

**In the Consistory Court of the Diocese of Worcester**

**Archdeaconry of Dudley: Parish of Alvechurch St Laurence**

**Faculty petition 02-21 relating to new extension to the north of the church**

***Judgment***

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1. This petition relates to the construction of a church hall at St Laurence's Church, Alvechurch. The petitioners are the incumbent, the Revd David Martin, and the two churchwardens.
2. The proposals have been warmly supported by the Diocesan Advisory Committee and the national amenity societies, and have been granted planning permission by the local planning authority.
3. There were however a number of objections to the proposals, from people living in or near the parish. Mr Wilfrid English, submitted Particulars of Objection, and required that the matter be the subject of an oral hearing. Mrs Sally Smith submitted Particulars of Objection, although not within the statutory time limit, and requested that she be allowed to make oral representations at that hearing, and I acceded to that request.<sup>1</sup>
4. I accordingly held an oral hearing on 19<sup>th</sup> March 2003. The petitioners were represented by Michael King, of counsel, instructed by Carver Jones of Hereford, solicitors. He called four witnesses – David Martin, the Rector; Michael Reardon, the architect of the scheme; Gordon Griffiths, a director of a property company and chairman of the relevant PCC sub-committee; and Reuben Bellamy, a town planner working for the Halcrow Group. Mr English and Mrs Smith both appeared in person. I am grateful to all concerned for their assistance in ensuring the smooth running of the hearing. I also conducted an inspection of the church and the churchyard, accompanied by representatives of the parties, and, as requested, I inspected the view of the church from the north (Callow Hill Road).
5. A copy of the brief given to the architect by the parish was produced at the hearing, and I subsequently received a letter relating to that brief from Mr English, and a response to that letter from Mr Martin.
6. Mr and Mrs Symms also submitted Particulars of Objection, although not within the statutory time limit; the remaining objectors (Lt Cdr and Mrs Davenport, Mr Day, Mrs Parry, Mr Stanford, and Mr Wollaston) outlined in letters the basis for their concern, but did not submit formal Particulars of Objection. I have therefore taken into account the written representations of all of these, without the need for them to become formal objectors.<sup>2</sup>

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<sup>1</sup> In accordance with rule 32 of the Faculty Procedure Rules 2000.

## **The existing building**

7. The parish has provided a Statement of Significance, which summarises the history of the existing building and highlights its main features.
8. There has been a church on the site since Saxon times, and the village derives its name from Saint Aelfgythe, to whom the original church was dedicated. The oldest remaining feature is the south doorway arch, which dates from the 12<sup>th</sup> century but which was re-sited in the Victorian restoration. There is a significant tomb of 1350 in the north aisle. The tower was rebuilt in 1676, and contains bells dating from 1711 onwards.
9. Perhaps more significantly for present purposes, the nave and south aisle were rebuilt by William Butterfield in 1859-1861, and the stone and patterned brickwork introduced in his restoration is one of the most notable features of the present building. He introduced a new roof over the north aisle, which otherwise is essentially a survival from the 14<sup>th</sup> century. And the pews and choirstalls, many of the other fittings and furnishings, with the exception of parts of the earlier low chancel screen, and all of the stained glass, also date from that Victorian restoration. As a result of Butterfield's work, the overall appearance of the building is very much that of a Victorian church.
10. The building is at the top of a low hill, and is visible from a number of viewpoints, both close to and further away, but it is not particularly dominant in most of those views – due principally to the trees surrounding the churchyard.
11. The church is a listed building of Grade II\*. It is also in the Alvechurch Village Centre Conservation Area.

## **The proposed works**

### *The scope of the petition*

12. The PCC at its meeting on 24<sup>th</sup> July 2001 resolved to build the extension to the church in accordance with “the architect’s designs”. There is unfortunately no record as to what those designs were; but examination of the later drawings prepared by the architects, Michael Reardon & Associates, indicates that those that were in existence at that date were 02A, 04A, and 07A, and probably also 06, 08, 09, AD10, and AD11 (although the latter group are not dated).
13. The drawings considered by the DAC at its meeting on 22<sup>nd</sup> January 2002 were, principally, “Proposals Presentation Document S/ASL/01, and Drawings D31/02/A-H”. The former is the useful A3-sized booklet prepared by the architects, Michael Reardon & Associates. The drawings referred to are those by the architects, numbered 02C, 04A, 06, 07B<sup>3</sup>, 08, 09, AD10, and AD11. The petition, dated 7<sup>th</sup> March 2002, also states that the works to be authorised are “new extension to the church building in accordance with the proposals, Presentation Document S/ASL/01, and Drawings D31/02/A-H”.

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<sup>2</sup> In accordance with rule 16.

<sup>3</sup> That drawing refers to two revisions entitled “A”; more correctly the drawing considered by the DAC should therefore perhaps be entitled “07C”. Probably nothing much turns on this.

14. I was also shown a later version of drawing 07 (the site plan), Revision E, dated July 2002. This indicates the lessening of the number of parking spaces in the new car parking area, in order to provide greater protection to two of the churchyard trees. I note that the first drawing indicating the latter change (Revision C) was dated April 2002, and was therefore presumably amongst those that were approved by the planning authority. I note too that the schedule to the petition does not refer explicitly to the construction of the car park. However, that is clearly an essential part of the proposals, and is shown on drawing 07. Mr Griffiths also referred to Drawing 03 (foyer details).

15. In the light of the above, therefore, I have considered the proposal on the basis that it is:

“the construction of a new extension on the north side of the church building and a car park to the west, in accordance with

- (a) the (undated) Presentation Document by Michael Reardon & Associates, considered by the DAC at its meeting on 22<sup>nd</sup> January 2002, and
- (b) their drawings 02C, 03, 04A, 06, 07E, 08, 09, AD10, and AD11”.

#### *The proposal*

16. The new building proposed is a two-storey structure, boat-shaped in plan, attached at ground floor level to the north side of the north aisle of the existing church building. Access from the church will be through an existing blocked doorway; and some pews will need to be moved as a consequence. On the ground floor of the new building there will be a foyer, hall (capable of being divided into two smaller spaces), kitchen and toilet accommodation. The first floor, to which access will be gained by lift as well as stairs, will house a meeting room, office and store. Even though on the north side of the church, the new building will obtain some sunlight, partly because it comes significantly to the west of the north-west corner of the existing building, and partly because the main axis of the existing building is not in fact aligned due east-west.

17. The new building will be clad in red brick with buff sandstone bands, to match the materials of Butterfield’s church. The necessarily complex form of the roof, of tern-coated stainless steel weathering to give the appearance of lead, will to some extent disguise the fact that the new extension is a two-storey structure. The glass used in the “prow” will be 15mm laminated glass, curved to match the profile of the building. The link will also be glazed, to reduce problems of vandalism.

18. An area of new parking will be provided, in the copse at the western side of the churchyard, and access to it will be gained by a new drive to the existing turning circle at the south-west entrance.

#### *Other relevant matters*

19. It is thought that no graves will be disturbed by the construction of the proposed extension. However, two above-ground monuments are affected, and will have to be re-sited:

- (a) a headstone, commemorating Thomas Horton (d. 1823) and his son John (d. 1836); and
- (b) a tomb with partial iron railings, in memory of a number of members of the Moore family, who died at various dates between 1814 and 1919.

This aspect of the proposals was specifically advertised in the local press, but with no response.

20. A reasonably thorough evaluation of the site of the hall and the car park has been carried out on behalf of the church by the County Council Archaeological Service, including a desk-based assessment and two further reports based on sample fieldwork. The conclusion of that exercise is that, other than in relation to the two monuments mentioned above, the hall has foundations that are to be so located and designed that their construction is not expected to disturb any remains of archaeological significance. The construction of the new car park will similarly not disturb any significant remains.
21. The construction of the new hall necessarily involves making a very minor diversion to public footpath no 46, which runs from east to west across the churchyard. To that end, a public path diversion order<sup>4</sup> has been obtained from the District Council.

#### *Development on the Black Paddock*

22. The parish intends that the construction of the proposed extension to the church and the associated car park be funded by the sale for residential development of a plot of land to the south-east of the church known as the Black Paddock, off School Lane. The development of that land has been and still is strongly opposed by a number of those living in Alvechurch, including those who objected to the proposal presently before me. However, the proposed development of the Paddock was granted planning permission (subject to the finalisation of an agreement<sup>5</sup>) on 13<sup>th</sup> May 2002, along with the construction of the church hall and car park. Further, the use of some of the proceeds of the sale of the Black Paddock for the purposes of the building project was agreed by an order of the Charity Commissioners dated 13<sup>th</sup> February 2003, and the sale to a developer was completed on 7<sup>th</sup> March 2003.
23. In those circumstances, I consider that it would be inappropriate for me to consider the desirability or otherwise of the development of the Paddock. I merely note that the land has in fact been sold, so that funding will now be available for the construction of the hall and the car park.

### **Cases for the parties**

#### *The case for the petitioners*

24. The parish supplied with the petition a Statement of Needs. This contained the following explanation:
  1. “There are at present no modern toilet facilities at the church. This causes great problems for young children and the elderly, plus those who have travelled long distances to be present at baptisms, marriages and funerals, and those attending concerts in the church.
  2. There are no adequate facilities to enable children’s educational activities to take place either during the course of Sunday worship or during the week. We employ a full-time Children’s and Youth Worker, but she has no base from which to work.

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<sup>4</sup> Under section 257 of the Town and Country Planning Act 1990.

<sup>5</sup> Under section 106 of the 1990 Act.

3. There are no adequate catering facilities to enable refreshments to be served and fellowship to flourish after acts of worship or concerts in the church.
  4. There is no Parish Office where administration can be located and volunteers can contribute their skills and time.
  5. There is a lack of storage space for furniture, liturgical equipment, staging and education materials.
  6. There are no facilities for the disabled.
  7. There is parking for only 5 cars at present, and a car park is urgently needed to avoid obstructions to the public highway.
  8. The population of the parish is growing and is set to grow still further. All of the above needs are likely to be exacerbated in the years ahead.”
25. These matters were explained in greater detail in the Presentation Document, and were elaborated upon by Mr Martin, the Rector, in his evidence at the hearing. He referred, for example, to the harvest supper (catering for 70 people); the social evening on St George’s Day (120 people); a Family Service lunch; children’s parties; and weddings. However, he conceded that the last Alpha course (which involves the provision of a meal) had been in 1998. The numbers in the congregation remained roughly static, but he wanted to make better provision for ministry. The youth worker, too, needed a room to be able to work in Saturdays with youth and children. And there was no room for storage.
26. Mr Bellamy explained the planning background – in short, that Alvechurch is a large settlement (in the context of Bromsgrove District), and a thriving one; it is also set to grow further.
27. The parish had looked carefully at the possibility of constructing a separate building in the part of the churchyard now proposed as car park. It had rejected that partly as a matter of principle – as it would not be appropriate to separate the sacred and the secular. In addition, however, a separate building was felt to be impractical, particularly in relation to its use by children during services and its function of reducing congestion between the two morning services.
28. The parish had also considered over a number of years whether it could meet its needs by internal modifications to the building. However, it had reached the conclusion that only a linked extension could satisfy its present and future requirements. It had then considered an extension along the north side of the north aisle, but that too was rejected due to its impact on the existing fabric of the church and its likely effect on the amount of daylight reaching the church.
29. The architect’s original brief (produced in 1999) required a single-storey building of approximately 250 sq m; it stated that “the extension should be in a style true to its time, and relying for its cohesiveness on sympathetic and harmonious contrast rather than closeness of copy.” The brief also gave details of the expected use of the new facility for various purposes. The first design produced by the architect in response to that brief was a single-storey building of 275 sq m – which led to concern by English Heritage over the size of its footprint, and the number of graves that would be disturbed. As a result, a two-storey design was developed that had a footprint of 229 sq m and a total floor area of 349 sq m. The principal floor level would be the same as that within the church itself.

30. The final design was worked up in consultation with the DAC, English Heritage and the local planning authority – who required a building that would enhance the Grade II\* church, which in turn would necessitate (for example) the use of more costly materials. The architect worked on the basis that the new building should be architecturally distinct from the existing one; it should have some sunlight for at least part of the day; and its form should express the aspirations and confidence of the parish. The shape and orientation of the new building are thus derived from a simple diagram of sight lines from points within the churchyard, from the topography of the land, and the movement of the sun. The architect also drew a comparison with the funerary chapels clustering around the Royal Church at Stockholm.
31. The resolution of the PCC in July 2001 to build the extension to the church (and, presumably, by implication, the car park) was by a majority vote of 24 in favour, with 2 against. At the same meeting, the PCC resolved to sell the Black Paddock for residential development in order to finance the building of the extension, by a majority of 21 in favour, 4 against, with 1 abstention. Mr Martin maintained in answers to cross-examination (by Mr English) that that meeting of the PCC had lasted two hours; the architect had been present; there had been no other item on the agenda; and that there had been a time of questions, followed by silent prayer.
32. A consultation for church members was held in the church on Friday 2<sup>nd</sup> November 2001, with a public exhibition the following day, at which computer imaging, a model and plans were shown, and talks given by Mr Martin and Mr Reardon. Two schemes – the more traditional extension alongside the north aisle, and the “boat” proposal – were presented, with drawings and a model. A comments book was provided on Friday evening and all Saturday morning, and many members of the public recorded their views.
33. A flyer produced was distributed to everyone in the village – as with details of Christmas and Easter services – and announcements were made in services. Mr Martin conceded that the flyer had made no mention of the need to sell the Paddock to finance the project. Indeed, the church had decided not to publicise the development of the Paddock, but to leave that to the planners. In addition, notices had been put on the three boards in the churchyard. All the planning applications were advertised publicly. Mr Martin had contributed an article to *the Village* magazine. And a full display would be launched following the grant of a faculty.
34. The planning application for the new extension had attracted 47 letters in support, and 60 in opposition. However, the officers of the planning authority had recommended that it be granted planning permission – largely in the light of the significant support from the amenity bodies. Permission was thus duly granted on 13<sup>th</sup> May 2002. At the hearing, Mr King, in his closing submission on behalf of the petitioners, laid great stress on this fact; and he drew my attention to relevant decisions of other consistory courts<sup>6</sup>, which I consider further below.
35. Finally, Mr Martin noted that the churchyard at Alvechurch, at 4 acres (slightly over 1.6 hectares), is one of the largest in the Diocese; and the number of burials has dropped from 30 a year prior to 1960 to 5 a year since 2000.
36. Mr Griffiths explained that the capital cost of implementing the proposal, around £960,000, were to be wholly met from the proceeds of selling the Black Paddock. The cost of the furniture and fittings for the new building will be met from a public appeal. The running

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<sup>6</sup> *Re St Mary's King's Worthy* (1998) 5 Ecc LJ 133 and *Re St James, Stalmine* (2000) 6 Ecc LJ 81.

costs of the new hall, in the order of £4,800 p.a., would be “well within the ability of the Church’s finances”; it was also noted that there would be extra income arising from the use of the improved facilities. A neighbouring parish, Ipsley, generated around £5,000 from its hall – although Mr Martin and Mr English disagreed as to the relevance of the comparison with Ipsley.

*The responses to consultation*

37. The proposal was the subject of comments from all the relevant statutory consultees.
38. The Diocesan Advisory Committee (DAC) visited the church in December 2000, and subsequently. It considered the final proposals at its meeting on 22<sup>nd</sup> January 2002, and recommended them without any proviso, in a certificate dated 30<sup>th</sup> January 2002.
39. The Council for the Care of Churches (CCC), in a letter of 25<sup>th</sup> March 2002 following a site inspection, expressed minor reservations as to certain details of the scheme, in particular as the practicality of the plan form, which might prove a problem if the parish wanted more accommodation in the future. It also suggested that the north doorway be recorded, and that the memorial brass currently mounted there be suitably relocated. However, it concluded that:

“The Council [is] confident that the extension would be a building of distinction in its own right, and make a positive contribution to the church and its setting.”
40. English Heritage has been involved since the late 1990s in extensive discussions with the parish about possible extensions to the church, and more recently in discussions with the Petitioners’ architects about the present scheme. Its conclusion, in a letter of 6<sup>th</sup> August 2002, was that:

“English Heritage has no objection to either the principle or the design of the current submission. The proposed extension, while bold in composition and dramatic in relation to the historic church, is considered to be architecturally distinguished in its own right and not to compete with or detract from the listed church.”

It also suggested that rigorous conditions be imposed requiring the approval by the DAC of a number of matters of details – and helpfully volunteered that it would be pleased to advise further on these items, as the ultimate success of this scheme is likely to be very dependent on the quality of finishes and materials.
41. As to the proposed car park and access road, English Heritage (in a letter of 3<sup>rd</sup> April 2002 to the local planning authority) raised no objection, but suggested that they be surface dressed in bound gravel, and that the hedgerows around the perimeter of the site be reinforced, to assist in screening from various external vantage points.
42. The Victorian Society, in a letter of 28<sup>th</sup> January 2002, stated that:

“The Society finds the concept and planning of the new building to be appropriate in this context, and welcomes the architectural treatment as an interesting response to Butterfield’s structural polychromy”.
43. The Society for the Protection of Ancient Buildings (SPAB), in a letter of 6<sup>th</sup> February 2002, states that:

"The Society's Main Committee was shown the scheme yesterday, and members were appreciative of the bold modern design and its appropriate relationship to the Butterfield church. We are therefore pleased to be able to support the design which appears suitably worthy of the grade II\* church."

44. The Secretary of the Ancient Monuments Society stated that it was content with, indeed excited by, the proposal; "not a combination we can always rely on. I just hope it gets built."
45. As already noted, Bromsgrove District Council, the local planning authority, granted planning permission for these proposals, subject to conditions – I consider the latter at the end of this judgment. The report to the Council's planning committee records the views of its special architectural adviser (SAA) as follows, in relation to the hall proposal:

"Supporting documentation is noted. Agree that extension should be in a style true to its time. Concept of building is well explained. The fact the form of the extension is not conventional may alarm the more conservative, but this is no bad thing. Design reflects the boldness of approach adopted by Butterfield in his rebuilding in 1859-61.

Proposed materials are deemed acceptable. Given its location, the extension will have some considerable impact on views to and from the church. However, rather than seeing this as detracting from the existing building, the extension should be thought of as reinforcing the church's presence on the hilltop.

The fact that the application is rather extraordinary will no doubt serve to divide opinion. I believe the church can accommodate this unusual extension precisely because it is such an important listed building.

The proposal would impact on the character and setting of the listed building and the conservation area. However, it is my view that the conservation area and church will be richer for accommodating such a unique structure."

46. Unsurprisingly, in the light of the fact that it had considered the matter fully, and granted planning permission, the authority declined to make further representations.

#### *The case for the objectors*

47. Mr English lives in the house immediately to the east of the churchyard. He is a regular worshipper at the church, on the church electoral roll, a sidesman and, for the last six years the independent examiner of the church accounts. Until his retirement, he was employed by the National Westminster Bank and its predecessors, and had considerable experience of dealing with property matters. Latterly he has worked on a voluntary basis at the County Record Office. He has lived in Alvechurch for 30 years, and is also chairman of the local historical society. It seems to me that Mr English is by no means an ill-informed outsider, and I give considerable weight to his views.
48. Mr English first made it clear that he, along with other objectors, fully accepted the need for accessible toilets and for better catering and other facilities. Their concern is with the nature of the plans, which had caused deep division within the congregation and the community.
49. He also observed that there was no reason why the new hall should be attached to the church, rather than being a separate structure nearby. There was only anecdotal evidence to support the claim that it would be much more convenient.

50. Secondly, however, if there had to be an attached building, he objected to the size of the building proposed – it was simply too large. This arose from the architect's brief; but he did not see, for example, the need to seat 100 people at a meal. The result of this was that the new structure would be too tall, and would compete with the north aisle. It should thus be less bulky, preferably single-storey; it should make greater use of the natural fall of the land; it should not be built on a platform above ground level, but sunk into the ground to reduce its impact. He also expressed concern as to the materials proposed for the new hall, which would not lie happily so close to the medieval stonework of the north aisle. Further, the running costs had been insufficiently taken into account.

51. Thirdly, Mr English objected to the scheme being financed from the sale of the Paddock, which was land held in trust for burial purposes and for the extension of the churchyard.

52. Finally, he was very concerned as to the small amount of publicity that had been given to these proposals – both for the hall and the car park and for the new housing. He drew attention to a survey that had been published in *The Village*, a magazine circulating in the village, which very broadly indicated that, of the 49 respondents who were regular worshippers at the church –

- ◆ 17 (approximately one third) agreed with the proposals,
- ◆ 25 would support a more modest scheme (although 6 were not sure),
- ◆ 18 agreed with the sale of the Paddock, and
- ◆ 17 felt that they had been consulted.

The corresponding figures for the 82 non-worshippers who responded were 5, 61 (12 not sure), 3, and 4. In particular, Mr English considered that Mr Martin's proposal to give a full display of the proposals only after a faculty had been granted was too little, too late. Had the outline of the plans been put on show earlier, there would not have been a problem.

53. Mrs Smith confirmed at the hearing that she totally supported the points that had been made by Mr English. In particular, she had no problem in principle with the provision of extra facilities; it was simply the way in which it was to be achieved that she thought was most unfortunate. She emphasised her concern that the cost of the new works was excessive, especially when compared to the ongoing need to carry out expensive repairs to the existing church building. And she pointed out that non-church-based groups meet in existing halls elsewhere in the parish, and so are unlikely to make use of the new hall. Finally, she drew attention to the fact that the Parish Council had not been informed of the proposals by the PCC.

54. Mrs Smith also raised a concern at the hearing in relation to the comments book, provided at the public meetings in November 2001. Mr Martin stated clearly that there had only ever been one such book, which was produced at the hearing, and a copy of which was reproduced as an appendix to Mr Bellamy's evidence. However, Mrs Smith noted that the comments she had made were not in it. Indeed the only adverse comment was a typed sheet from Mr English, stuck into the book. Following the conclusion of the hearing, she sent me on 8<sup>th</sup> June 2003 a letter, in which she said –

“since the meeting I have been approached by a number of people regarding the comments book submitted in evidence at the hearing. They were concerned to hear that the book in which they had written comments adverse to the church extension did not appear to be the one exhibited as evidence at the Consistory Court hearing. Following the Court hearing, I did not

feel that it was ethical to approach you regarding this matter. However, it has been suggested to me that this issue should be brought to your attention.

55. Lt Cdr and Mrs Davenport, and their son – all regular members of the church – jointly wrote a letter in which they reiterated most of the concerns raised by Mr English. They accepted the need for new facilities; but felt that the resulting building is too large and too expensive, and would have a poor relationship with the medieval church. Mr Day, who with his wife had voted against the proposal when it came before the PCC in 2001, wrote in similar terms. He concluded –

“Whilst I and a few others have been made to feel like party poopers with regard to this, it is with genuine concern I feel that a further period of time to pray and think this over, together with your good guidance, would be greatly beneficial in this matter.”

56. Mrs Parry too was primarily concerned with the size, appearance and cost of the new building, as were Mr and Mrs Symms, although they also raised the issue of development on the Paddock. Mr Stanford and Mr Wollaston were principally concerned with the latter, but also stated that the new building was not in keeping with the church.

## Legal framework

### *Works affecting the exterior of listed buildings*

57. The principles that are generally held to govern the determination of a petition for a faculty for works to a church that is a listed building were set out in the decision of the Court of Arches in the case of *Re St Luke, Maidstone*,<sup>7</sup> in which the Dean of the Arches approved and adopted the questions posed by Cameron Ch in *Re St Helen, Bishopsgate*,<sup>8</sup> –

- “(1) Have the petitioners proved a necessity for some or all of the proposed works, either because they are necessary for the pastoral well-being of [the church] or for some other compelling reason?
- “(2) Will some or all of the works adversely affect the character of the church as a building of special architectural interest?
- “(3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that, in the exercise of the court’s discretion, a faculty should be granted for some or all of the works?”

58. This formulation has been re-visited by the Court of Arches in *Re St Mary, Sherborne*,<sup>9</sup> and on many occasions by consistory courts in other dioceses deciding similar cases, including by this Court in the *Pershore* case.<sup>10</sup>

59. In the case of *Re St Mary, St Giles and All Saints, Canwell*<sup>11</sup>, it was accepted by both counsel, and by the (Lichfield) Consistory Court, that the same approach should be adopted in the case

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<sup>7</sup> [1994] 3 WLR 1165, [1995] Fam 1

<sup>8</sup> 26 November, 1993, unreported.

<sup>9</sup> [1996] Fam 63.

<sup>10</sup> Reported as *re Holy Cross, Pershore* [2001] 3 WLR 1521, [2002] Fam 1.

<sup>11</sup> (1997) 5 Ecc LJ 71.

of external works to churches. That case concerned the construction of a substantial modern extension in the north side of a Victorian church, just as in Alvechurch.

60. However, where a proposal consists of or includes works affecting the exterior of a listed building, although listed building consent will not be required, planning permission certainly will be. And in determining an application for permission in such a case, the planning authority (or on appeal the Secretary of State) is required to “have *special* regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”<sup>12</sup> Where the building is in a conservation area, there is a similar duty to “pay *special* attention to the desirability of preserving or enhancing the character or appearance of that area”.<sup>13</sup> Those two tests are precisely the same as would apply to the determination of an application for listed building consent if one were necessary.
61. In other words, where planning permission has been granted for a proposal prior to the determination of a faculty petition, the decision maker under the secular jurisdiction will, or undoubtedly should, have taken into account the effect of the proposal on the listed building, its setting and, where appropriate, the conservation area in which it lies.
62. The overlap between the ecclesiastical and secular jurisdictions was considered by the Winchester Consistory Court in *Re St Mary's King's Worthy*<sup>14</sup>, where it was noted –

“... There is a strong argument for saying that, once the planning authority has granted permission for a particular proposal, issues [such as traffic flow and parking availability] ought not to be raised for reconsideration by a consistory court. In the exercise of my discretion, however, I have agreed to hear evidence relating to these matters, but only on the basis that the decision whether or not to grant a faculty is unlikely to be affected by it unless the evidence is of a very strong and compelling character. In other words, I shall assume the planning authority made the correct decision in this respect, unless there is convincing evidence to the contrary.”

The decision of the Blackburn Consistory Court in *Re St James, Stalmine*<sup>15</sup> is to the same effect.
63. If that approach were to be applied equally to cases involving external works to churches that happen to be listed buildings, a consistory court should not reconsider matters such as the bulk, height and scale of an extension, or its architectural relationship to the listed building to which it is to be attached, since those matters must have been considered by the planning authority when it granted planning permission. Indeed, the very fact that listed building consent is not required means that the authority would (or should) have been all the more likely to give thorough consideration to such matters, since it would not have a second chance to do so.
64. Further, the result of allowing a consistory court to revisit these matters following an earlier decision by the planning authority to grant planning permission would in effect be to grant to those dissatisfied by that decision a right of appeal – a development that has been steadfastly resisted by Parliament in spite of much pressure in certain quarters.

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<sup>12</sup> Planning (Listed Buildings and Conservation Areas) Act 1990, section 66(1); emphasis added.

<sup>13</sup> Planning (Listed Buildings etc) Act 1990, section 72; emphasis added.

<sup>14</sup> (1998) 5 Ecc LJ 133.

<sup>15</sup> (2000) 6 Ecc LJ 81.

65. An alternative way of looking at the matter is to say that part of the logic behind the approach adopted in *Re St Helen Bishopsgate* and *Re St Luke, Maidstone* is that listed building consent is not needed for internal works to listed churches, due to the ecclesiastical exemption; but if that exemption is to be justified, there must be a very rigorous system of supervising works to listed churches. But that argument does not apply in relation to external works, since there is no exemption from the need for planning permission; and the determination of an application for such permission must be made on the same basis as would apply to the determination of an application for listed building consent.
66. I have therefore come to the view that, where a consistory court has before it an application for works affecting the exterior of a church that is a listed building or in a conservation area, and where planning permission has previously been granted for those works, then – unless it can be shown that the planning authority has failed to have special regard to the desirability of preserving the building, its setting and its special features (or, where appropriate, to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area) – the court is entitled to assume the authority made the correct decision in respect of those matters, unless there is convincing evidence to the contrary.
67. One exception to that broad principle I have enunciated would be where a church becomes a listed building or is included in a conservation area after the date on which planning permission was granted. Another exception would be that a consistory court may perfectly properly consider the interior of a new extension, and in particular the details of the way in which the new building is to be joined onto the old – since those matters are unlikely to have been considered in detail – or at all – by the planning authority.

#### *The need for a proposal*

68. This does not mean that the need for a proposal is irrelevant; issues such as the need for a proposal, and the means to pay for it, will very often be relevant to the consideration of faculty petitions – whether or not the church concerned is a listed building. But I do not consider that there is the need for the balancing exercise envisaged in *Bishopsgate*.
69. I thus respectfully depart from the approach adopted in *Canwell*.

#### *Pastoral consequences*

70. In the judgment of this Court in the *Pershore* case,<sup>16</sup> I also postulated a fourth question which should always be asked, alongside the three posed in *Bishopsgate* – namely, “what are likely to be the pastoral consequences, both short-term and looking further ahead, of making a proposed change?” I held as follows:

“This may apply to the pastoral consequences for the immediate worshipping community. For example, to allow a proposal which only has the support of the PCC by a single-vote majority would probably be unwise; but to prevent a proposal that has been unanimously considered by the PCC for many years to be vital to enhance the quality of worship, to satisfy a single objector, would also be unwise in the absence of some other good reason.

But it may equally apply to the consequences in terms of mission and evangelism to the wider community. If a church in a large urban area is re-ordered in a way that is not to the taste of

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<sup>16</sup> Reported as *re Holy Cross, Pershore* [2001] 3 WLR 1521, [2002] Fam 1.

some living nearby, it is likely that they will be able to go elsewhere. But in a rural village or a market town (such as Pershore), there is usually only one church (or at least, only one within the Church of England), and those who are alienated by what is going on there, for whatever reason – because of either the substance of changes taking place, or the way in which the changes are being presented and managed – may in reality have little if any choice if they wish to attend worship; and such people may therefore be unnecessarily lost at least for the immediate future.

This is not of course to say that consideration of the pastoral consequences of a proposed change will always lead to it being postponed or dropped altogether. Indeed, quite the reverse: a failure by a church to adapt to changing circumstances may be disastrous pastorally – particularly, for example, in an area with young families. But, whether favourable to a proposed change or not, its likely effect on the mission of a church in its area must be an important consideration.”

71. On reflection, it seems to me that such considerations would apply equally to any case, whether or not the *Bishopsgate* questions are being considered – although I appreciate that the above formulation may be no more than an attempt to make explicit the approach that would be adopted by a consistory court in any event.

#### *The Disability Discrimination Act 1995*

72. Finally, whilst there is no statutory or other duty on this Court to have regard to the needs of disabled people, I am of course mindful of the duty laid on parishes – as service providers under Part III of the Disability Discrimination Act 1995 – not to discriminate against disabled people; and in particular, from October 2004, not to do so by the design or construction of buildings or premises.<sup>17</sup>

## **Assessment**

### *The need for the proposed works*

73. There appears to be no dispute in principle as to the need for at least some new facilities. I note that even those responding to the survey in *The Village*, who may well be more strongly opposed to the proposals than is the case in the community as a whole, still accept the need for a smaller extension.
74. As for the scale of the facilities that are needed, I consider that the amount of accommodation proposed is entirely reasonable. There may once have been a time when congregations were content with a building that provided no more than a place in which to conduct traditional worship. However, it is now entirely reasonable to expect facilities such as space in which to gather before and after services and on other occasions; a range of meeting rooms; modest catering facilities; toilets; a small office; and storage. Certainly those outside the immediate worshipping community would expect to find such things.
75. I am thus entirely satisfied that the needs outlined by Mr Martin are real and immediate. As to the reservations expressed by the objectors, I strongly suspect that these are based on a dislike of the size of the building proposed, which leads backwards to a mistrust of the initial brief, and the subsequent evolution of that brief, that led to a building of that size. But that is

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<sup>17</sup> Disability Discrimination Act 1995, section 21(2).

a false line of argument. I can understand that a church might have to accept a smaller hall than it ideally wants, if the desired size is unacceptable for townscape or other reasons; but that does not vitiate the need as such. I also note that the CCC – which is the body with the widest experience of such matters – is slightly concerned that the new hall may in the future prove to be too small, not too large.

76. In particular, I am satisfied that a facility of the kind proposed is likely to be significantly more useful if it is physically linked to the church. A completely free-standing event, such as an Alpha course, or a semi-independent one, such as a wedding reception following a service in the church, could equally well be held in a detached building. But any facility that is functionally linked to the activities taking place in the church building itself, such as children's activities during services or fellowship after services, or toilets, will not be anywhere near as useful if it involves a need to go out into the open air – particularly, obviously, in poor weather.

77. I am also satisfied that these proposals will assist in the use of the church and its facilities by all, including disabled people. It will thus materially assist the church in ensuring that it complies with section 21 of the 1995 Act when it comes into force.

#### *The visual impact of the proposed works*

78. It follows from my analysis above that – unless I find that the planning authority has failed to have special regard to the desirability of preserving the building, its setting and its special features or has failed to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area) – I shall assume that the authority made the correct decision in respect of those matters, unless there is convincing evidence to the contrary.

79. In this case, it is clear from the reports submitted to and considered by the relevant committee of the District Council (included by Mr Bellamy as appendices to his evidence) that ample consideration was given to the effect of the proposed extension on the church, its setting and its special features and on the character or appearance of the conservation area. The Council took account of the comments of its special architectural adviser. It also noted the views of the relevant national amenity societies (English Heritage and, in respect of the new hall, the Ancient Monuments Society, the Victorian Society, and the SPAB) – even though, as this was an application for planning permission, there was no need for it even to consult them. It also had well in mind the views of the (secular) Parish Council, which broadly followed the line adopted in the present proceedings by the objectors, and those of the local residents, who were split in their conclusions.

80. I therefore see no reason not to follow the decision of the planning authority in respect of the impact of the proposed hall and the car park on the existing building and on the surrounding area – both in general terms and in respect of more specific issues such as the height, materials and detailing. I thus consider that the scheme should not be refused on those grounds.

81. However, in case I am wrong in my analysis, I will briefly consider the question of the design and the visual impact of the proposal from first principles. In essence, the amenity societies are, to an extent that is quite remarkable in my experience of such proposals, unanimous in not only accepting this scheme but in enthusiastically welcoming it. Some of

the parishioners, on the other hand, do not like the proposed design, considering it to be too bulky, too high, located wrongly (a proposal next to the north aisle being preferred) and using inappropriate materials.

82. I place limited weight on the survey carried in *The Village* magazine, and on the accompanying extracts from letters, since there was no guarantee that the people who took part had views that were representative of those of villagers generally. Indeed, experience suggests that the reverse is likely to be the case – with those opposing the scheme much more keen to express their views.
83. Further, in view of the concerns raised by Mrs Smith as to the comments book, I place no weight on the views expressed in it. I have no reason to doubt her word that a number of people expressed some degree of reservation; in view of the controversy in the village caused by these proposals, it would be surprising were it to have been otherwise. But it is wholly unclear what became of those views – whether, for example, in spite of Mr Martin's protestations to the contrary, there was in fact a second book, that has now been lost.
84. Nevertheless, as I stated earlier, I have considered carefully and given considerable weight to the views cogently expressed at the hearing by Mr English and Mrs Smith, and in writing by the other objectors. And I have no doubt that similar views are held by others.
85. I have some sympathy for the views of those objectors, for this proposal is undoubtedly radical; and it will significantly change the appearance of the churchyard, and of the north side of the church itself. It is natural to be suspicious of such a major change. On the other hand, all the bodies with wider experience of such proposals are strongly supportive; and they are not slow in opposing such schemes if they feel that appropriate. Thus, for example, the extension in the *Canwell* case, to which I referred above, was strongly opposed by English Heritage – even though it accepted the need in principle for some additional facilities.
86. It is perhaps inevitable that a scheme of this nature will produce mixed opinions. There is always the possibility that future generations will not appreciate the bold decisions we make today. And I am not convinced by the analogy with the chapels in Stockholm. However, on balance, I am content to accept the views of all those who are experienced in these matters, and to welcome this scheme (for the new hall) as a bold, innovative design – rather than to agree with those who argue for a less radical approach – a hall that is either smaller or differently located.
87. In particular, no-one has taken exception to the way in which the new building is linked to the old, or to the effect of that link on the appearance of the interior of the existing church.
88. The other aspects of the proposals – the new car park, the relocation of the memorials and the re-routeing of the footpath – have little or no effect on the character of the church as a building of special architectural or historic interest, or on its setting. The car park affects the character of the churchyard, but not adversely.
89. Since I have found that the proposed works are needed and that their effects will be either beneficial or neutral, the question of weighing the two issues against each other does not arise.

### *The pastoral implications*

90. I consider that the pastoral implications of carrying out these works will, in the long run, be favourable – in that they will assist the outreach of the church within the local community.
91. In the short term, however, there is clearly much work to be done in restoring in the village a spirit of concord and unity – and trust. It is extremely unfortunate that there appears to have arisen a widespread and strongly held feeling that the church, and in particular the Rector, has failed properly to consult the whole of the congregation and, more especially, those in the village outside the community of regular worshippers. That feeling may or may not be justified; certainly many people must by now be fully aware of what is proposed. But the fact that it exists, or is felt to exist, is deeply unhelpful to the mission of the church and to the general wellbeing of the village.
92. In particular, the proposal to develop the Paddock was obviously unpopular in certain quarters. If the church were a commercial developer, it might of course have been appropriate for it to seek to persuade the planning authority of the merits of the proposal in planning terms, and simply to ignore the opposition. But the church is much more than that; and it should endeavour if at all possible to persuade the wider community of the merits of what it is proposing, or at least to try hard to do so. Thus, in this case, by upsetting the local people over the development of the Paddock, it has engendered much opposition to the hall proposal itself, and consequential delay and other costs, which might not otherwise have occurred.
93. I noted that one witness appearing for the church was obviously dismissive of the value of consulting the wider community; as he put it, “had we approached every Tom, Dick and Harry in the village, ...” That sort of attitude is totally inappropriate, and should be contrasted with the approach commended by Coningsby Ch, an extremely experienced chancellor, in the York Consistory Court in *Re St Nicholas Stillington*<sup>18</sup> –
- “The chancellor made it clear that it was the right of any church member or parishioner to make an objection in faculty proceedings. Petitioners and PCCs should expect that objections might be made, and should not try to stifle or suppress potential or formal objections. Furthermore, ... it is not enough for petitioners merely to follow correct legal procedures. Instead, whenever a PCC is considering a course which will have a special effect on a particular member of the congregation or resident of the parish, it should consider the feelings of that person and take proper pastoral steps to address those feelings. ... A PCC is a church body, charged with acting in a sensitive and Christian manner towards those with whom it is in a pastoral relationship. He hoped that other PCCs and petitioners might learn from this case.”
- I unreservedly agree with that approach; and commend it to all concerned in the present case, and more widely in the Diocese.
94. I therefore conclude that there may be some adverse pastoral implications in the short term, but that – if the relationships between church and village are handled sensibly, and possibly more cleverly than perhaps they have sometimes been in the past – the longer term pastoral consequences of providing this facility will be positive, in that it will assist both in retaining existing congregations and in attracting new ones.

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<sup>18</sup> (2000) 6 Ecc LJ 80.

95. I note that the Rector said that he was heartened by the fact that he and Mr English were good colleagues. I very much hope that this was not mere politeness; and that all who were involved in this case may now put the past behind them and work together to make the best use of the new facilities for the benefit of all, worshippers and non-worshippers alike. I agree with the objectors that it is unsatisfactory for a full display of the plans to be held only after they are permitted – but I hope that such a display will nevertheless be held, and that it will provide a chance for a real reconciliation to take place between those who have hitherto been in opposing camps.

## Conclusion

### *Decision*

96. I therefore consider in principle that a faculty should issue.

### *Conditions*

97. As already noted, the planning permissions for the church hall and the car park were subject to conditions. These require (in summary) that:

- (a) the building of the hall and the car park is not to be started after 14<sup>th</sup> May 2007;
- (b) no works for the construction of the hall are to take place until:
  - i. an archaeological investigation has been carried out;
  - ii. the architectural details of the hall have been approved; and
  - iii. the drainage for the hall has been approved in detail;
- (c) no works for the construction of the car park are to take place until:
  - i. the details of its construction have been approved; and
  - ii. the trees on site have been protected;
- (d) the car park not to be used until it has been fully completed;
- (e) the hall is not to be occupied until:
  - i. the approved drainage works have been implemented; and
  - ii. the car park has been provided;
- (f) the car park is only to be used in association with the use of the church and the hall; and
- (g) the access drive is not to be used for parking.

98. Those conditions all seem to me to be eminently sensible and reasonable; and I see no purpose being served by the imposition of further conditions to duplicate them, since they will have to be complied with in any event.

99. I am however conscious that, in respect of architectural details, the local planning authority is likely to be concerned principally with the external appearance of the building. It seems to me that the internal finishes and details are also of importance in this case, as are the details of the link between the new extension and the existing building. I am also concerned as to the ability of the parish to fund the proposed works in the event that they turn out to cost significantly more than is currently anticipated.

100. The faculty should therefore be subject to conditions that:

“1. No works are to start on the construction of the hall until the Diocesan Advisory Committee or, in default, the court, has approved the architectural details (external and internal) – including the selection and detailing of facing materials, mortars, rainwater goods, and joinery – of:

- (a) the hall, and
- (b) the link between the hall and the church,

and the works shall thereafter be carried out in accordance with the details thus approved.

2. No works are to start on the construction of the hall until the parish has available to it, either in an account in its own name or otherwise to the satisfaction of the Court, a sum equal to the expected total cost of the works, including fees and taxes payable, as certified by a quantity surveyor.”

*Costs*

101. The petitioners are to pay the court costs.

**CHARLES MYNORS**

Chancellor

October 2003