

**DIOCESE OF SHEFFIELD  
In the Consistory Court**

Her Honour Judge Sarah Singleton QC

*Chancellor*

**In the Matter of  
ALL SAINTS HOOTON PAGNELL  
WORKS UNDERTAKEN WITHOUT FACULTY**

**Judgment**

1. This judgment is handed down in most unusual and unfortunate circumstances. It accompanies my direction that a faculty be granted to the petitioners in this matter to enable and direct that necessary works of restoration be undertaken at this church to rectify the carrying out of unlawful works.

Many of the facts set out in this judgment are beyond dispute and gleaned from the documents filed in the proceedings. Where there are gaps or conflicts I have drawn inferences based upon the written documents. I have not had the benefit of hearing oral evidence because the Petitioners in this case wish the matter to be dealt with on paper without a hearing. This I take to be their intention from the letters written by the chairmen of the PCC of Bilham and the DCC of All Saints to the Registrar of 3rd and 6<sup>th</sup> April 2017 respectively.

Annexed to this judgment are the orders I made on 4<sup>th</sup> November 2016, 21<sup>st</sup> November 2016, 10<sup>th</sup> January 2017 and 30<sup>th</sup> March 2017.

**The Church**

2. All Saints Church Hooton Pagnell is a grade 1 listed church (<https://historicengland.org.uk/listing/the-list/list-entry/1314808>).

It is a Norman Church with some features that suggest pre Norman origins. It was extensively renovated during the 19<sup>th</sup> Century.

The Church lies within the Benefice of Bilham. Its running is delegated by the PCC of Bilham Parish to a District Church Council at All Saints. The two churchwardens are Mr Michael Macdonald (since 2011) and Mr Mark Warde-Norbury (since 2013). Mr Warde-Norbury is the chairman of the DCC. Both are also members of the PCC of Bilham of which Mr Warde-Norbury is also the chairman.

Hooton Pagnell is a beautiful medieval village which lies just into South Yorkshire in the Metropolitan Borough of Doncaster. The village and the associated manor house are listed in the Domesday Book. Many of the properties in the village were constructed and owned originally by the estate of the manor house which is now held by Mr Mark Warde-Norbury. Throughout its history the church has benefited from the patronage of the manorial families at Hooton Pagnell.

The Church has been without an incumbent for some little time. The Archdeacon of Doncaster, the Venerable Stephen Wilcockson (the Archdeacon) has been active in the ministry at the Church during the time they have been without their own priest.

## The events necessitating these proceedings and this judgment

(These paragraphs constitute my findings as to the relevant issues after consideration of the evidence filed)

3. In March 2016 the Archdeacon discovered, when he went to All Saints to conduct a service on Easter Sunday, that a toilet had been installed in the vestry within a roofless cubicle. The installation is unlawful because no faculty process had been followed and no permission had been obtained from the Consistory Court for the construction. This situation is exacerbated by the poor quality of the works and the fact that the arrangements for the drainage of sewage from the toilet have involved excavation into the ancient churchyard.

It is significant to note that each of the Churchwardens had previously been signatories to faculty petitions for works at the church:-

- In 2010 Mr Macdonald successfully petitioned alongside the then incumbent, the Reverend David Lethbridge and Mr Antony Warde-Norbury for the installation of halogen floodlights;
- In 2013 Mr Macdonald, Mr James Stuart Murdoch (DCC Treasurer) and Mr Mark Warde-Norbury successfully petitioned for the restoration of the church clock.

I therefore reject any suggestion that the Churchwardens either:-

- did not know of the need for a faculty petition before undertaking works at the church and in particular their duty under Canon F13.3 that:-

*It shall be the duty of the minister and churchwardens, if any alterations, removal, or repairs are proposed to be made in the fabric, ornaments, or furniture of the church, to obtain the faculty or licence of the Ordinary before proceeding to execute the same.*

- did not know of the process for petitioning for a faculty; or
- did not know how to get assistance with any such petition.

4. The Archdeacon and the Secretary of the Diocesan Advisory Committee of the Diocese of Sheffield, Dr Julie Banham (the DAC Secretary) made extensive efforts during the weeks and months that followed the Archdeacon's discovery of the vestry works to secure a proper restoration of the church and the removal of the unlawful works from the vestry and churchyard.

The Church Architect responsible for the Quinquennial Inspections at the Church is Mr Andrew Boyce (the Church Architect). He became involved so as to ensure that the works necessary to restore the Church to a lawful state would be carried out appropriately. He had not been consulted about the works.

I consider it was and remains appropriate and necessary for the Church Architect to be engaged in the works now required to restore the Church and reject any criticism of the Archdeacon or the DAC Secretary for involving him.

5. The Church Architect's opinion of the Vestry works was as follows (from his letter of 14<sup>th</sup> April 2016 to the DAC Secretary):

*My primary and urgent concern would be for the PCC to confirm what type of drain they have connected the WC into. If it is simply into a drain pipe running along the rear (north) wall of the church, this is almost certainly NOT suitable for foul drainage as I suspect it is surface water*

drainage either going to a small, old soakaway or possibly just a pipe heading west and discharging onto the bank over the retaining wall & roadway beneath.

**If this is the case they should stop using the WC now.**

All of the work to form the enclosure, install drainage and other services is subject to Building Regulations control and approval. The PCC must ensure that any installation in the church has the relevant consent under Building Regulations if applicable as, apart from not being compliant with those regulations, they may otherwise invalidate their insurance. An internal WC installation such as the one built does not normally need Planning Consent but will need Faculty (which will give the equivalent of Listed Building Consent). In the secular world, work to a Listed Building without consent, which damages fabric, runs the risk of criminal (not civil) sanction. (I am not clear on the implications within Ecclesiastical Exemption). This sort of proposal within a grade 1 Listed building is also subject to statutory consultation with Historic England, and possibly other Amenity Societies.

An important point to be made here is that if this sort of work is seen to be carried out without Faculty there are plenty of people who will point to this as a failure of the Ecclesiastical Exemption system and could bring forward arguments for a return of churches to the jurisdiction of the Local Planning Authority. This would have serious consequences for the running of churches and, in my opinion, be a retrograde step.

Looking at the enclosure which has been built, the following comments are made:

1. If the PCC are providing a single WC in a public building then according to current Building Regulations it should be of accessible provision and therefore a minimum 1500mm x 2250mm clear internal size. This is to allow a 1500mm diameter turning circle for a wheelchair within the cubicle. I measured 1240 x 1980mm approx. The door also needs to be 1000mm wide over the frame (usually about 925mm clear). I did not measure the door but it was a standard panel item and certainly not 900 clear. The Building Regulations make no distinction about who might use the WC (we discussed whether a smaller cubicle is acceptable for "staff"), but it could be the case that a future Vicar or other PCC members/churchwardens, etc. have disabilities of some sort or could be wheelchair users.
2. As an accessible WC should also have various accessible aids such as handrails, etc. There are none in the current arrangement.
3. The basin has been fixed to the wall and does not rest on the pedestal properly. It should either be fully supported by it, or have proper basin hangers. There appears to be a leak from the basin pipework somewhere as there was copious amounts of water on the timber block floor when we visited. The wooden floor blocks are loose, decayed and not in good order. Any spills of dirty water could not be properly dealt with.
4. The cubicle has no "lid". This might not be a problem as it is within an enclosed vestry space however the Building Regulations require a WC to be mechanically ventilated and there is no provision for this. The only openable light in the vestry windows is rusted shut. The lack of a lid to the enclosure means that use of the vestry is potentially limited if the WC is occupied.
5. The below floor/ground drain works should have been overseen by an archaeological watching brief particularly in view of this church's ancient foundation which has

*implications not only for disturbance of human remains but also for damage to buried remains of earlier structures and buildings.*

6. *The (apparent) relatively limited disturbance of ground on the north side of the vestry suggests that the drain has been connected into a pipe adjacent to that rear wall, however, there are two ledger stones either side of the new inspection cover which must have been disturbed as part of any excavation. The connection between this inspection chamber and the soil pipe from the back of the WC would have required breaking out of part of the substantial stone wall – part of the Listed structure.*
  
7. *Outside the WC enclosure, the door into the vestry is quite narrow and not at all suitable for wheelchair access, quite apart from there being a step through the threshold. There is a further step down from the adjacent chapel altar pace. The south chancel door has an upstand threshold, and there is a step from the chancel down to the nave level.*
  
8. *The construction of the WC appears to have required the re-positioning of the safe. This has been pushed right up to the electrical equipment on the east wall making access for maintenance almost impossible and certainly potentially unsafe (leading to the possibility that the electricity board might refuse to carry out servicing).*

*Quite apart from the technical aspects of the installation, I am disappointed to note that the work is not of the sort of aesthetic standard which one would hope to see in a Grade 1 Listed building. There are plenty of examples of beautiful design in the remainder of the church and the cheap stained ply and planted timber materials used are not in any way worthy of the building.*

6. The Diocesan Registrar, Mr Andrew Vidler, (the Registrar) soon became involved and supported the efforts of the Archdeacon and DAC secretary to secure a lawful and proper restoration including writing several letters to the church wardens setting out clearly what was required and setting, on each occasion a deadline for compliance which was repeatedly extended

It was necessary for the Registrar to become active in this matter once it was clear, as it was from May 2016, that the parish were disinclined to act quickly or consensually to remove the unlawful works despite the opinion of the church architect and the advice of the Archdeacon and DAC Secretary.

I use the term parish carefully because it would seem that the Churchwardens were not disclosing or forwarding the communications they were receiving from the Registrar, the DAC Secretary or the Archdeacon to the other members of the DCC or the PCC of Bilham and statements have been filed and correspondence received from members of the DCC and the PCC complaining that they were not notified of what was happening. They are right to complain but their complaints should be directed at the Churchwardens whom I consider had a responsibility to keep them informed. Perhaps the Archdeacon should have called a meeting of everyone but he was concerned that to do so over the heads of the Churchwardens might be seen as undermining their position. Throughout the process Mr Macdonald's approach (gathered from his correspondence and statement) has vacillated between conciliatory and seeking a proper solution and angry and making complaints directed particularly against the Archdeacon.

7. Once the Registrar began corresponding with the Churchwardens it was evident that this was a legal process from the very fact and nature of the correspondence and I consider it was their responsibility to inform the DCC and indeed the PCC of the correspondence and the issues. This conclusion is supported by the fact that at the hearing I conducted Mr Macdonald expressly asked me to deem that service upon him would be service upon all the relevant individuals.
8. In October 2016, after months of seeking to liaise with the Churchwardens to secure the removal of the unlawful works in the vestry and churchyard (the toilet), the Archdeacon made a further discovery at All Saints; namely that a kitchen sink unit and a wall mounted electric water heater had been installed inside a cupboard at the base of the church tower. These works are also unlawful because no faculty process had been followed and no permission had been obtained from the Consistory Court for the construction. This situation is exacerbated by the poor quality of the works and the fact that no one at any point during the communications about the vestry toilet, had chosen to inform the Archdeacon or the DAC Secretary of them.
9. The Archdeacon and the DAC Secretary sought between May and October 2016 to persuade the Churchwardens to petition for a faculty to undertake the necessary works of restoration. Up to the end of October they did not do so.

It was therefore necessary for me to make orders of my own motion about this matter and I did so on 1<sup>st</sup> November 2016 when I made recordings of what had happened and directed:-

- That the water heater be disconnected and not used again and further that there should be cooperation with any investigation initiated by the South Yorkshire Fire Service.
- That there be written confirmation by 11<sup>th</sup> November 2016 including details of the plans either that they were to remove the unlawful installations and make good the premises or that they wished to contest the Court's recordings that there were unlawful works.
- In default of compliance or if necessary in accordance with the last paragraph a hearing was to be fixed to determine what evidence was required to decide whether and how the works of restoration should be undertaken.

After only partial compliance with that order by a letter received on 17<sup>th</sup> November 2016 I made a further order on 21<sup>st</sup> November 2016 providing for a hearing at the church on 6<sup>th</sup> January 2017. I fixed the hearing for 2.00pm with a direction that the parties (and their legal representatives if instructed) attend for discussions from 11.00am.

(I later changed the order to fix the hearing at 12.00 and omit the requirement for pre hearing discussions.)

10. Both of the orders (of 6<sup>th</sup> and 21<sup>st</sup> November) were clearly marked as Court documents. Both contained prominent notices explaining that the orders of the Consistory Court are enforceable as follows.

***Warning***

1. *The Consistory Court has jurisdiction to make orders and judgments which are enforceable both as money judgments and by way of contempt proceedings.*
2. *This means that breaches of this Court's orders may be established to be contempt of Court and could result in the contemnor being made subject to a fine or even a sentence of imprisonment.*

3. *Furthermore the Consistory Court may make such costs orders against parties who are before the Court as are just and reasonable in all the circumstances*

I am therefore surprised to read, in the statements filed by the Churchwardens and other DCC members, complaints that people did not know it was to be a formal court hearing and were taken aback when they attended to find that was what it was (or found out later). The Registrar's Clerk was asked at the hearing for an agenda for the meeting despite the directions of 21<sup>st</sup> November 2016 explaining that it was a hearing and further what the issues were.

11. On 14<sup>th</sup> December 2016 a petition for permission to undertake the illegal toilet washbasin and enclosure from the vestry and a heater and basin from the tower was finally received at the Registry. Mr Macdonald and Mr Murdoch (DCC Treasurer) are the petitioners.
12. The hearing on 6<sup>th</sup> January 2017 at the Church went ahead as directed of my own motion and in the matter of the Petition. The order I made is annexed to this judgment with those of November 2016.

At the hearing I sought to explain:-

- The gravity of what had happened;
- The need to comply with the law;
- The purpose and the utility of the law in so far as its proper operation secures the exemption of churches from ordinary listed building regulation;
- The extent of the help available to parishes in the Diocese to comply with the law, to devise inspiring schemes of renewal and improvement and to fundraise for such schemes.

Many of these points were repeated and amplified by the Archdeacon and the DAC Secretary.

Those present from the Parish expressed their willingness to comply with the law and their regret for not having done so before.

13. I was concerned at the hearing, despite the expressions of regret and apology, that no details were disclosed about how and by whom the decision had been taken to commission unlawful works and ignore the need for faculty permission. Therefore there were no clear lines of responsibility for what had happened. My concern was not in order to be able to blame individuals but so that I could make a fair order as to the costs of putting right what has gone wrong. This includes the professional costs of the Church Architect and also the legal costs which have been incurred by the Registrar's involvement.

It is not right that the Parish as a whole should have to pay a large bill which it can ill afford if a particular individual or individuals has or have been responsible for encouraging the Parish to believe that they could ignore the law with impunity. If that is what occurred here then it was open to me to make an order requiring such individual or individuals to bear some or all of the costs personally. I explained this at the hearing and the reasoning is set out in my directions order. Hence I required statements to be filed containing a proper account of what had happened.

14. The DAC considered the Petition for the removal of the unlawful works at their meeting on 10<sup>th</sup> January 2017 and formally did not object to them proceeding. That absence of objection was subject to the following provisos:-

- All work is to be supervised by the Quinquennial Inspector (QI).
- The contractor(s) undertaking the work are to be approved by the QI.
- In agreement with their QI and approved contractor(s) the church are to inform the Registry no later than 28<sup>th</sup> February 2017 of the start and end dates by which all works will be completed.
- An archaeological watching brief to be put in hand with a report submitted to the Registrar and DAC.
- All electrical connections are to be made safe in accordance with current BS requirements.
- The QI is to determine if any affected areas need to be checked for asbestos and to report the findings with any recommendations to the Registry.
- All flooring in the vestry is to be repaired or replaced on a like for like basis with appropriate sub-base as required.
- The safe is to be relocated so as to allow free access to the fuse box and associated electrical works.
- The parish agree to pay all fees due to the QI and contractors and any others as directed by the Chancellor.
- A Completion Certificate and photographic record of the restorations to be submitted by the QI to the DAC within one month of the restoration work being completed.

In addition to these provisions the DAC provided for Historic England, the Local Planning Authority and the Church Buildings Council to be consulted.

15. In accordance with my directions, witness statements from Mr Michael Macdonald, Mr Mark Warde-Norbury, and Mr James Murdoch have been received by the Registry. I have read and considered them.

In addition I have read and considered an email from Joyce Plumb, the PCC Secretary for the Benefice of Bilham and a letter from Mrs Linda Jackson, a member of the DCC at Hooton Pagnell.

The statements, email and letters contain a spectrum of views and accounts of the facts of this matter:-

- Mr Michael Macdonald's statement says that the decision to install a toilet was taken in principle at the DCC meeting in January 2016. He was not present. His statement contains no details of how that decision resulted in the works simply being done unlawfully without a faculty. His statement does contain a litany of complaints about the processes adopted by the Archdeacon, the DAC Secretary and the Registry during their attempts to resolve this matter without the need for a Consistory Court hearing. He suggests that the legal costs incurred at the Registry were unnecessary.

Suffice it to say that, on a neutral evaluation of the statement, Mr Macdonald's accounts and assertions would have been vulnerable to serious challenge had this matter proceeded to a contested hearing.

- Mr Warde-Norbury's statement contains no account of how or why these works at the church were undertaken without faculty. It contains an acceptance that a faculty should have been applied for and an apology. The statement complains that the parishioners have been "bamboozled by poor communication and archaic process and language". He too suggests that costs have been incurred by reason of the approach of the "Church" and asks for a constructive approach in the future. I infer from the statements of others that he was present at the January 2016 DCC meeting when a decision was taken "in

principle” that works to install a toilet and a kitchen should be undertaken. I note that whilst I have a minute of the DCC meeting which agreed to petition to remove the works, I do not have, in turn, an equivalent record of the original decision and I have no account of the meeting in January 2016 from Mr Warde-Norbury.

- The statement of Mr James Murdoch is more informative. He confirms that the first time the DCC discussed the installation of a kitchen and a toilet was on 19<sup>th</sup> January 2016 at the DCC meeting. The proposal was for tenders for the works to be sought from Colin and Kevin Soar. He was not too happy about this because of the cost and “involvement of the Church Architects” which conflicted with the Church’s limited funds. He says that the next he was aware was when he returned from holiday to be informed that water and drains had been installed. At the next PCC meeting he says, it was revealed that this had been completed using Bramhill Brothers and they had been paid using the village charity account. He did think that the kitchen was a little crude but ok and he considered the toilet to be substandard.

It is a pertinent point to note that no one from the church community has yet explained what the drainage arrangements are for the toilet that was installed and I am not reassured that the work done is not unlawful in and of itself because it may contravene laws or byelaws regulating drainage of sewage from toilets. An appropriate referral has now been made to Yorkshire Water who may well investigate further.

I infer from Mr Murdoch’s statement that somebody, presumably on the DCC, took the decision outside the DCC meetings simply to commission less expensive contractors than those originally considered in January at the meeting to undertake the works. The decision maker or decision makers must also have decided to pay them from the village charity account.

Mr Murdoch was aware that the Archdeacon was in touch with the wardens about the works’ legality. He was not fully informed of what was going on by the Churchwardens. He regards the response of the Archdeacon, the DAC Secretary and the Consistory Court as something of an overreaction to a relatively minor matter.

- The letter of Mrs Linda Jackson explains why the DCC and the Church community wanted a toilet and kitchen to be installed and I obviously understand that there are very good reasons why this or any church would want such facilities. Mrs Jackson wants to see an expansion in the number of people coming to functions and visits to the church and that would be difficult without these facilities. Mrs Jackson seems to think that the problem here is simply with the quality of the work.
- Her letter reveals a lack of understanding that the installation which has gone ahead is unlawful and that commissioning it would be a criminal offence in a secular setting.

### **Other Responses**

16. At some point since the January hearing I infer that a public meeting of some sort has been held about this matter which has prompted correspondence to the Bishop of Doncaster containing complaints about the interventions necessary to secure the restoration of the church. I have been sent one such letter as an example of a number that the Bishop has received along the same lines. I have edited the name and of the correspondent and anything to identify her from this extract but otherwise reproduce exactly what she wrote:-

*I am writing to you today to express my disbelief regarding the way my Church family are treating some dear friends of mine who live in Hooton Pagnel. You may or may not be aware of action being taken regarding recent works at All Saints church.*

*Essentially, due to parishioners and visitors needs, friends of All Saints, organised for some works to be carried out. For the avoidance of any doubt, adding internal WC facilities to the church was great and well overdue progress. With dwindling and aging congregations such facilities are no longer a nice-to-have but a necessity.*

*We are lucky that this particular church is at the hub of village life, with many events being organised by the same few. Often encouraging people from outside the village in with delights such as cream teas etc. Creating a hugely welcoming environment for people to come together and to bring harmony into people's lives.*

*Consider this against a back drop of chemical attacks in Syria, earth slides in Columbia, and extreme acts of terrorism occurring only a few weeks ago close to home on Westminster Bridge.*

*So I struggle to see how on earth MY church leaders can be oncoming actions in such a belligerent, barbaric and oppressive way regarding building alterations in a church in Hooton Pagnel. Seriously, have people taken leave if their senses? The work has been tastefully and sympathetically done. It has brought the church into line with food safety legislation (which it previously wasn't- as ex Technical Director and head of Trading Law for a national retailer, I am more than happy to provide further detail should it be needed).*

*It beggars belief, the way my Church leaders have intimidated my friends who have good hearts and have only ever sought to improve the lives of others around them. Perhaps Easter can help as a timely reminder of how wrong the 'authorities' can be. Persecution, over reacting, intimidating. Lots of parallels here but incredibly depressing that thousands of years on we continue to make the same mistakes.*

*In short, I respectfully ask that this situation is resolved. Common sense is brought to the table. The jobs-worth mentality is brought to an immediate halt.*

*My fiends are too kind to be as forthright as I am. I am seriously considering penning a note to Queen Elizabeth who is head of my church to ask for her views of the disproportionate action being taken. Bonkers I think will be her reply. This sees typical of such a pale, male and stale establishment. Perhaps a woman's view will bring a new perspective.*

*Rest assured, as a Christian I believe in fighting for others when they are being intimidated and bullied. I am very happy and capable of bringing this to the attention of the media. Do I really have to resort to this? Private eye would have a field day. Something I hope that can be avoided. One of this is meant to be a threat, just options available if this isn't brought to an immediate end. How will we all feel if someone decides they simply can't take the pressure of this any more.*

*Let's look after what is important. When it boils down to it, people are important not buildings. The church is setting an appalling example in its community. Time to grow up and move on wi the times and help build a proposer future that is sustainable for the whole community not a few.*

*I look forward to your reply. May I also ask, other than God, who do you report to?*

I have copied this letter into this judgment, not to belittle its author, but to explain my inference from this style of correspondence sent to the Bishop, that some members of the community of Hooton Pagnell and their friends and supporters have been seriously misled.

17. By contrast, the DAC Secretary and the Church Architect have received the following comments on the works from Elizabeth Lewis, an inspector of historic buildings and areas at Historic England:-

**Installation of WC, kitchenette & associated works at All Saints Church, Hooton Pagnell**

*Thank you for contacting Historic England to seek our opinion regarding the above unauthorised works. Please accept our apologies for the delay in responding to you. We understand the works comprise of a w.c. basin and enclosure within the vestry and the installation of a kitchenette within the base of the tower.*

*The Church of All Saints is listed at grade I meaning it is of outstanding architectural and historic interest and is one of only 2.5% of listed buildings which have been graded in this highest tier. This fascinating Church was erected in the twelfth century possibly with earlier origins. Further additions were undertaken in the thirteenth and fourteenth centuries particularly to the two stage tower. A significant restoration was also undertaken in 1876 by J.L.Pearson.*

*Historic England understands these recent works have been carried out without faculty approval. Whilst we have not visited the Church to view the alterations, we have seen a number of images which illustrate the extent of the works. We are extremely concerned regarding the impact of the alterations on the appearance and historic fabric of the vestry and tower. In addition the works appear to have been executed quite crudely, cutting through features such as the wooden block floor and possibly medieval masonry.*

*As the works are unauthorised we would like to draw the attention of the PCC to Section 7 of the Planning (Listed Building and Conservation Areas) Act 1990 (LBCA Act) which provides that, subject to the following provisions of the Act, 'no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised. (Section 9 of the 1990 LBCA Act provides that if a person contravenes Section 7 he/she shall be guilty of an offence.) It is a criminal offence to carry out work which needs listed building consent without obtaining it beforehand.*

*We would like to stress that we are not opposed to accommodating these facilities within the Church providing they are justified and the correct procedures have been followed. However, careful thought needs to be given to the siting of the w.c and the kitchenette as well as the associated drainage to avoid any impact on the high significance of the Church. We would welcome the opportunity to explore alternative locations for the facilities if it would be helpful.*

*We would urge the members of the PCC to remove the items and repair any damaged fabric such as the wood block floor and masonry within the vestry and tower in accordance with the schedule of works provided by Andrew Boyce.*

18. After all the statements including those in reply from the Archdeacon and the DAC Secretary were filed it was sadly obvious that there were a number of serious conflicts of fact. By this I mean that the key people did not agree about where the truth of this matter lies. I concluded that a hearing was necessary and fixed a three day hearing to take place that month (May 2017) in order to hear evidence and make findings about what had happened, when and why so that I would be able to make a fair decision about who should pay for the works and the associated costs including the legal costs, including whether there should be any orders against individuals.

Such was the understandable importance of these matters for the DAC that they proposed to brief counsel (i.e. use a barrister) to act for them at the hearing and his advice on the matter was sought. This use of counsel (a barrister) by the DAC was, to my mind, reasonable; the DAC Secretary and indeed the Archdeacon were the targets of vituperative criticism in some of the statements and letters of the church community. These statements materially underestimate the gravity of what had taken place and demonstrate an attitude that they were being persecuted for a “minor planning matter” (the quotation is from a letter of Mr Macdonald’s to the Archdeacon).

19. Shortly after the order of on 30<sup>th</sup> March 2017 providing for the listing of the hearing was made, the Bilham PCC met and were addressed by the Archdeacon. The attenders included Mr Macdonald.

The conclusion of the meeting is minuted as follows:-

*After a lengthy discussion it was proposed by FM that Hooton Pagnell D.C.C. should pay the costs to date and carry out all repair works required to return the church to its former state. This proposal was accepted by the meeting. MM agreed to contact Andrew Vidler (Registrar) the next day to determine the Chancellor’s costs and bring the matter to a satisfactory conclusion.*

The Registrar subsequently received a letter from Mr Warde-Norbury dated 3<sup>rd</sup> April and from Mr Frank Mann, the chairman of the PCC of the benefice of Bilham, dated 6<sup>th</sup> April. They each confirm this position but Mr Warde-Norbury’s letter suggests that the parish does not accept that it should be responsible for all of the legal costs incurred by the Registry.

## **Conclusions**

20. It is important in the circumstances of this judgment that I say something about the purpose of the law and the motives of those involved in its operation and enforcement. They are not ‘jobsworth apparatchiks’ doing their work because they like telling people what to do. What is done is done because churches, particularly listed churches, constitute a tangible and spiritual history which touches everyone including the people of the past, the present and the future including those from within and from outside our church communities and from within and outside their geographical area. They connect us to each other and to those who went before us and to those yet to come by our mutual and continuing appreciation and enjoyment of their beauty and history. These buildings need and deserve to be preserved, renewed and improved, expertly, professionally and within a process open to public scrutiny. That is my understanding of the purpose of the strict law which applies to listed buildings generally and within the Faculty Jurisdiction as applied to listed churches generally and Grade 1 and 2\* listed in particular. Within the church the preservation and development of beauty and history is undertaken to the glory of God.

21. My experience so far in the Diocese of Sheffield is of people from widely varying churches across the Diocese who do their best to comply with the law which can seem dauntingly technical. Some do find the rules irksome. Some, no doubt, resent the need to comply but do so anyway. They can and do take advantage of the assistance available in the Diocese from the Archdeacons, from the DAC Secretary and the DAC and from the Registrar and his Clerk. The DAC includes members who are experts in numbers of different and relevant crafts and professions who gladly give a lot of time to help parishes work up proposals, to help them through the faculty process and through the scrutiny of the historic bodies. This includes other parishes who have been without an incumbent as they went through the process. Some of the projects I have had the honour and duty to scrutinise and approve have been inspiring.
22. With the preceding paragraphs in mind I consider it proper and appropriate to say that the approach of those with responsibility and authority in the parish of Hooton Pagnell has been exceptional. I find it likely, upon a scrutiny of the written evidence, that, at or about the time of the January 2016 DCC meeting (at which a decision in principle was taken to install a toilet and a kitchen), one or two powerful voices persuaded others in the parish that complying with the Faculty regime was not important and that it was worth trying to get away with not doing so.
23. Unfortunately it would be disproportionate and inconsistent with the overriding objective of the 2015 Faculty Jurisdiction Rules, given the concessions that are made by the parish as to what should now happen and given the costs both financial and human of a hearing, for me to insist that a hearing go ahead. At such a hearing I would have considered oral evidence in order to make findings as to who was responsible for influencing the parish as I have outlined. I am concerned that a deliberate choice has been made in some quarters not to relate the details. I am concerned that the parish has chosen to take collective responsibility to discharge a relatively large cost when such a liability might properly have fallen elsewhere. It is still open for whoever is responsible for what has happened to offer to take responsibility, whether publicly or privately.
24. For all the reasons outlined in this judgment:
- I make the directions attached that the faculty to facilitate the works be issued.
  - I direct that the legal costs incurred by the Registrar be paid by the DCC of Hooton Pagnell Parish. His final bill is to be submitted to the Respondents and they are at liberty to raise arguments with me as to either the incidence or quantum of any particular item for me to consider whether such item or the amount charged for it is fair. Such arguments may be raised by way of letter sent to the Registry within 14 days of delivery of the bill to them. The Registrar is at liberty to reply to any such argument by way of letter to me to be copied to the Respondents within 14 days of the delivery to him of any letter containing arguments to persuade me to reduce the amount of the bill submitted. I would propose to deal with any such dispute by considering the documents but the parties are open to request a hearing (the costs of which would also be at large for my determination). It is also to be open to the Registrar to agree a compromise as to the bill payable with the Respondents if he saw fit to do so.
  - The DCC of Hooton Pagnell Parish must also pay, in addition to the costs in the Registrar's bill, the fees of the barrister instructed to advise the DAC.

The majority of these costs were incurred before the meeting of the Bilham PCC and the letters of Mr Mark Warde-Norbury and Mr Frank Mann were received. Mr Warde-Norbury's letter argues against such an outcome because he had understood that the Diocesan Board of Finance were to make a contribution as yet unspecified.

25. The decision as to costs in paragraph 24 (that the DCC should pay) does not preclude a contribution being made by the Diocesan Board of Finance but that would be entirely without prejudice and in the interests of good will. The order equally does not preclude some or all of the legal costs and/or the costs of the necessary works being met on a similar basis by that person or those persons who are responsible for what happened here who have not been identified because a process of hearing contested evidence has not taken place. This is because to have done so in order to consider whether the responsibility for the costs of making good the unlawful works should fall, not collectively, but upon the responsible individuals would have been disproportionate.

Therefore – Order as attached.

**Sarah L Singleton QC**

**Chancellor of the Diocese of Sheffield**

## **In the Consistory Court of the DIOCESE OF SHEFFIELD**

### **In the Matter of**

### **ALL SAINTS HOOTON PAGNELL – RESTORATION OF CHURCH AFTER WORKS UNDERTAKEN WITHOUT FACULTY**

**And in the matter** of a petition dated 2<sup>nd</sup> December 2016 relating to the removal of the toilet, washbasin and enclosure from the vestry and the kitchenette from the tower of the church at Hooton Pagnell All Saints

### **CASE MANAGEMENT DIRECTIONS**

#### **RECORDINGS**

1. The Churchwardens and the PCC and DCC members present acknowledge that works have been undertaken without faculty at this church which are not fit or apt for retrospective approval and must now be removed to restore the church.
2. A Petition for a Faculty to provide for the removal of the unlawful works and the restoration of the Church has been lodged at the Diocesan Registry (the Registry). The Petitioners are Mr Jamie Murdoch and Mr Michael Macdonald acting on behalf of the churchwardens, the PCC and the DCC. It is to be considered by the Diocesan Advisory Committee (the DAC) at their next convenient meeting.

#### **IT IS ORDERED THAT:-**

1. The Churchwardens and the PCC and DCC members are directed to file at (i.e. deliver to) the Registry (through the Petitioners) the following documents:-
  - a. A DAC Notification of Advice, to be filed within 7 days of its delivery to the Petitioners.
  - b. A copy of the required public notices of the proposed works of removal and restoration, to be filed within 7 days of first going on display.
  - c. A Certificate (pursuant to Rule 6.2 of The Faculty Jurisdiction Rules 2015) confirming that the required public notices of the proposed works have been displayed, to be filed no later than 7 days after the expiry of the relevant 28 day display period.
  - d. Minutes of the PCC meeting or meetings when the PCC discussed the works undertaken without faculty, and/or the need to restore the church from them, and/or who is to pay for the necessary works of restoration and/or the legal costs of this matter, to be filed on or before 31<sup>st</sup> January 2017.
  - e. On or before 31<sup>st</sup> January 2017, written statements from:-
    - i) Each of the Churchwardens (separately) namely Mr. Michael MacDonald and Mr. Mark Warde-Norbury;
    - ii) A member of the DCC other than the Churchwardens;
    - iii) A member of the PCC who is not on the DCC for this church.

The statements should each set out (so far as is known to each deponent):

- An account of how and why unlawful works came to be done in and around the church:

- An explanation for the delay of the Churchwardens and DCC members to respond to informal requests, formal requests and the directions of the Court of 1<sup>st</sup> November 2016 to agree to restore the church and to submit proper plans for its restoration for consideration by the DAC.
  - The position of each deponent as to who is to pay for the works of restoration and the legal costs of this matter. (For the avoidance of doubt the Chancellor has throughout this matter by reason of the extraordinary circumstances authorised the Registrar to incur costs for the preparation of correspondence and other documents within the meaning of the relevant fees orders).
2. The Court agrees that service of documents may be by way of electronic transfer and that service of documents upon the Petitioners, the members of the DCC and the PCC will, in accordance with Mr. Macdonald's request, be deemed effective if sent by email to Mr Michael Macdonald, church warden and member of the DCC and PCC, such service to be acknowledged by him as soon as reasonably practicable and in any event within 7 days.
  3. The DAC Secretary, Dr Julie Banham and the Archdeacon of Doncaster, the Reverend Steven Wilcockson, may, if so advised, each file a statement in reply to the statements required under paragraph 1 (e) no later than 14th February 2017.
  4. Upon receipt of all the relevant documents at the Registry, this matter will be relisted for a further hearing before the Chancellor to consider the following matters:-
    - a. The terms of the Faculty to be granted to enable the restoration of the church;
    - b. The allocation of responsibility for and consequent liability to pay the costs of the necessary works of restoration;
    - c. The allocation of responsibility for and consequent liability to pay the legal costs incurred at the hearings and generally in this matter.

#### **WARNING**

1. The Consistory Court has the jurisdiction to make orders and judgments which are enforceable both as money judgments and by way of contempt proceedings.
2. This means that breaches of this Court's orders including the directions above may be a contempt of Court and could result in the contemnor being made subject to a fine or even a sentence of imprisonment.

#### **RECORD OF HEARING**

On the 6<sup>th</sup> day of January 2017, before the Chancellor, HHJ Sarah Singleton QC.

The Court was sitting at All Saints Church Hooton Pagnell.

No party was legally represented.

The hearing had been fixed by the Chancellor of her own motion.

**In the Matter of**

**ALL SAINTS HOOTON PAGNELL – RESTORATION OF CHURCH AFTER WORKS UNDERTAKEN WITHOUT FACULTY**

**And in the matter** of a petition dated 2<sup>nd</sup> December 2016 relating to the removal of the toilet, washbasin and enclosure from the vestry and the kitchenette from the tower of the church at Hooton Pagnell All Saints

I certify that this order was served on the following person(s) at the address(es), by the method and on the date(s) given below.

Name: Michael Macdonald

Address: michaelmacdonald166@btinternet.com

Method: Electronic mail (in accordance with the above order)

Date served: 10<sup>th</sup> January 2017 (15:17)

I believe that the facts stated in this certificate are true.

Signed: .....  
Registrar

Date: .....

## **In the Consistory Court of the Diocese of Sheffield**

### **In the Matter of**

### **ALL SAINTS HOOTON PAGNELL – RESTORATION OF CHURCH AFTER WORKS UNDERTAKEN WITHOUT FACULTY**

In the matter of the petition of 2<sup>nd</sup> December 2016 for the removal of the toilet, wash basin and enclosure from the vestry and the kitchenette from the tower of the church

### **DIRECTIONS AND NOTICE OF HEARING**

#### **RECORDINGS**

3. The Court has read the statements filed in this matter by Mr Michael McDonald, Mr Mark Warde-Norbury, Mrs Joyce Plum, Mr Jamie Murdoch, Mrs Linda Jackson, Dr Julie Banham, DAC secretary and The Venerable Stephen Wilcockson, Archdeacon of Doncaster.
4. The statements reveal serious conflicts of factual account about the key events in this matter and as to the knowledge of the relevant church officers and members about the necessary process for seeking permission to carry out works to the church lawfully.
5. A further formal court hearing to resolve these conflicts of account is therefore now necessary in order for the court to make a fair decision as to who is responsible for what has occurred and who should pay for the restorative works now necessary and to decide who should pay for the legal costs incurred in this matter by each party, including the Sheffield Diocesan Board of Finance (as represented by Dr Banham and the Archdeacon of Doncaster).
6. The hearing will be in public and the makers of statements are expected to give oral evidence, including cross-examination. At the conclusion, a public judgment will be delivered about the matters set out above. Such judgment will necessarily include the Court's conclusions as to the credibility and accuracy of the witnesses.
7. This matter is of importance and may have far reaching consequences for the DCC members and the PCC members, both collectively and/or as individuals. The Court therefore requests that the DCC and PCC members give consideration to whether they wish to be legally represented at the hearing.

#### **ORDER**

1. The hearing of this matter is fixed to take place at All Saints Church, Hooton Pagnell on 11<sup>th</sup>, 12<sup>th</sup> and 19<sup>th</sup> May 2017
2. At the hearing, the Chancellor will hear oral evidence in order to decide the terms upon which the petition to restore this church should be granted and to decide liability for the cost of the works and the costs of the legal proceedings
3. The Chancellor's hearing will be conducted in public and her judgment will be published

4. Any party and/or person who may be affected by these directions has permission to apply to vary or vacate them by way of letter to the Diocesan Registrar

**Sarah L Singleton QC**  
**Chancellor**

**30<sup>th</sup> March 2017**

**DIOCESE OF SHEFFIELD**  
**In the Consistory Court**

Her Honour Judge Sarah Singleton QC  
*Chancellor*

**In the Matter of**  
**ALL SAINTS HOOTON PAGNELL**  
**WORKS UNDERTAKEN WITHOUT FACULTY**

SUMMARY OF WORKS OR PURPOSES:-

Removal of toilet, basin and enclosure from the vestry and of a water heater and basin from the tower

DIRECTIONS

1. Let a Faculty issue subject to the following provisos:-
  - All work is to be supervised by the Quinquennial Inspector (QI).
  - The contractor(s) undertaking the work are to be approved by the QI.
  - In agreement with their QI and approved contractor(s) the church are to inform the Registry no later than 30<sup>th</sup> June 2017 of the start and end dates by which all works will be completed.
  - An archaeological watching brief to be put in hand with a report submitted to the Registrar and DAC.
  - All electrical connections are to be made safe in accordance with current BS requirements.
  - The QI architect is to determine if any affected areas need to be checked for asbestos and to report the findings with any recommendations to the Registry.
  - All flooring in the vestry is to be repaired or replaced on a like for like basis with appropriate sub-base as required.
  - The safe is to be relocated so as to allow free access to the fuse box and associated electrical works.
  - The parish are to pay all fees due to the QI architect and contractors.
  - A Completion Certificate and photographic record of the restorations to be submitted by the QI to the DAC within one month of the restoration work being completed.
  
2.
  - a. The DCC of Hooton Pagnell are to pay the legal costs incurred by the Registry in this matter.
  
  - b. The Registrar is to submit a final bill to the Respondents within 21 days of the final sealed date of this order. The Respondents may raise arguments to the Chancellor about either the incidence or the amount of any particular item in order for the Chancellor to consider whether such item or the amount charged for it is fair. Such arguments should be set out by way of letter sent to the Registry within 14 days of delivery of the final bill to them.

- c. The Registrar is at liberty to reply to any such argument by way of letter to the Chancellor which is to be copied to the Respondents. Such letter is to be submitted (together with the Respondents' letter) within 14 days of his receipt of the Respondents' letter.
- d. In addition they are to pay the legal costs incurred by the DAC, namely counsel's fees in the sum of £500 plus VAT.
- e. These provisions as to the costs are not intended to prevent the various parties (including the Diocesan Board of Finance, the Registry and the DAC) from agreeing to compromise as to the amounts to be paid by the Respondents under this order.

**HHJ Sarah L. Singleton QC**

**Chancellor of the Diocese of Sheffield**  
**21<sup>st</sup> May 2017**