

St Barnabas Erdington judgment

On the 4th October 2007 in the early hours of the morning a wicked act of vandalism took place at St Barnabas. It appears that a failed burglary led to the perpetrator setting fire to this lovely and much loved old church in several places; the resulting inferno engulfed pretty much the whole church. The least damage [with merely minor smoke and roof damage] took place at the tower and south west lift stairwell. Thereafter the church was deemed a dangerous structure and some emergency work has been undertaken pursuant to a Licence granted by myself on 12th May 2008. The reaction of the press and public has generally been one of horror- St Barnabas has over the years been a popular place for weddings and a treasured place of worship.

I need not repeat at length the excellent document with the papers before me describing the extent of the damage and exhibiting photographs; suffice it to say that the extent of the fire damage is truly considerable; asbestos has been released from failed artificial roof slates; contaminated debris fell through burnt timber floors; and even the water used to douse the fire exacerbated subsidence problems.

Much of the damage was beyond repair. Perhaps the only really good news was that the clock mechanism was repairable and has been repaired and the bells to the tower are again in use.

But the church is in effect an empty shell. Even windows have been damaged in several places.

Before me is a petition by the vicar and churchwardens to rebuild the church; not so much as to recreate it as it was as to *integrate new and existing by bringing the church into the 21st century. This will include redeveloping the church's bond with the local community and broadening the functionality of the church.*

The petition seeks to undertake the following: *internal reordering of the space to provide worship for 300, a separate chapel for 30, narthex, vestry, crèche and toilet provisions on the ground floor with hall, meeting rooms, office, kitchen and toilet provision on extended space at first and second floors. Extension on the north side to provide new entrance, foyer and community space. Regeneration of the churchyard sections A, B & C by removing derelict unsafe and unvisited markers as well as relocating some markers necessitated by the building works above.* I am asked to note this is the first petition dealing with the general fabric of the building and its extension with details of the interior furnishings and decorating to follow in subsequent petition[s].

With the papers is a very detailed architect's report from Brownhill Hayward Brown, incorporating the statement of significance and statement of need required.

I am aware that the church has consulted the Church Buildings Council [CBC]; at this stage I observe I would ask for further such consultation when dealing with the reordering of the interior- as I am aware that valuable advice can be given in these difficult circumstances

St Barnabas was built in the period 1822-24. It is a Grade II listed building; so great care must be taken by all concerned with the remedying of the damage caused and the restoration/re-build envisaged. Mercifully the costs of the fire can be met by the church's insurers but the damage and cost run into several millions of pounds. The church has some considerable architectural significance in that much of its design is by Thomas Rickman and later J. A. Chatwin, two of Birmingham's most significant architects of the 19th century. This is said to be the last of Rickman's Gothic churches within the city

The church has rightly consulted English Heritage [EH] and the Victorian Society [VS]. It has also liaised with the Local Authority entirely properly.

The Diocesan Advisory Committee [DAC] has been closely involved. I remind myself as I must that whilst I am not bound to follow the views of the DAC it is an august body, not given to approving plans that would undermine the integrity of an established and much loved church of architectural merit. I have seen the minutes of the DAC meetings discussing this proposal. I listen to DAC advice with the greatest care and in my view should always give sound and very carefully argued and cogent reasons were I to disagree with its recommendations. I note that the present proposals were approved by it without a vote; in saying so that does not undermine the views of VS but it does emphasize a degree of unanimity.

The PCC of the parish are entirely behind the current proposal and a unanimous resolution in support accompanies the petition. There are no objections to the proposals from individual parishioners, nor from English Heritage [EH] to whom I refer below.

The only opposition to the new plans is from VS which objects not so much to the entirety of the plans as to three aspects of them [which I shall enumerate below]. That said were I to uphold the objections then it seems to me that the plans would be largely undermined and the church would have to think again. In other words I would be taking a decision that would be very serious indeed for all concerned and which would require almost entire re-design.

I remarked above that CBC has been consulted; so it has been, though it appears to have been rather late in the day. That said and with minor and not relevant reservations CBC says *the Council considers the scheme to have been well designed and specified, and it is pleased to recommend the granting of a faculty*. CBC raises the furnishings [I have already said there should be further consultation with CBC about that] and the quality of a new font; but that is for the future not for this petition.

EH has considered the matter also: again the present scheme is broadly supported with the reservation that the design and appearance of flooring materials, raised altar platform, details of internal doors etc are clarified and appropriate items properly approved; so much awaits a further petition. Accordingly it approves the Faculty subject to-

- i. Approval of a sample of the roofing material prior to installation
- ii. Likewise approval of the flooring material
- iii. Submission of details relating to the design and materials of the proposed internal doors, windows and glazed panels
- iv. Demolition to be limited to the works at paragraph 4.1 of the architects' report.

EH do not require the matter to be re-referred to them – so they are subject to their provisos, broadly in favour. It is fair to say that EH's concerns do not undermine the present plans as would the objections of VS.

No objections have been received from members of the public

There is no statement of evidence in support of the plans by the incumbent or the churchwardens; I take it therefore that they are in favour of the proposals as drafted and supported by the church architect.

As the only objector VS has taken the pragmatic and entirely appropriate step of supporting a judgment to be delivered by me pursuant to my reading and analysing the papers, not by my hearing representations at a Consistory Court.

I have been to view the church in the absence of the vicar with my Registrar, with the DAC chair and with the Archdeacon. I have offered another site visit with VS but have not been asked to undertake one; I made that proposal so all parties felt I was taking an objective view of the matter, uninfluenced I hope by the views of one side alone.

What do the plans entail? The church seeks a rebuild but with a new entrance from the Erdington High Street. The idea is that it should serve not simply as a place of Anglican worship but as in part a community centre, where people of all faiths and none can feel welcome. In particular the church is anxious that for community purposes local Muslims should feel that they can access the building. In this context it is worth noting that the social and demographic make up of the parish has changed out of all recognition in the last 50 years. The area was moderately well to do years ago; it had predominantly a white mix of English and Irish and certainly there was not the substantial Muslim population that there is now. More significantly the area is now quite deprived, with a good deal of poverty especially to the south of the parish.

The reaction of urban planners and city tree and archaeology experts is reported to have been one of enthusiasm. I note that planning permission for the new structure was granted on 10th June 2010. The new entrance would require the felling of three trees and some crown lifting. Initially both EH and VS had objected to the planning permission sought but EH had changed its view after negotiation and commenting upon the reflectivity of the new roof covering.

VS

What are the objections of VS? it should first been said that there is no doubt that both these petitioners through their architect and the DAC have sought to work with VS in a constructive and purposeful way given the major project envisaged. I note in particular that VS has sought that the petitioners should lodge a method statement for restoring damaged stonework, provide a clear approach once the work has begun and should photograph each element worked upon. That seems entirely reasonable to me and will be one of the conditions attached to any Faculty granted.

In fairness VS very much appreciates the fact that much of the fire damaged fabric *is* to be restored- including Chatwin's unusual arrangement of arches dividing the nave from the chancel and transepts. The plans also envisage the retention of the damaged reredos plus the relocation and restoration of the one surviving stained glass window.

The more specific objections are these:

- i. **The proposed removal of some of Rickman's structure from the surviving remains.**
VS objects to the removal of the two cast iron windows from the north side of the nave. It argues that *the more ornamental traceried part of the windows is significant as part of Rickman's design for the building, and we consider its removal to be damaging to the character and appearance of the surviving parts of Rickman's work. We object to the removal of the windows from their original position.* In fairness VS concedes that Birmingham City Council has nonetheless granted planning permission but point out that this is not listed building consent as that is not required. Very reasonably VS then adds *however if the Chancellor is minded to grant the Faculty we hope that the present proposed relocation of the cast iron tracery will still proceed. We understand that it is proposed that the cast iron tracery from the upper parts of the windows be relocated to the new internal works at the west end of the church. Any cast ironwork removed should be properly preserved for possible future reuse, as is conditioned by the local planning authority (condition 19) and not damaged or destroyed* Of course it will be a condition of the Faculty I grant that planning conditions are fully complied with.

- ii. **The proposal for a substantial extension on the north side of the church**
 No objection in principle is taken to the principle of a new entrance to the church. VS argues that the design must be subservient and sympathetic to the listed building. However *we consider the design of the extension, which now has planning consent, with full length curving glass windows to be an inappropriate addition to the listed building...the glass will be reflective and create a significant barrier between the listed building and the churchyard and street. It is also likely to be difficult to maintain in the long term.* Further matters of concern to VS are raised: the treatment of internal appearance of spaces to be carefully considered; the need for a very careful evaluation of internal colours, fittings and furnishings; and their view that a less prominent extension requires consideration. Were I to uphold that objection a wholesale 'rethink' would in my judgment be required.
- iii. **The proposed new design for the roof of the building**
 Objection is taken to the roof of the building. Whilst conceding that the roofs designed by Rickman and Chatwin are wholly lost, *we continue to object to the proposed curved structure of terne-coated steel which now has planning consent. We consider that it will neither preserve nor enhance the character and appearance of the listed building.* Objection is taken because the designs of Chatwin and Rickman were rectilinear, and because terne-coated steel is reflective...*the large expanse of roof and glass on this north elevation is too dominant in views of the church, obscuring Rickman's nave walls and isolating the tower at the west end at a distance from the walls of Chatwin's transept, vestry and chancel at the east end. They add we would also wish to see the chimney to Chatwin's vestry retained.* Again such a retention would be a considerable impediment were that done and a redesign would be in part required.

[Pausing there I take the view that the demolition of the chimney concerned does *not* amount to partial demolition for the purposes of s17 of the Care of Churches etc Measure of 1991].

What is said in response to these objections:

- I have seen the building and note that:
 - i. The DAC considered the points raised by VS with care and still recommended the Faculty
 - ii. Birmingham City Council granted planning approval despite the objections being made also to them; and whilst they are not considering listed building consent I note that VS nonetheless made the same objections doubtless seeking to alter the plans. Their representations were taken into account but not acted upon.
 - iii. Given that the church was faced with the near total destruction of the building a bold decision has been taken to re-orientate the building towards the High Street in Erdington. Historically the entrance to the church has been off a side street. Given the fact that church going does not have the 'pull' that it did the desire is to maximise an opportunity for mission by attracting in passers-by, of whom there are plenty in the High Street but few at the side.
 - iv. There is a desire in effect to incorporate a community centre- the point of the extension, it is said, is to maximise available space. Curtailing the extension would mean in effect losing the opportunity of creating church hall facilities within the building.
 - v. I understand the roof design has a theological basis i.e. the theology of the church as an ark of salvation. It follows that the retention of a chimney would undermine the plan in its entirety.

- vi. Sufficient of the windows with frame and tracery is retained to be indicative of the original design
- vii. Damage in many respects cause by the fire is irretrievable and irreversible. The original building to a large extent cannot be seen. But the glass nature of the extension and the retentions envisaged give the best reasonable achievable

Burden of proof

The burden of proof in connection with a Faculty petition lies on the petitioner i.e. the vicar and wardens must have shown me on balance that their plans are appropriate. There is no presumption that the views of the PCC will prevail. That said the matter is affected by the law to which I now refer.

The law

Following the well known decision in *Re St Luke the Evangelist, Maidstone* I must follow the so-called *Bishopsgate* questions and I now address those:

- i. 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 parish] or for some other compelling reason?
- ii. Will some or all of the works adversely affect the character of the church as a building of special architectural or historical interest?
- iii. If the answer to (b) 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?

I note that 'necessity' is a broad concept; it is more than mere unavoidable repair but it includes works necessary for the pastoral well-being of the church or for some other compelling reason. In *Re St John the Evangelist Blackheath George Ch* [as he then was] described the word as meaning *something less than essential but more than merely desirable or convenient; in other words something that is requisite or reasonable necessary.*

I bear in mind of course that in the case of a listed building the burden of proof is not easily discharged, indeed the presumption is ordinarily heavily against change.

It seems to me that I can apply those *Bishopsgate* questions in this case, bearing in mind that I am starting with a building virtually destroyed by arson. In doing so I have referred myself to current case law in which the *Bishopsgate* questions has been considered. No case is of direct relevance but I note for example that in cases such as *Re St Peter's Walworth* the court looked essentially at the character of the building. There is no attempt here to render beyond repair or devalue a building already very gravely damaged.

Observations on the objections of VS

I note that VS in effect concedes its first objection cited by me above. There is simply a desire to preserve and retain what can be retained. That can be effected by retaining the cast iron window trceries so far as possible

I do not consider that the objection to the 'glass extension' is realistic. The extent of the damage to the church is enormous. The church has put forward an imaginative and sensitive plan incorporating a 'church hall' i.e. a community centre in a modern yet well designed way.

As to the terre coated steel roof I have to weigh up the opinions before me. I understand the roof will not reflect after time and will in fact be a modern but beautiful design showing off so far as possible to former fine features of the architecture. The complaint that the design is too large seems to me to be a little unfair. Churches are not preserved in aspic. They are growing and changing bodies of necessity where such terrible damage has been done. I have seen the site-plans seem to me to be well thought out, thoroughly well considered and designed to a great degree to be carried out in co-operation with both EH and VS. I do not see this as an example of failing to work with amenity societies- rather the reverse.

Will the new roof preserve the existing building? It seems to me that it will. If the design is simply not good enough and proves to be a structural disaster then of course that would be a matter of litigation elsewhere, and not be my concern.

The chimney simply cannot be retained; if it were the new roof would be at risk, would require a re-design and large extra costs would be incurred.

I for my part am satisfied that the Petitioners have done a remarkably good and thorough job in the most distressing and painful circumstances. A new but effective building is emerging from the ashes of the old and the vicar, wardens and PCC are to be congratulated on their efforts, and the DAC thanked for its tremendous yet appropriate support.

I am nonetheless grateful to VS for pointing out how important colours etc are and will of course remit further matters to the DAC.

Application of the Bishopsgate questions

- i. The church has been closed because it is dangerous for a considerable period. The parish has not had the advantage of a prominent position for worship on the High Street in Erdington. There is no doubt that rebuilding is an urgent pastoral necessity, and rebuilding to a high standard. The plans I have seen are as I have noted imaginative and frankly exciting. They seem to me to do all they can to preserve what is possible of the designs of Rickman and Chatwin; much of what they did that has survived will still be seen. The cast iron tracery is to be preserved. I do not accept that there should be a substantial redesign to incorporate a chimney; nor do I consider the roof, unusual though it is, to be an impediment to a sensitive and well-designed project- rather the reverse. Were I to uphold the objections of VS I consider that the new entrance would be compromised and the radical inclusion of space to have community rooms inside the building would be irredeemably compromised. Accordingly I find that there is reason for this design in the interest of the pastoral well-being of the church and I further find that there is another compelling reason- to draw people in a refreshing approach to mission and evangelism.
- ii. Nor do I find that the works will adversely affect a building of special historic or architectural interest. I note that neither EH, nor the DAC nor the planning authority nor the CBC have opposed the new design; only VS. Such further change as is necessary [the removal of a chimney, the new roof and the moving of a cast iron window] are necessary and I note the huge efforts made by the petitioners to preserve the good from the past as a whole. Given the disastrous position from which the church has started the petitioners' achievement is considerable and worthy of commendation not criticism.
- iii. I have in effect elided questions (ii) and (iii). For even if minor 'damage' is being done to the historic features of the church it is minor when the scheme is viewed as a whole and entirely necessary in implementing the parish's plans.

Conclusions

Accordingly it is my view that the petition should be granted. I am however going to impose a number of strict conditions to ensure that as much of the historic aspects of the church are preserved as possible and to ensure that the development is sensitive. The conditions are not 'writ in stone'; if they are simply not feasible then the petitioners may apply to me on notice to VS, EH and the CBC for the conditions to be varied if necessary.

I have great confidence in the DAC and will make many of the conditions refer to approval by this body of the way forward.

Accordingly and subject to the conditions beneath I approve the petition and grant it.

The Conditions

1. The petitioners must comply with all conditions attached to the grant of planning permission in their entirety. [That goes without saying].
2. I shall impose those conditions recommended by EH:
 - i. The DAC must give its approval of a sample of the roofing material prior to installation.
 - ii. Likewise the DAC must give its approval of the flooring material
 - iii. The DAC must approve details relating to the design and materials of the proposed internal doors, windows and glazed panels.
 - iv. Demolition to be limited to the works at paragraph 4.1 of the architects' report.

Where I require DAC approval that must be by the DAC as a whole or else by its delegated sub-group which includes an architect member.

3. Internal colours and fittings must be approved by the DAC
4. The re-ordering of the church and the furnishings to be used must be subject to a further Faculty and the CBC should be consulted about that.
5. In particular this approval is not to be construed as approving the font referred to in the CBC letter.
6. The petitioners must lodge with the DAC and the Registrar a method statement for restoring damaged stonework [including photographing each element to be worked upon] to be approved by the DAC before such work is undertaken

His Honour Judge Cardinal
Chancellor of the Diocese of Birmingham
28th September 2010.