

Re St George, Tombland

Judgment

1. On 28 October 2009, pursuant to a decision of the Chancellor of the Diocese, a faculty was issued for the installation of two heritage interpretation panels on the perimeter wall of the Church of St George, Tombland in Norwich city centre. The petitioners were the Churchwardens and Priest in Charge and the application was supported by the DAC. Advertising consent for the installation had been granted to Norwich Heritage Economic and Regeneration Trust ('HEART') by Norwich City Council on 19 August 2009. The panels were installed and a certificate of completion was filed at the Registry dated 9 May 2010.
1. As may be apparent from the dates of the Chancellor's faculty and of this judgment, the matter has a long and not altogether straightforward history. The matter first came before me in late September 2010 after it became clear that compliance with the public notice procedures under the Faculty Jurisdiction Rules 2000 had been challenged by some local residents who objected to the location of the panels. The Chancellor reviewed the matter on 21 July 2010 and decided to re-open and review the faculty. When it became clear that no consensual resolution was possible the Chancellor recused himself as he knows one of the objectors. The matter now falls to me for determination.

Background

2. The panels in question are part of a city-wide heritage-led regeneration initiative established by HEART. The initiative includes the installation of similar panels at the sites of the various fine medieval churches in Norwich City, of which St George, Tombland is one.
3. It is clear from the papers before me that the overall initiative was the subject of substantial consultation both in the local area around St George, Tombland and more widely within the city of Norwich. The initiative appears to have received almost universal support. The difficulty in this matter has arisen

because the consultation at that stage did not specify the precise location of the panels with which I am concerned. The advertising consent which was granted by Norwich City Council clearly involved a careful consideration of the location of the panels, but it appears that the procedures surrounding advertising consent do not require public notice to be given of the relevant location. Thus it is clear that the only mechanism by which public notice was to be given of the actual location of the proposed panels was that set down in the Faculty Jurisdiction Rules 2000 ('FJR').

4. Public notice of the faculty application was displayed at St George, Tombland between 16 August and 15 September 2009. The Certificate of Publication was signed by the Priest-in-Charge on 20 October and returned to the Registry. No objections had been received at the Registry during the public notice period and as such a faculty for the installation of the panels was issued shortly thereafter.

5. Rule 6(4) FJR requires that a public notice shall be displayed

“(i) inside the church on a notice board or in some other prominent position, and
(ii) on a notice board outside that church or in some other prominent position (whether on the outside of the church door or elsewhere) so that it is readily visible to the public.”

In the case of this petition the public notice was displayed both on a notice board inside the church and on a notice board outside the church. The external notice board used was positioned in the church porch which was, at times at least, behind locked gates. At such times it was not readily visible to the public.

6. I pause at this stage to note that it appears that the parish has used this location for the display of the public notice in relation to other previous faculty applications. It seems clear to me, and was indeed clear to the Chancellor at the time of his review on 21 July 2010, that this location is inadequate to satisfy the requirements of rule 6(4). It cannot be said that a location which is regularly locked to the public is “readily visible to the public”. In light of this I would urge to parish to identify and use an alternative location for the external display of the public notice in relation to any future faculty applications.

7. After the installation of the panels in May 2010 contact was

made with the Registry and the Archdeacon of Norwich by Ms Ann Page (on behalf of herself, her partner Professor Paul Binski and her next door neighbours, Mr Remy and Mrs Hannah Aquarone - 'the objectors') objecting to the panels. It is important to note at this early stage that there has never been any objection to the presence or content of the panels in question. The dispute simply relates to their location. The objectors had clearly been unaware of the proposed location of panels prior to their installation. They live in two listed terraced properties next to St George's church and the panels are immediately apparent if one looks to the left from their front doors. The objectors expressly challenged the public notice procedures under the FJR given the location for the display of the external public notice as set out above.

8. In light of the concerns raised the Chancellor decided to re-open and review the faculty on 21 July 2010. He concluded that "clearly the [public] notices could not have been visible as required" and invited the objectors to set down their views and thereafter gave HEART the opportunity to respond. He encouraged those parties to seek a consensual resolution to the problem and made clear that without such agreement "the whole procedure must be re-started from the beginning" and that the matter would be passed to me for determination.
9. It is sufficient to state that the responses received from the objectors and HEART made it clear that no agreement had been reached in relation to an alternative location for the panels. As a result of this I directed that the public notice procedures under the FJR should be repeated with the external notice placed in an alternative adequate position. I gave the objectors the opportunity to file further information about suitable alternative locations for the panels together with photographs and details of those locations. I gave the petitioners, HEART and Norwich City Council the opportunity to respond to any information so filed by the objectors.
10. After further limited delay occasioned by difficulties in delivering paperwork to two of the objectors my directions were complied with and the papers returned to me on 12 December 2010. The further display of the public notice took place between 6 November and the 4 December 2010. No additional objections were received at the Registry in relation to the application, although five letters were received in support of the

panels¹. Each of these letters strongly supports the retention of the existing panels, although it is only the letter of Dr Nicholas Groves which expressly addresses (and supports) the current location of the panels.

11. On the basis that it has now been agreed by all parties that this matter shall be disposed of by way of written representations I have decided this matter with reference to and in consideration of the written representations and documentation submitted by the petitioners, the objectors, HEART and Norwich City Council. I have included in my consideration the photographs and letter filed by the petitioners on 16 December but dated 29 November 2010 despite such documentation being submitted out of time.

The application

12. As the Chancellor noted in his review of 21 July, in making the faculty application the parish were largely acting at the behest of HEART who may be seen as “the real applicants” in this case. The petitioners and HEART have clearly already satisfied the Chancellor of the necessity for signs *per se*. As I have already made plain, all persons and bodies concerned in this matter (including the objectors) support the installation of heritage interpretation panels at St George, Tombland.

13. The intention of the panels is to raise the profile and recognition of the Church with users of the city centre and thereby encourage higher visitor numbers and greater use of the church building. Such an end must be consistent with the duty of those concerned with the care and conservation of the church to have due regard to the role of the church as a local centre of worship and mission². I concur with the view that for St George’s Church to be the only medieval church in Norwich city centre without such panels would distort the perceived significance of the church in relation to the other medieval churches in Norwich City.

14. The issue for determination, therefore, is whether the panels should remain where they are or be moved to an alternative location. The petitioners’ (or rather HEART’s) case is that the

¹ These letters were received from Dr Nicholas Groves (honorary archivist to St George, Tombland, trustee of the Norwich Historic Churches Trust and author), Peter Bentley (Friends of Elm Hill), Shona Richards (Cathedral Quarter Steering Group), Julian F Foster (Central Norwich Citizens’ Forum) and Victoria Manthorpe (The Norwich Society).

² Care of Churches and Ecclesiastical Jurisdiction Measure 1991, s.1

current location was selected after consultation with and advice from local bodies and that it is the safest and most appropriate location.

The objections

15. The petitioners, who have clearly had significant involvement in the life of the church, accept that they were consulted about and in agreement with HEART's overall plans for the relevant area of Norwich. They do, however, object to the location of the panels having not been consulted about the same. I have fully in mind the correspondence and helpful plans and photographs provided by the objectors and hope that I do their objections no disservice by summarizing them thus:
 - a. The panels in their current location stand out in a detrimental way against the brick wall on which they stand in what is otherwise an important, coherent and harmonious vista;
 - b. The panels can (and have) become a target for graffiti;
 - c. The grant of advertising consent for the panels creates a precedent which may lead to the use of this area of wall as a permanent site for commercial advertising.

16. The objectors have proposed two alternative locations for the panels; firstly, further east along the churchyard wall towards Tombland on the area of wall near to the Edith Cavell public house (or possibly further along near the church's own noticeboards) ("the eastern location"); and secondly, on the church wall close to the north door in Tombland Alley ("the Tombland Alley location").

17. The PCC and petitioners are anxious not to lose the panels. Their position in relation to the location of the panels, however, seems to be one of relative neutrality. They were clearly content with the proposed location of the panels at the time of the faculty application but have also indicated to the objectors that they would be content if the boards were to be repositioned (although their letter of 29 November 2010 to the Registrar indicates that they are concerned that an alternative location would be "inferior").

18. In summary, HEART responds that the current location was agreed in consultation with and on the advice of the City Council planning department. It was chosen because it least impedes the view (and photography) of the church; it is the safest location

for pedestrians; it allows maximum access to the panels for the public/visitors (including those in wheelchairs or with pushchairs *etc.*); and it provides maximum exposure of the signs to the public. HEART argues that the design and quality of the panels means that they do not negatively affect the street scape and that the design and manufacture of the panels has been such as to ensure that any incidents of graffiti can be easily removed. An example of graffiti has been successfully removed and the panels have remained graffiti-free for some time since then.

19. HEART responds to the alternative locations proposed by the objectors as follows:

- a. In relation to the eastern location, HEART states that the width of the pavement at the wall near to the Edith Cavell pub is too narrow safely to position the panels at this point. It is said (and this is supported by the City Council) that if pedestrians stopped to read the signs then other pedestrians would be forced to walk into the road to avoid them and that this would not be safe.
- b. In relation to the Tombland Alley location, HEART states that this location is inappropriate as it would be “out of sight to most visitors”³. It is suggested that such a location would undermine the purpose and effectiveness of the panels. The City Council agrees, stating that “the vast majority of pedestrians ... use [Princes Street] rather than Tombland Alley”⁴.

The decision

20. Having acknowledged above that the panels should remain at the church, I must now decide whether they should be relocated. I am mindful of the wealth of consistory court decisions which indicate that once planning permission has been granted in relation to a proposal then it is not for the consistory court to re-litigate matters such as the effect on views and traffic flow without a sound and compelling reason⁵. In my view this case does not fall within the parameters of these decisions. Here, advertising consent has been granted rather than planning permission. An application for advertising consent does not have the same public consultation process as that which must be completed for a planning permission application and as such it cannot be said that matters such as the effect on views and

³ See their letter to the Registry dated 1 December 2010

⁴ See their letter to the Registry of 25 November 2010

⁵ For example, *Re St Peter and St Paul, Upper Teddington* [1991] 1 WLR 852 and *Re St Lawrence, Alvechurch* (2003) Ecc LJ 367.

traffic flow would be 're-litigated' were they to be considered afresh by the consistory court. In light of this I do not feel bound to follow the decision of the City Council in granting advertising consent. Nevertheless, it is clear that the granting of advertising consent, and the steps undertaken in determining its grant, are factors to which I should have regard in reaching a decision in this case.

21.I will consider each of the alternative locations in turn.

The current location

22.The objection to current location is, in essence, an aesthetic one. It is clear from the photographs that I have seen that the panels do intrude upon the view down Princes Street towards the church, although whether that intrusion is unduly detrimental to the view is a matter of aesthetic judgment. It is undoubtedly true that the green utilities box located next to the current panels is far more unsightly than the panels themselves. Clearly a degree of caution must be exercised in such matters in a location which is both in a conservation area and adjacent to a number of listed buildings of varying grades.

23.When considering the concern about the increased risk of graffiti created by the panels, I have in mind both the fact that the panels have already attracted the attention of graffiti 'artists' and the fact that it has already been possible for that graffiti to be removed successfully. Given the acceptance that the panels should remain in *some* location, I cannot accept that the risk of attracting graffiti is any greater in their current location than in any of the alternative suggested locations. In fact it seems more likely that the Tombland Alley location would present a greater risk of graffiti given the relatively lighter traffic flow (both pedestrian and vehicular) and less open location there.

The eastern location

24.The principal objection to the eastern location is that of safety due to the width of the pavement. It is said that in this location if someone were to stop to read the panels (as it must surely be hoped would happen often) then others would be forced to walk in the road to move past them, and that this would apply *a fortiori* where one of the parties was in a wheelchair or pushing a pushchair. It is clear from the measurements on the plans provided to me by the objectors that the pavement at the churchyard wall near the Edith Cavell pub is between 1.10

metres and 1.15 metres in width. In so far as it is suggested that the panels should be installed further up Princes Street near the church's own noticeboards, it is clear from the photographs provided by the objectors and my own review of the location on Street View⁶ that the pavement narrows still further towards that point such that the problem will only become more acute at this point.

25. Clearly, a pavement of this width would have the effect of requiring a pedestrian or wheelchair user to move into the road to pass someone who had stopped to read the panels (although given the decreasing width of the pavement it seems unlikely that a wheelchair user would choose to use that side of the road at all and so bypass the panels altogether)⁷. I note that in the area in question the road is for access only such that the traffic is said to be minimal, but there are a significant number of businesses and houses on Princes Street to which vehicular access for deliveries *etc.* would be necessary as well as a car park. This, coupled with the fact that the road is now a two-way street, means that there must be a real risk of injury if pedestrians or wheelchair users are required to step into the road by the placing of the panels in this location. This risk cannot be ignored.

The Tombland Alley location

26. The Tombland Alley location is said to be “out of sight to most visitors” and as such would limit the exposure and effectiveness of the panels. The evidence which I have seen suggests that this route is used mostly by locals but is not known of by many visitors to the city, at whom the panels are perhaps more particularly directed. This is perhaps unsurprising given the nature of the relatively narrow alleyway. I am told that there is plan to use the currently unused rear door of the church (which is adjacent to this location) as a disabled access to the church at some future point. What is clear from the geography of the church is that the panels in their current location are well placed to catch the attention of anyone using Tombland Alley as well as those passing down Princes Street, whereas the Tombland Alley location would only catch the attention of the former group.

⁶ <http://maps.google.com> (Search ‘Tombland Norwich’)

⁷ The Government’s Inclusive Mobility policy states that:

“A clear width of **2000mm** allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints **1500mm** could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another. The absolute minimum, where there is an obstacle, should be **1000mm** clear space.”

<http://www.dft.gov.uk/transportforyou/access/peti/inclusivemobility>

27. One further concern about the Tombland Alley location is that mentioned above. The objectors have raised concerns that the panels provide an attraction for graffiti 'artists'. It seems to me that the risk of graffiti appearing on the panels would be much greater if they were to be placed in Tombland Alley where the location is much less open than the current location.

Conclusion

28. In reaching my decision I have had due regard to all of the considerations set out above. Despite the fact that they have been in the current location for at least seven months the location of the panels has attracted no criticism (even with the further public notice period) save for that received from the objectors. In light of all of this I conclude that the panels should remain in their current position and that the faculty originally granted by the Chancellor in October 2009 shall stand.

29. As mentioned above, it is apparent from the papers that although the priest in charge and churchwardens are the petitioners in this matter that they have clearly made the application for and on behalf of HEART. In fact, it was HEART who made the application for advertising consent and in that application it was stated that HEART "...are applying for Faculty permission". In light of this the proper order as to costs is that HEART should pay the court and correspondence fees in this matter. I make that order unless within 14 days of service of this judgment upon them HEART make written representations as to why such an order should not be made. In accordance with usual practice, I make no order as to costs as between the parties.

Ruth Arlow
Deputy Chancellor

17 January 2011