

BAPCHILD, ST LAURENCE

Diocese of Canterbury

JUDGMENT

1. INTRODUCTION

- 1.1. The Petitioners, who are the incumbent and church wardens of St Laurence, Bapchild, sought a Faculty for the following works to the church:

A reordering of the west end of the building to include the installation of a toilet and some external drainage works, in accordance with a specification and works schedule by Roger Turner dated March 2013 and supporting drawings nos. CFB-10/1, 2, 3, 4 and CFB-12/7 and 8.

- 1.2. In support of the Petition, a Statement of Need explained that the church building is well used and is a religious focus for the local community and nearby school. A wider dispersed community of visitors also attends services on major festivals, concerts and theatrical events held there and finds in the church and churchyard a place for spiritual contemplation and refreshment. There are regular Baptisms, Marriages and funerals. In order to make the church more convenient for users, the Petitioners desired to equip the church with a lavatory, a new, properly fitting timber door in place of a pair of modern metal gates to the porch and to

reconfigure the chancel. The latter space was “encumbered by fixed pews”; removal, it was suggested, would “open up the area”, which would “expand the variety of possible forms of religious ritual, as well as widening the opportunities for other community-based activities.”

1.3. The Statement of Significance is in the following terms:

"St Laurence Church is presently Listed Grade I. The building consists of a nave, north aisle, chancel, north-east chapel, south tower and south porch. The building dates from the 12th century with a spire of the 13th century. The south porch was added circa 1525 and the whole building was restored in 1872 and 1883.

The church is entered through the south porch which is a brick structure with plastered internal walls and ceiling. The floor is of brick and there are two ancient benches, one on each side. There is a 20th century iron gate on the exterior and an ancient door on the interior which appears to be medieval in origin. The door leads through to the nave at a point near to the west end. The nave and north aisle are extensively pewed for their entire length with the exception of open space immediately to the north of the point of entry. Within this space to the south of the nave arcade a 19th century font is located. The pews are dated to the 18th and 19th centuries in the List description. An arch separates the nave from the chancel which is also demarked by a change in the architecture of the arcade. Under the arch along the south wall is a pulpit of the 17th century. Hanging in the chancel is a brass chandelier with the inscription 'Bapchild 1746'. The other furnishings in the chancel appear to date from the mid 20th century. These include timber stalls for the clergy and choir, and timber altar rails. In the sanctuary is a stone altar which appears to date from the 19th century. Also within the sanctuary is a clergy chair and credence table. To the north of the chancel arcade is the north-east chapel in which a 19th century pipe organ is housed. This is an area of flexible storage space with an altar on the east wall. On the west wall a small servery area has been provided. The south tower is separated from the nave by a blocked archway which now contains a simple timber door. The vestry is located in this space which includes a blocked eastern arch and piscine, which once led to an apse.

The nave has a plastered roof with two crown posts, the north aisle a plastered lean-to roof, the chancel and north chapel both have part-plastered, part-panelled wagon roofs. The areas of pewing are fixed to raised timber pew platforms. Otherwise the floor finish throughout the building is a mixture of tile, stone and ledger slabs. A single blue carpet runner extends along the main east/west axis and leads to a fully carpeted sanctuary. Otherwise the use of carpeting in the building is fairly limited. The glazing in the building is a mixture of stained glass of the 19th century and clear quarries. Notable architectural features include the north arcades which separate the nave from the aisle and the chancel from the chapel. These are of different architectural styles. The chancel arcade is believed to date from circa 1200 and is based on the work of 1175 at Canterbury Cathedral. In the north wall of then north chapel is a fine masonry arcade. On the east wall of the north chapel is a 13th century painted reredos of the crucifixion and also on its south wall a fine angled piscine, which is built into the masonry of the arcade. Throughout the building there are other fragments of paintwork from the 17th and 18th centuries including a large date of 1689 set above the chancel arch. The building also contains a number of wall-mounted monuments and memorials of the 19th and 20th centuries.

St Laurence Church is a building which retains a strong sense of its medieval origins which are particularly evident in the carved masonry throughout the building. The pews in the nave and aisle make a significant contribution to its character. There is a low level of natural light in much of the nave and north aisle, and north chapel. The use of clear glazing in the chancel however, makes this a much lighter part of the building.”

1.4. The Listing description states:

“Parish church. C12 with C13 spire, south porch c.1525, restored 1872 and 1883. Flint and rubble with plain tiled roof, brick porch and shingle spire. Nave with north aisle, chancel with north chapel, south tower and south porch. Fenestration of heavily restored C16 Perpendicular windows apart from single round headed west light in north aisle, south-west lancet in aisle and 3 lancets on south wall of chancel. Blocked western window, and remnants of east window of triple round-headed lancets, the centre raised Diagonal buttresses to chancel and chapel, 3 offset buttresses to chapel north wall, 2 hipped dormers to north aisle and blocked northern and western door-

ways. South porch with diapered brickwork on weathered and moulded plinth, with barge boarded gable. South door with strap hinges, dated by graffiti to at least 1596, in double hollow chamfered surrounded. South tower with blocked western doorway and blocked eastern arch; angle vice to west and broach spire. Interior: nave arcade of 4 round unmoulded arches on octagonal piers with calloped capitals. Central piers is doubled in width. Plastered roof with 2 crown posts. Hollow moulded doorway to south to external vice. Plain chamfered chancel arch. Lean-to north aisle with pointed keel-moulded arch to north chapel, on moulded impost with carved-leaf corbels. Chancel with 3 bay arcade to chapel, pointed keel-rolled arches on round piers with square abaci chamfered at corners with aired and stiffly upright debased acanthus motif. c.1200, based on the 1175 work at Canterbury Cathedral. Remnants of C12 triple east window jambs over C16 east window with capitals of missing attached shafts either side. Part plastered wagon roof. Blocked arched opening to south tower, with double hollow chamfered and roll moulded doorway. South tower with blocked eastern arch with piscina, once leading to an apse. North chapel with arcade on north wall, 4 keel-moulded arches on free-standing shafts with waterholding bases and carved leaf capitals. Discontinuous string course decorated with cinquefoils, and evidence of 4 lancet windows to north, blocked and replaced by C16 windows, and blocked and replaced east window originally of lancets. Part plastered part paneled wagon roof. Fittings: angle piscina in north chapel, the frieze of the eastern respond of chancel arcade is carried back and over the piscina, with 2 roll moulded arches with central shaft, the capital arved as with chancel arcade (the same distinguishing motif used at Doddington, Milstead, Frinsted and Murston churches). Aumbrey in chancel east wall. C13 painted reredos of the Crucifixion in chapel. Restored C15 rood screen now stored in north chapel. C17 octagonal pulpit; brass chandelier of 12 sticks and central torch finial; inscribed: Bapchild 1746. C18 and C19 box pews. Fragmentary medieval and C17 paintings, including double orb and date 1989 over chancel arch. Single Perpendicular niche in nave over central arcade pier, some fragmentary glass and tiles in north chapel, east window in chancel by Warrington 1865.”

- 1.5. The Diocesan Advisory Committee (“DAC”) recommended that a Faculty be issued subject to the following provisions:

“(1) The DAC reserves its position on the detail of the new screen at the west end until joinery details on a scale of 1-5 have been provided.

- (2) *A person approved in advance by the archaeological adviser to the DAC shall maintain an archaeological watching brief during the works of excavation.*
- (3) *No items of archaeological or historical interest may be removed from the church site without prior consultation with the DAC.*
- (4) *Any human remains disturbed during the works shall be immediately covered from public view and must be treated decently and with reverence at all times. Their discovery shall be notified immediately to the incumbent. They shall be labelled and preserved as an entity in locked premises until they are reburied in the churchyard at the direction of the incumbent, in a place as close as practicable to the location in which they were uncovered.*
- (5) *The electrical installation must comply with BS7671 – 2008 Requirements for Electrical Installations (IEE Wiring Regulations 17th Edition) and the best practice set out in the Council for the Care of Churches booklet ‘Wiring of Churches’ ISBN 0-7151-7571-8 (1997).”*

The DAC also certified that, in its opinion, the works were not likely to affect the character of the church as a building of special architectural or historic interest or any archaeological remains.

2. ISSUES

- 2.1. On 13 December, after initial consideration of the Petition, I directed that English Heritage (“EH”) and the Society for the Preservation of Ancient Monuments (“SPAB”) be specially cited, commenting:

“I note that some of the pews are eighteenth century (I am unsure whether they are included in the proposals to remove). I also note in the Statement of Significance that ... ‘the pews in the nave and aisle make a significant contribution to [the building’s] character.’ This observation is difficult to reconcile with the DAC’s opinion ...”

I was referring there to the DAC's opinion about the lack of effect upon the character of the church as a building of special architectural or historic interest.

- 2.2. Dr Tom Foxall, the EH Inspector for the area, responded by letter dated 14 January 2014, confirming that, having been involved with the project for several years, EH did not object. The letter continued:

"The justification for a toilet at St Laurence appears to us to be sound, but opportunities for accommodating it at the church are unusually limited, such is the small scale of the building and absence of suitable discrete spaces. Locating a toilet at the west end of the north aisle is in our view the least harmful of the limited number of possible options in this case. The options of housing a toilet in a new extension to the north and an internal solution in the north chapel were also considered, but both were in my view considerably more harmful to the building's significance than the current solution.

The harm in the proposed scheme relates to the loss of a small group of pews from the west end of the north aisle. We agree with the applicant's statement of significance that the eighteenth-century pews would largely remain intact following their removal. Were this a secular listed building, we would be content to say, with reference to paragraph 134 of the NPPF, that the harm to significance is less than substantial and outweighed by the public benefits of providing a toilet and, in doing so, helping to secure the continuing use of the building."

SPAB did not respond to the citation but were copied into the EH letter.

3. LEGAL PRINCIPLES

- 3.1. The Court of Arches recently reviewed the principles to be applied to the consideration of petitions affecting listed churches in the case of In re St Alkmund, Duffield. The Court noted in its judgment that the Department for Culture, Media and Sport in its guidance *"The operation of the Ecclesiastical*

Exemption and related planning matters for places of worship in England”, advises that the “essential requirement” of the churches’ consent procedures is “equivalence with secular listed building consent in terms of due process, rigour, consultation, openness, transparency and accountability”.¹ I had these principles in mind when directing the special citations in this case and I have found Dr Foxall’s letter very helpful in considering this Petition. Bearing in mind EH’s role in relation to listed buildings and Dr Foxall’s experience and expertise in relation to the diocese’s churches, I have given his letter considerable weight.

3.2. The Court of Arches commented in Duffield that:

“It is apparent from this guidance that the concept of ‘equivalence’ does not necessarily require that the same result will be achieved as if the proposal were being determined through the secular system, nor that listed building considerations should necessarily prevail. What is essential, however, is that these considerations should be specifically taken into account, and in as informed and fair a manner as reasonably possible. In particular, the guidance contains no reference to any test of necessity before works which would affect the special character of a listed church are carried out.”

The Court went on to state that it did “not consider that chancellors should be required to apply precisely the same approach to listed building as is followed in the secular system”.² There was then set out at paragraph 89 a new framework or guidelines for the consideration of Faculty petitions concerning listed buildings, as follows:

¹ Duffield para 38, quoting guidance para 30.

² Para 84.

- "1. *Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?*
2. *If the answer to question (1) is 'no', the ordinary presumption in faculty proceedings 'in favour of things as they stand' is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see **Peek v Trower** (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in **In re St Mary's White Waltham (No2)** [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.*
3. *If the answer to question (1) is 'yes', how serious would the harm be?*
4. *How clear and convincing is the justification for carrying out the proposals?*
5. *Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see **St Luke, Maidstone** at p.8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2*, where serious harm should only exceptionally be allowed."*

3.3. Notwithstanding the Court of Arches' guidance about the separate nature of the ecclesiastic and secular jurisdictions, I should note the recent re-emphasis by the Court of Appeal in Barnwell Manor Wind Energy Ltd v East Northamptonshire DC., English Heritage, the National Trust and the Secretary of State for Communities and Local Government [2014] EWCA Civ 137 that Parliament intended, through the enactment of s.66 Planning (Listed Building and Conservation Areas) Act 1990 to give "*considerable importance and weight*" to

the desirability of preserving listed buildings and their settings.³ The Barnwell Manor case also concerned questions about the application of secular planning policy concerning significance and harm, which amply demonstrate the good sense of suggesting a simpler framework for the decision making of chancellors. Nevertheless, it seems to me, with respect, that the treatment of harm to significance in the first Duffield question as the trigger for one of two different sets of questions is consistent with the Court of Appeal's general approach and therefore in tune with the principle of equivalence.

4. APPLICATION OF DUFFIELD QUESTIONS

- 4.1. Using the Duffield questions as the framework for my deliberations, I find the following.

Question 1

The proposed pew removal would result in harm to significance. Three pieces of evidence justify this conclusion. Firstly, the listing description specifically mentions the church's eighteenth and nineteenth century box pews. Secondly, the Statement of Significance states that "*The pews in the nave and aisle make a significant contribution to its character*". Thirdly, Dr Foxall, giving the view of EH, is clear in his advice that the loss of a small group of pews from the west end of the north aisle would cause harm. In view of the positive answer to question 1, I must proceed to consideration of question 3. There is no evidence to suggest that replacement of the old porch gates with a new door would be harmful.

³ Para 29

Question 3

The harm to significance would be less than substantial. In reaching this conclusion, I bear in mind the following factors: the small area of pews to be lost, the facts that the impressively uniform collection of box pews in the nave would remain and, as Dr Foxall explains, that the group to be lost were the least visible because of the "*robust Norman piers*". Moreover, although I have reached a different conclusion from the DAC about effect to the character of the listed building, I do take into account and note their view when forming my own opinion as to the degree of harm.

Question 4

In my opinion, the Statement of Needs is a well-reasoned document, the work of a Christian community which is looking outwards to the people in the village and beyond in mission and service. Liaison with the village primary school and drawing in a wider circle of visitors are important aspects of the church's mission to which I am obliged to have regard. I accept that WC facilities are increasingly seen as essential to hosting children's events and other gatherings of the public in churches.

Question 5

I bear in mind the outstanding national significance of the church's Grade 1 listing and the "*strong presumption*" against works which would adversely affect the character of any listed building (even of Grade II status). Nevertheless, the Court of Arches pointed to several potential matters of public benefit which are in

evidence in this case. One reason for seeking to re-order is the desire for liturgical freedom to innovate and introduce variety into the church's worship. Pastoral well-being and opportunities for mission would be served by fostering links with the village school; now that many children do not have the benefit of active Christian influence within their families, church may be an unfamiliar and forbidding place, therefore facilitating opportunities to bring them into the building for school activities is a vital part of mission. All these considerations are relevant to the final Duffield example of public benefit - that of keeping the listed church building viable; obviously, innovation and drawing in younger generations and a wider circle of visitors will help to keep the church vital and therefore sustain the viability of ecclesiastical use. As Dr Foxall recognises, securing this use is of considerable significance in terms of listed building considerations (quite apart from the mission considerations which I have also noted). This public benefit, in his opinion, outweighs the harm which, in the terminology of secular national planning policy, he identifies as less than substantial.

5. CONCLUSION

- 5.1. I have concluded that a Faculty should be granted for the works. The new door would not cause any harm and would make the church warmer and, hence, more comfortable. For the reasons given above, I consider limited removal of pews and the installation of a lavatory to be justified.
- 5.2. Having reached the conclusion that the works could properly be authorised, I asked the Registry to notify the parish that it could undertake them. Accordingly I

directed that a Faculty should be issued, subject to standard time and bat protection conditions and conditions reflecting the DAC's provisos. I indicated that I would issue a reasoned Judgment in due course. The works have now been done and I had the pleasure of meeting one of the Petitioners at the recent Episcopal Visitation, who described what an improvement the works have made to the church's activities. The Faculty should now be issued.

A handwritten signature in black ink, appearing to read 'M. Ellis', followed by a long horizontal line extending to the right.

MORAG ELLIS QC
28 May 2014