

In the Diocese of York

In the Consistory Court

Parish of Beverley, St Nicholas

The Church of St Nicholas

1. This Petition is for a Confirmatory Faculty to carry out significant modifications in the execution of works previously permitted under faculty. The variations are: 1. to re-site the font further north, 2. to re-grade the pathway to the new platform in front of the west doors, 3. to modify the roof on the new inner west lobby, 4. to paint the salvaged pew ends incorporated into the new WC and kitchen screens, 5. to replace the proposed carpet tiles with a pattern of *Amtico* tiles in three colours, and 6. to introduce various new lighting fittings.

2. When this matter was referred to me by the Registrar I required the Petitioners to set out in writing an account as to how this state of affairs had arisen. I observed at that time that

“I was saddened and disappointed to learn that this church which has over a number of years engaged well with the Faculty Jurisdiction and has demonstrated clearly an awareness of the requirements of the system had decided to take matters entirely into their own hands and to depart significantly from that which they were permitted to do under faculty, without any application to amend the faculty.”

3. The Petitioners in their written response have acknowledged that they “bypassed the process and made decisions without reference to the DAC” and myself, which they say they regret. They explain that they did ask their architect to write to the DAC when they realised that they wanted to make these changes to the original specification, but say that having been very patient throughout the process at that point they lost sight of the need to halt the works until they heard back from the DAC and made a decision to go ahead with the work in the sincere belief that they were “still within the spirit of the faculty”.

4. They say that the decision was precipitated by the pressure that they felt under to complete the work before the 6th November when there was to be a wedding in the church of the daughter of a retired priest in the congregation.

5. They say that in retrospect they perhaps did not fully assimilate the import of the advice that the architect had given them with regard to the potential need for securing faculty approval for the amended scheme, which he pointed out to them verbally and confirmed in minutes of meetings. This is an important piece of the narrative provided by the petitioners. I know that the architect was publicly criticised at a site meeting with the DAC when this matter came to light. That was unfortunate as he was clearly not to blame, having tendered appropriate advice to the petitioners and subsequently having alerted the DAC to what had happened.

6. Finally, they say that they are disappointed in themselves, that they apologise unreservedly for their actions, and that they have learned an important lesson which they are determined will inform them in the future.

7. Of course I accept the explanation given by the Petitioners and I also accept the apology that they offer; however my overwhelming feeling on reading the account of what has happened resulting in the need for this petition remains one of sadness and disappointment.

8. It seems to me that I should spell out the reasons why that is.

9. There are those who consider that some large evangelical churches regard themselves as being exempt from the need to comply fully with the faculty system. There are stories told (not so far as I know in this Diocese) of churches that have carried out major re-orderings labelling such changes as “temporary” persuading themselves and perhaps hoping to persuade others that such labelling provides an escape route from the faculty system. It is said that there are other churches which have just done what they want in the belief that they are so big and their contribution to the Diocesan Quota is so large that it puts them beyond being criticised. It may be that these are apocryphal stories, but they do feed a certain mindset amongst some who are concerned with the faculty jurisdiction system which almost expects some churches to do that which was done here. Perhaps the gravest consequences of the actions taken by these petitioners are that:

- * They have now added another story to contribute to that mindset;
- * They have thereby not only affected how people charged with overseeing the operation of the faculty system will regard them in the future in relation to matters which concern faculty jurisdiction, but also how they will regard other churches which they consider to be similar to St Nicholas;
- * They have provided ammunition for those who would wish to see an end to the “ecclesiastical exemption”, which ammunition may well be deployed when the faculty system is next reviewed by government;
- * They have made more difficult the objective I set myself when I was appointed as Chancellor, namely seeking to achieve a “light touch regulation”.

10. As I say this is all very unfortunate because this evangelical church had engaged well with the faculty process over the years. They have a history of engagement with the DAC in relation to the appointment of an architect, then in connexion with a new heating system and the need to remove some pews in connexion with that. Almost the first thing I had to do on appointment as Chancellor of this Diocese was to deliver a major judgment in October 2006 in connexion with that matter. It is worth observing that at that stage some of the

objections were based on a fear that if they were given an inch they would take a mile and that the removal of any pews would be the thin end of the wedge. However the parish continued to engage with the DAC, the Church Buildings Council, the amenity societies and English Heritage, over their re-ordering proposals resulting in a faculty being granted in September 2009

11. It was as they began to implement the works that they realised that some alterations were required, and so they again approached their architect who advised them of the need to consult the DAC

12. It is not uncommon for this to happen. When it does then matters can usually be dealt with quite expeditiously. The architect contacts the Registrar and/or the Secretary to the DAC; if he contacts only one of those persons, then that person would immediately communicate with the other one. In that communication, the DAC Secretary advises the Registrar whether there are any complicating issues that would require a reference back to the full committee. In many instances he is able to say that he is quite confident that the Committee would have no objection to the amendment. If that is the case then I am asked to consider the matter and in straightforward circumstances I will authorise an amendment to the faculty within days of the matter first having been raised. If the matter needs further clarification or I feel that I need more detailed advice then I give directions and progress matters as quickly as possible.

13. The Faculty Jurisdiction exists as a real benefit for the Church of England. It provides an exemption from secular listed building controls. It exists because the State at the moment accepts that there is in place an alternative system which achieves the same outcomes as does the secular system. It is regularly reviewed and it has always been made clear that if the Faculty system is not achieving that result then it will be taken away and the control over what is done to listed churches will come under the local authority and its planning authority – its officers and committees.

14. If that were to happen then the church would lose the benefit it enjoys of having these matters determined by very experienced persons who not only understand the conservation and design issues but also have a deep understanding of the life and mission of the church.

15. Furthermore coming under secular control would result in the case of serious breaches, in criminal prosecution; a point which I understand was forcefully made by representatives of the local authorities and the amenity societies on the DAC at the meeting when they considered this petition for a confirmatory faculty.

16. Further it seems to me that the doing of this work without a faculty creates a potential financial risk. These works were unauthorised; if anything had happened that gave rise to a claim under the church insurance policies then it is at least a possibility that the insurance cover would have been avoided by the insurers. Any claim for third party liability for injury could have been very

expensive and left the members of the PCC and or the project manager exposed to personal liability.

17. Of course the faculty system is not without sanctions of its own. The Court has the power to make reinstatement orders, in which case the Petitioners would not only have to restore the church to the state it was in prior to their carrying out the unauthorised works but they would also have to pay the costs of the enforcement proceedings.

18. On this occasion, of course the petitioners have now had to seek a confirmatory faculty.

19. The petitioners have provided with the petition a Statement of Need explaining why each of the departures from the works permitted by faculty was undertaken.

20. The matter has been considered by the DAC, which recorded that it had "no objection" to the works that had been carried out.

21. However the members of the DAC who attended the site meeting had a number of observations which they had not only raised at the site meeting but which were expressed in the minutes of the December meeting in the following way:

- i) reassurance must be given as to the adequacy of the ventilation below the new raised floor areas;
- ii) the kerbs outside the west front must be cut back, as agreed on site;
- iii) the potential safety issues raised by the gradient and finish of the areas of sloping floor between the kitchen and WCs at the west end must be carefully considered;
- iv) consideration should be given to neater detailing where the new *Amtico* flooring meets the edges of the pew platforms;
- v) the heater behind the font should be removed and re-sited;
- vi) consideration should be given to the effect of the LED floor-lights on the status of the font, which now seems to be analogous to that of the WC and the kitchen, rather than the altar - effectively 'demoting' the status of a major liturgical article.

22. The DAC did not however make the doing of any of those things a proviso to its not objecting to the works.

23. It may be that some of these matters have been addressed by the architect but I am not aware of any correspondence indicating whether that is so or not.

24. I am satisfied that in broad terms the proposals are acceptable. However before the confirmatory faculty issues I wish to have from the architect a letter setting out his comments on the matters itemised (i) to (vi) above. I will then consider whether any further direction is necessary or whether any condition should be imposed on the faculty.

25. I also direct that Public Notice shall be displayed.

26. I anticipate that if no objections are received as a consequence of the Public Notice and when I have the letter from the architect I shall be able to direct that a confirmatory faculty will issue.

27. It will be a condition of that faculty that the petitioners will pay the costs of the petition in accordance with the Practice Direction 1992 No 1 together with payment for the ancillary work and additional correspondence in the Registry and by the Court on this confirmatory petition.

Canon Peter Collier QC
Chancellor

16th March 2011