

Neutral Citation number [2016] ECC Swk 5

IN THE CONSISTORY COURT OF THE
DIOCESE OF SOUTHWARK

IN THE MATTER OF WIMBLEDON, ST JOHN THE BAPTIST
AND IN THE MATTER OF THE DEMOLITION AND REPLACEMENT OF THE CHURCH HALL

JUDGMENT

1. INTRODUCTION

2. The Petitioners are the team vicar, the Reverend Bruce Rickards and the Churchwardens of the parish, Mr Sean Bulmer and Ms Anne Dudley Buchanan. They seek a Faculty to authorise the demolition of existing outbuildings and the construction of a single-storey modular hall in the church curtilage.
3. The cost of the works is estimated to be some £257,300. The majority of this considerable sum has already been raised from gifts/legacies and substantial grants. £10,000 remains to be found.
4. On 29 September 2015, the PCC unanimously resolved to seek a Faculty for the proposal. The Diocesan Advisory Committee has recommended that the Faculty be granted, subject to conditions designed to assist in the management of the proposed self-build contract. The DAC advised that the proposal is likely to affect the character of the church as a building of special architectural or historic interest, but is not likely to affect the archaeological importance of the church, or archaeological remains existing within the church or its curtilage. The DAC recommended that the Petitioners consult Historic England, the Local Planning Authority and the Victorian Society.
5. Full planning permission for the proposal was granted by the London Borough of Merton on 7 December 2015. The decision was taken by officers under delegated powers and there no report of their reasoning is publicly available. I infer from the adoption of this procedure that Historic England (which would have been a statutory consultee) did not object to the planning application.

6. Prior to submitting the Faculty Petition, the Petitioners' architect sought the views of Historic England and the Victorian Society. There has been no response from Historic England.
7. The Victorian Society responded on 12 January, saying that its Committee had considered the proposal. Its conclusions were that:

"The current extension is a 1960s pre-fabricated building which has served long past its expected life and as a result is in need of improvement. We therefore have no objection to the principle of a new extension.

However any proposed extension should be of commensurate quality to the historic church which it extends. The architectural style of the new extension is somewhat bland and non-descript and the appearance of the extension is not improved by the hard paving in front for car parking. The committee felt that this current extension was not of the same architectural quality of the listed building and felt it represented a missed opportunity to design something which would enhance the church."

8. THE PROJECT AND THE HISTORIC ENVIRONMENT

9. The current hall is a 1960s prefabricated building, which was intended to be temporary. It is well past its 25 year design life and has been patched and mended for ten years or more. The parish have concluded that it is no longer possible to eke out its useful existence. The building leaks and is in very poor condition.
10. Owing to the topography of this part of Wimbledon, the hall is some 1.5 to 2 metres lower than the church. It is directly accessible from Spencer Road to the east and from St John's Road to the north via a path and steep steps at the western end of the church. Cars are parked at the front of the hall, off Spencer Road. The hall does not connect directly to the historic part of the church, being linked to a brick box-like structure at the south eastern end of the church. Connection at this point would continue and internal arrangements would be improved by the installation of a permanent ramp for disabled access to replace the current temporary one, which gives access to a lower level church meeting room and disabled WC.
11. The church hall is not currently used for church activities but it is rented out for community activities including a nursery school, Guides and Brownies. Supporting material with the Petition explains that the hall is essential to the financial viability of the church.
12. The church of St John the Baptist is listed at Grade II. The description in the statutory list describes the building in the following terms:

"Church. 1875 by TG Jackson. Red brick, stone-dressings; pitched tiled roof to eaves. Late Gothic style. 5 bay nave; wide aisle to north only. No clerestory. Slightly lower chancel. Ogee arched entrance in north west porch with traceried gable. 2-light aisle window. Buttresses between bays. Tourelle and ogeed bellcote to south east of nave. 5-light reticulated traceried east window. Interior: barrel roof with king posts; pointed to chancel arch. Perpendicular timber rood screen; inlaid marble pulpit and font; inlaid timber lectern; altar to north aisle, with gilding and figured reliefs; reredos. Window by Morris & Co, 1926, to south side."
13. Both church and hall lie within the Wimbledon West Conservation Area, which comprises principally residential development evidencing the rapid expansion of Wimbledon in the Victorian era. In the Local Planning Authority's statutory Conservation Area character assessment, the existing hall is described as tending to "*detract from the setting of the church*".

14. The proposed structure is to be largely prefabricated on a steel frame which can then be erected on site. Three of the elevations are to be timber clad in a recessive grey/brown tone. The eastern elevation is proposed to be faced in brick, chosen to match the church building as closely as possible. The roof would be grey, its ridge height at the same level as existing. The new building would sit on much the same footprint as the existing hall, extending a little further west to accommodate new disabled and standard WCs, office and kitchen within the building. Car parking would be provided at the front (eastern) end of the building, as at present, with pedestrian access via a gently sloping path to the north of the parking spaces.

15. PRINCIPLES FOR ASSESSMENT

16. The Court of Arches in In re St John the Baptist, Penshurst (9 March 2015), has recently reaffirmed the approach which it set out in Duffield, St Alkmund [2012] Court of Arches (Derby) to be taken in the determination of Faculty Petitions affecting listed buildings. The Court said:

"20. Where works are proposed to a listed building, a balancing exercise has to be carried out, in respect of which this court gave guidance in Duffield para 87.

21. For those chancellors who would be assisted by a new framework of guidelines, the court suggested an approach of asking:

- "(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 character of a listed building....., will any resulting public benefit (including matters such as liturgical freedom, pastoral wellbeing, 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 to a building which is listed grade I or II*, where serious harm should only exceptionally be allowed".

22. We make four observations about these questions:

- (a) Question (1) cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church. That is why each of those matters was specifically addressed in Duffield paras 57-58, the court having already found in para 52(i) that "the chancellor fell into a material error in failing to identify what was the special character and historic interest of the church as a whole (including the appearance of the chancel) and then to consider whether

- there would be an overall adverse effect by reason of the proposed change".
- (b) In answering questions (1) and (3), the particular grading of the listed church is highly relevant, whether or not serious harm will be occasioned. That is why in Duffield para 56 the court's analysis of the effect on the character of the listed building referred to "the starting point...that this is a grade I listed building".
 - (c) In answering question (4), what matters are the elements which comprise the justification, including justification falling short of need or necessity (see Duffield paras 85-86)? That is why the document setting out the justification for the proposals is now described in rule 3.3(1)(b) of the FJR 2013 as a document "commonly known as a "statement of needs"" (italics added), in recognition that it is not confined to needs strictly so-called.
 - (d) Questions (1), (3) and (5) are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article."

17. CONSIDERATION UNDER DUFFIELD GUIDELINES

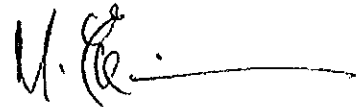
18. The church is predominantly constructed of brick. It is a strong, solid structure of imposing form and appearance relieved by more delicate masonry tracery on the main south door and the windows. It dwarfs the existing church hall, as a result of its vastly greater scale, grandeur, quality and higher ground level.
19. No direct physical link to the historic structure of the church is proposed. Therefore, the impact to its significance would derive solely from the effects of the proposed hall upon the setting of the listed building. Although the proposal is described in the Victorian Society's letter as an "extension" to the church, it is important to note that the only link is via an existing door into the box-like structure to the south west of the church which is not mentioned in the listing description as forming any part of Jackson's architectural plan. Moreover, I note, importantly, that the Victorian Society does not suggest that either the fabric or the setting of the listed building would be harmed by the proposal. The Society's point is, rather, that an opportunity to do something better has been missed.
20. In considering the Victorian Society's response, it is important to bear in mind the baseline. The existing hall is an unlisted building of no merit. The Society does not object to its removal in principle. It is noted above that the Local Planning Authority's Conservation Area Statement identifies the hall as detracting from the setting of the listed building. This conclusion is clearly justified and I regard it as important. The current hall is long past its design life and obviously in poor condition as a result. It is of extremely unattractive appearance, being comprised of what looks like a jumble of undistinguished materials coloured green, white and grey. Its only conceivable design virtue is its small size relative to the church.
21. The proposed hall would be of similar proportions to the existing building. In particular, it would be no taller than the current hall. Moreover, because it would occupy the same footprint, the new hall would continue to sit on ground which is substantially lower than most of the church building. These relative topographical positions appropriately emphasise the church's superior status, in accordance with the ecclesiological understanding of the Gothic Revival movement which finds expression in Jackson's design.
22. The proposed building is simple and considerably tidier than the existing structure. Its materials are likely to blend better with their surroundings than the existing green and white

colours. The proposed brick facing represents a deliberate effort to match the frontage with the church and would be a considerable enhancement compared to the existing situation.

23. I agree with the Society that, in an ideal world, one might have wished to see an architect designed building and the parking removed from the frontage. As to the latter, the site is constrained and there is nowhere else for cars to be accommodated. As to the former, the cost of the proposed building and associated works is not inconsiderable as it is – over £250,000. A bespoke building using higher quality materials would be even more expensive to construct. It is essential to the parish's financial viability to have a properly lettable building for the nursery school and other community activities. Keeping the mission and worship of the parish financially afloat is, of course, the best way of securing the continued use of the church for its original purpose and enabling the Petitioners and the congregation to continue to care for the fabric of the listed building. Supporting material to the Petition explains the difficulty of fund raising, even in an area of London which is, in many respects, affluent. I accept what is said in this regard. The Petitioners also explain that alternative schemes were considered and rejected for a variety of reasons, including impact to heritage assets.
24. Finally, under Duffield Question 1, I bear in mind that the Local Planning Authority has granted planning permission for the project. In the absence of cogent or convincing evidence to suggest that the decision to grant planning permission was wrong, I am entitled to, and do, assume that it was appropriately granted: see Re St Laurence Alvechurch (2003) 22 CCC 25, 7 Eccl LR 367.
25. Drawing all these factors together, I conclude that the proposals would not result in harm to the significance of the church as a building of special architectural or historic interest. Whilst it might have been acceptable or even preferable to have commissioned a specially designed building as a replacement, I accept that this was not feasible. The proposed building is unpretentious and functional. It would not compete with the listed church, but would bring slight enhancement by means of replacing a worn out, untidy, ugly and inappropriately coloured structure with one of neat, recessive appearance.
26. Duffield Questions 2 and 3 therefore do not arise.
27. Questions 4 and 5 can conveniently be considered together. S.1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 is relevant. It requires me, in the exercise of my functions, to have due regard to the role of a church as a local centre of worship and mission.
28. The existing hall has come to be used solely as a revenue-raising resource which helps to fund the mission and worship of the parish and the upkeep of the church building. That source of income is now threatened by the critical state of the current building. There are wider points of relevance too. The current structure is an eyesore and is not a suitable facility to offer to the community as a venue for activities such as the nursery school, Brownies and Guides. It projects a decrepit and substandard image which is, at the very least, associated with the church. The parish wishes to do better, and this aspiration is entirely appropriate.
29. Not only would a new building bring financial security, but it also offers the opportunity for it to be used for church functions, with consequent potential to build up the fellowship and outreach of the congregation.
30. All these social and mission concerns, in my judgment, amount to clear and convincing justification for carrying out the proposals and public benefit. I have already found that there is no harm to outweigh, but these considerations weigh in favour of the project in their own right.

31. CONCLUSIONS

32. I therefore propose to grant a Faculty to permit the proposed works, subject to standard twelve month time limit and insurance conditions and the conditions proposed by the DAC for supervising the design and build contract, as well as a financial phasing condition reflecting the fact that a considerable amount of the funding has yet to be raised.
33. As a matter of detail, I should point out that the plan which was stamped by the DAC carries a later revision number than those listed in Condition 3 of the planning permission. It may be, therefore, that an application should be made to the London Borough of Merton for approval of a minor non-material amendment to the planning permission.



MORAG ELLIS QC

Deputy Chancellor

24 March 2016