which the door is to be created is a Victorian addition to a Mediaeval Church.
  
34. The concern from Historic England is in the impact on the setting of the church, by the addition of a substantial extension in a modern style. It is certainly the case that the modern building will differ from the style of the historic building. However the incongruity complained of by Historic England is a result of the new building being obviously modern, rather than aping the style of previous years. In my view, whilst a modern building does harm the significance of the building, being able to clearly read what part of a church is ancient and which a modern addition, is an advantage to the legibility of a complex building that has been altered many times over the centuries. Further, the style of the building has been designed so as not to draw too much focus away from the historic building. It is lower in height than either side aisle (themselves of differing heights) and very much lower than the main nave. The glazed covered walkway serves to separate the two buildings, further reducing the impact of the new one upon the historic one.
  
35. Again Historic England are correct that there is no precedent for a covered walkway or cloister arrangement previously on this site. However, the cloister, or court is a recognizable feature of church architecture, both ancient and modern. In this case the need for the walkway is due to the sensible desire to separate the modern building from the ancient one to preserve the historic outline of the ancient church, whilst providing necessary and appropriate facilities for modern users of the building. Provide the

proposed cloister / courtyard garden is properly looked after and kept well tended it is likely to be an attractive addition to the setting of the church. That will also mitigate some of the harm to the significance of the building by the proposals.

36. It is also correct for Heritage England to raise the fact that the new building will compete with the historic one, and that that issue is most marked on the West elevation. However, again, in my judgment that is well mitigated by the walkway that provides visible distance between the new building and the historic one. It is also mitigated by the fact that the differing heights of the two historic side aisles is even more marked on the Western elevation than it is on the Eastern.
37. Therefore, in my judgment whilst the impact on the significance of St Helens as building of historical and architectural importance is considerable, the design and the nature of the historic building itself go some way towards mitigating this.

#### Other options to achieve the parish's objectives

38. Part of the Ellis Scott's concern is that he believes that the parish can obtain their objectives in ways that cause less damage to the significance of the building. He suggests that toilet facilities could be contained within the historic building and that the existing kitchen facilities within the church are sufficient. He also suggests that the existing church hall could be extended to meet the parish's needs. Finally he also suggested that an extension on the north side could be made that was attached to the existing building, rather than linked via a walkway and cloister/courtyard.
39. The petitioners have considered these options in their document dated 10.9.14 entitled "Options Appraisal". In it they consider siting toilets within the main building and identify that this is problematic. The loss of church space that would be taken up by the toilet would be undesirable as all the space is already fully used. I accept this view and note that as a church whose congregation is currently growing numerically, I agree that it would not be wise to reduce the available space within the main church that is used for services and other events.
40. The petitioners also considered extending the existing church hall, but came to the conclusion that the space that could be gained by so doing would be small and impracticable. This option also did not resolve the issue of not having properly accessible toilet facilities for church users. I agree with that assessment.
41. The petitioners also consider an extension for toilets only or toilets and a hall on the south side of the church, but concluded that such an extension would

be very much more visible and would be more damaging to the significance of the building. Again, I agree with that assessment.

42. The petitioners finally considered a full sized extension adjoining the church, rather than with the covered walkway. They considered that it had the difficulties of such an approach would include: the new building covering the windows in the north wall reducing the light internally, or a greater change to the existing by the removal of the north wall and its replacement with a glass wall. However, they also identified that the roof of any such extension would have to start higher than the existing windows and slope down at a fairly shallow angle to provide 6m width of usable space. This would be a large modern extension fully grafted onto the historic building but would be visually ugly and out of proportion to the rest of the building. Again I agree.
43. Therefore it seems to me that the only option is either to approve the proposed extension as designed, or to refuse it. That will depend on whether the petitioners can demonstrate sufficient public benefit for the extension that justifies the harm to the significance of the building that I have identified that the extension will cause.

How clear and convincing is the justification for the proposed extension?

44. St Helen's is a growing church. Their regular Sunday attendance increased by 40% in the three years between 2010 and 2013. They are a church that is closely involved in their local community hosting civic services, regular community groups, school projects, exhibitions and concerts and a wide range of church services including Messy Church and Café Church in addition to more regular services.
45. A well used building needs proper on-site toilet facilities. The current arrangements are not at all satisfactory, and 60 metre walk to a separate building in the open down a steep incline does not meet that need at all.
46. The need for extra space is also well made out. Space is hired from third parties for a regular church activities (Pathfinder Group). Space is needed for crèche facilities. A relaxed space with audio visual and internet facilities is need for the teenager group. 'Backstage' space is needed for plays and concerts, as well as robing space for dignitaries etc. The need for private space for counselling, school project work, training events, and courses is also made out. There is wide community support for the provision of this extra space.
47. I have no hesitation in finding that a good case has been made for the proposed extension and that the public benefits of the proposals were sufficient justification, despite the harm to the significance of the listed building. I note my view accords with that of the Church Buildings Council.

### Appropriate Conditions

48. The CBC also recommended that two matters are given proper attention, prior to granting of a faculty, or as conditions to that faculty, namely (1) that there is an archaeological strategy in place because it is highly likely that the building work will disturb ancient burials and (2) that an appropriate assessment of the significance of the trees is undertaken. I agree that these are necessary and appropriate conditions.
49. To deal with the first of these concerns I will make conditions for an archaeological watching brief (to be approved by the DAC) and for the discreet and reverent reburial at the direction of the incumbent of any human remains disturbed by building works.
50. In respect of the second of these, the parish has already obtained an Arboricultural Survey Report dated 6.9.16 by Tersus Environment and Design. This report concludes, "Subject to the recommendations of this report being observed and implemented, it is considered the development proposals put forward can be accommodated alongside the site's existing tree stock without any need for modification." Therefore this issue can also be dealt with by way of condition to the faculty to observe the recommendations contained in the report.
51. The DAC have also recommended other conditions relating to (1) building regulations approval (2) electrical work to be undertaken by an approved registered contractor (3) consideration of the use of random coursing in the stone work (4) consideration of using NHL 2 rather than NHL 5 or using Hot Lime (5) the method of excavation and (6) a proper archaeological investigation. I agree that each of these suggested conditions would be appropriate to ensure all is done properly and well in respect of this extension and I accordingly direct that such conditions be added to the grant of faculty.

### Conclusion

52. I therefore direct that a faculty is issued in the terms requested by the petition to last for the full two year period, subject to the conditions I will set out below.
53. Finally, I would be grateful if the petitioners could inform me, via the registry, when the extension is complete as I would very much like to see the building when it is finished.

### Conditions

1. That the petitioners obtain buildings regulations approval

2. All electrical work is to be undertaken by an approved contractor registered with The National Inspection Council for Electrical Installation Contracting (NICEIC), Electrical Contractor's Association (ECA) or The National Association of Professional Inspectors (NAPIT) in accordance with the latest edition of IEE regulations.
3. That the petitioners consider the use of random coursing for the stonework; 3 heights of stone interspersed randomly to reflect the coursing of the adjacent church.
4. That the petitioners consider using NHL2 rather than NHL 5 or using Hot Lime.
5. That professional excavation is undertaken and that the selected contractors are CIFA registered and have previous experience of excavation within churchyards.
6. Either (a) the entire process of 'digging out' is contracted to professional archaeologists or (b) an evaluation excavation is undertaken by them first to determine what level of archaeological intervention is required.
7. A proper programme of archaeological investigation is undertaken with a written scheme that has been approved by the DAC Archaeological Advisor.
8. Any human remains that are disturbed during the works are discretely and reverently exhumed and reburied elsewhere in the churchyard under the direction of the Vicar the Rev'd Peter Huxtable.
9. The recommendations contained in the Arboricultural Survey Report dated 6.9.16 by Tersus Environmental Design are complied with.

JACQUELINE HUMPHREYS  
DEPUTY CHANCELLOR  
14.11.16