

Neutral citation [2019] ECC Der No. 2

In the Consistory Court of the Diocese of Derby

In the Matter of Swarkestone, St James, and

In the Matter of a Petition dated 25th January 2018 presented by the Incumbent, Rev'd Anthony Luke, Mr Ted Lawrence, the PCC Secretary, and Mrs Laura Howarth, the PCC Treasurer.

Judgment

- 1) This is an application for permission to make changes affecting the interior and exterior of this Grade II* church, which stands in an isolated position within a conservation area. The church itself is ancient, dating back to C12, but it was enlarged in 1829 and the main part was largely rebuilt in 1874/5 to designs by architect F.J. Robinson, when the plain pews, choir stalls, reredos, altar rails and a marble pulpit were all introduced. The tower at the west of the nave is C16, and to the south of the chancel is situated the C16 Harpur Chapel, with a number of 'good' monuments.
- 2) There is a north aisle with a block of pews in addition to the two blocks of pews in the nave, and to the east of the aisle is the meeting room/ vestry, which is the chief focus for the proposals. This contains a small fireplace in the north-west corner, although I do not know if this is usable. At one time this area was the site for the organ, although that has now been moved into the north aisle.
- 3) The full listing description has been provided to me.
- 4) The incumbent is the Rev'd Anthony Luke, who also has overall responsibility for the seven churches forming what may be called 'The Trent and Derwent Group', (although that is not the official name), which lie to the south of the City of Derby. St James's has no churchwardens at present. Mr Mark Stewart RIBA SCA AABC is the church architect. He is an experienced architect well used to working on historic church buildings.
- 5) The papers initially came to me around 10th October 2018, and I subsequently wrote a Note for the petitioners and their advisers, seeking some more information on relatively minor aspects of the meeting room part of the proposals, particularly the heating and aspects of the east wall changes.
- 6) **Proposals:** Essentially the parish want to make changes to the former vestry, which lies at the east end of the north aisle, to turn it into a self-contained meeting room and kitchen area, separated off by glazed screens from the rest of the church. Secondly they want to provide toilet facilities in a new extension with a flat roof abutting the eastern (outer) side of the east wall of the meeting room, and north (outer) side of the chancel. There is to be a replacement entrance into the church through the east wall of the meeting room, and a window will be lost to make way for the kitchenette. It will be possible to access the toilet area from the outside through the new east wall. A water supply and sewerage (trench arch)

system are required. In addition the remains of a small broken memorial stone to members of the Stevens family, that lies just outside the present east wall of the meeting room, will need to be moved.

- 7) It all seems relatively straightforward in principle, the most surprising feature being the truly eye-watering cost of £180000 that this small church is apparently able and willing to commit to these modest changes. How much cheaper it would have been had it been found possible to bring the toilet within the footprint of the building! **Planning permission** has been obtained for the extension.
- 8) The proposals are not made easier to follow by the way the meeting room is referred to variously, as such, as 'the vestry', and also as the 'north transept'. The church does not exhibit that cruciform shape which makes references to transepts meaningful – at least to me. I shall refer to it as the 'meeting room'.
- 9) The **Diocesan Advisory Committee** (DAC) attended a site visit in March 2017 when possible sites for a WC were considered, and I have later memoranda from early 2018, when the matter was further considered at length by the PCC. Having looked at this and the extensive correspondence that has passed, I am satisfied that very careful consideration has been given to the various possibilities for a different location. I am forced to the view that has been adopted in these proposals, namely that the area for the WC described above, is the only realistic choice. That having been established, I am further satisfied that discussion as to the detailed design of the extension has also been undertaken, with the planners and HE, and input from the architect members of the DAC.
- 10) The **PCC** formally adopted the scheme unanimously at its meeting on 18th January 2017. The Schedule of Works or Proposals on the petition simply states: *'To build an extension to provide an accessible WC and external door lobby and make adaptations to the existing meeting area to include a kitchen, all in accordance with drawings numbered.....'* and there then follows the designation of 29 separate documents.
- 11) The opening words set out very economically the essence of the work and any reader of the Public Notices, which are generated by the on-line faculty system, and which of course adopt the same wording, are thereby alerted to the core of what is proposed, and have the opportunity to raise objections or criticisms, or make further enquiries. That is a fundamental part of the process. The list of plans or drawings by itself would give no clue as to the nature of the works proposed, and could only begin to enlighten a parishioner who took the trouble to get access to them. A list of plans may be comprehensive in setting out where the detail may be found, but only if access to them is easily available – which is not the case to the majority of parishioners or others who have a legitimate interest in knowing what is proposed - but a list of that kind does not explain what is sought. I would encourage parishes to seek to set out in somewhat greater detail than here what the various things are that they want to do, but accept that the level of description to be given is a matter of judgment. The list of Works or Proposals, needs to set out all areas of work, but does not need to descend to a full written description.

- 12) The **Public Notices** were exhibited between 31st May and 30th June 2018 and the proposals were also placed on the diocesan website. These steps did not give rise to any objection, (although, in the circumstances described below, English Heritage did lodge an objection and completed a copy of Form 5).
- 13) **Site Visit:** On 10th December, the Registrar and I visited the church with a view to seeing the meeting room area, and the exterior where the new toilet accommodation was to be constructed. My impression of the church as a whole was that it was small and very heavily crowded with seating, and difficult to negotiate conveniently. There seemed at that time to be quite a number of loose chairs in addition to the pews, but that may have been in part due to extra seating being introduced to increase the capacity because of forthcoming Christmas celebrations. The plans sent to me indicate the nave is 12m long and 9m across, including the north aisle.
- 14) The meeting room itself is a very small space, much smaller than I had anticipated, though the plans should have alerted me to the fact. The interior dimensions of the room appear to be about 4.0m x 3.6m. The area for the WC extension is not large either, the kitchenette area and toilet extending the footprint of the building approximately 3.75m eastwards. We gained access on our visit into the meeting room from the south side, i.e. the chancel, but under the plans, a new access will be gained down the north aisle, through the west side, by the chancel arch.
- 15) In order to make the meeting room more usable as such, the petitioners seek to make the space self-contained. Two aspects of this are to provide independent heating, (one of the aspects on which I sought more information), and to fit fully glazed screens along the west and south sides of the room. In addition a small kitchen area is to be fitted into the east wall, which extends into the toilet extension area, beyond the current footprint. This is helpfully shown on plans 1618.A4.03.010A and 11A. In addition, at the east end of the north aisle three pews will be removed, to facilitate movement around that area. The kitchen area will require removal of a small plain window presently looking to the east. The interior of the north and east walls is presently rough stone of a not very uniform appearance. It seems that in the past these were plastered and painted, but the plaster was removed many years ago, sometime in the last century.
- 16) The **Statement of Needs** says that there is little other open space in the building than the meeting room. At the moment this cannot be used or heated independently of the whole church, and it is inaccessible to wheelchair users, by reason of pews, screens and varying floor levels. There are no toilet facilities, or means of providing modest refreshments to visitors. There are no other such facilities in the village.
- 17) **Historic England** (HE) has sent three letters as part of the consultation process or planning application, dated 7th April 2017, and 11th January and 25th February 2018. In essence, the earliest letter raised a number of design questions about the toilet area and the proposed kitchen(ette) and raised a number of helpful questions about the detail of the design.
- 18) The January letter was in response to a letter from an officer of South Derbyshire District Council ('SDDC') dated 15 December 2017, to assist

them in determining the planning application. It welcomed the siting of the new exterior door to the toilet/ meeting room back from the line of the east wall of the church, so as to avoid cutting into an existing buttress to the north of the east window. However they remained concerned about the loss of the fabric forming the east wall of the meeting room, which dates from the late Victorian re-building. Again they offered some helpful suggestions about the kitchen area. They were also concerned about the detail of the screens to be placed in the west and south. *'A full height screen (in the latter location), which would need to be set back from the capitals, will have a significant impact on the appreciation of both spaces and the detail of the arch. The reflective quality of full height glazing may also create a distracting and discordant element within the space.'* They looked forward to continuing discussions with the parish within the faculty proceedings.

- 19) The February letter is again addressed to SDDC following a further contact from the local authority providing further information. HE continued to maintain their earlier concerns, despite noting the parish's (presumably), *'justification for the design of the proposed WC and kitchen and'* (being able to) *'understand the rationale put forward.'* They drew the Council's attention to the statutory duty on SDDC under s.66(1) of the **Planning (Listed Buildings and Conservation Areas) Act 1990** *'to have special regard to the desirability of preserving listed buildings or any features of special architectural or historic interest which they possess'*. HE urged SDDC to impose appropriate conditions on the planning permission. This the Council appear to have done by requiring a recording survey to be made as a condition of granting planning permission, of the parts to be demolished, (which presumably will be photographic, at least in part), and by submitting samples of materials to be used.
- 20) HE obviously feel the concerns they have raised have not been adequately answered, as they have taken the unusual step of putting in a **Form 5 Notice of Objection**, dated 28th August 2018, making clear they want me to take their comments into account when I make my decision rather than wanting a full hearing. They did not object to the application, but had hoped for more dialogue about the screens. This is a legitimate issue to raise, but I confess that it leaves me with some uncertainty as to the other matters which they have expressed concern about, such as the east wall of the meeting room. Is that still a matter of contention? I will assume so.
- 21) I note however that in the correspondence I have been sent emanating from the DAC's consideration of the proposals, mainly in the early part of 2018, there are, very unusually, contributions from no less than four architects, (Richard Brook, Richard Smith, Simon Gratton and Liz Walker) who seem to me to share some of the concerns raised by HE, particularly about the east wall and the detail of the finish.
- 22) The **DAC Notification of Advice** is dated 7th June 2018, and *Recommends* the proposals for approval, subject to the DAC agreeing to *'the alterations to the wall at the east end of the north transept'*, and an archaeological investigation. However the DAC were also of the view the proposals were likely to affect the character of the church as a building of special architectural or historic interest, and have archaeological implications.

They therefore also urged consultation take place with Historic England, the local planning authority, the Victorian Society and the Church Buildings Council ('CBC').

- 23) The **Victorian Society** indicated in an email of 1st March 2018 that they did not wish to comment.
- 24) Possibly the consultation with the **local authority** (South Derby District Council) under the Faculty Jurisdiction Rules 2015 has not been initiated separately, but I am sure their conservation officer will have been involved in the planning application, and if s/he had wished to comment and express any concerns about the adjacent meeting room, would have done so.
- 25) The **Church Buildings Council** set out their views in a letter dated 20th March 2018. This followed a site visit by one of their officers on 14th February and discussion at a meeting of the Council. After describing the proposals, the CBC felt *'these objectives were appropriate, but it considered that the statement of needs could better articulate the likely range of uses and users for the improved facilities. It was important to show what consultation or discussion had taken place in developing the proposal and what level of usage was anticipated'*. They accepted that *'the chosen place for the new facilities was the most suitable. A very useful suite of facilities would be introduced to the church which would enable it to diversify mission opportunities and provide a more comfortable setting for worship'*.
- 26) Nonetheless in the body of the letter they had raised concerns about a number of matters, including security of the flat roof, removal of the existing low screens to the north aisle, which were part of the 1870's re-ordering, and they were worried full-height glazed screens would cause reflections. They suggested solid half-height partitions below with glazing or curtains above. They recognised the east wall dating from 1870 would largely go, but accepted the kitchen proposal necessitated this. The CBC welcomed the proposal to re-use stone and the window opening within the new external wall. They were also critical of some of the paperwork submitted, and felt there should be *'an assessment of the significance of the spaces, features and views which would be affected under the different options and identify the impact on each'*. On the basis their concerns would be addressed, *'the Council defers further advice to the DAC'*.
- 27) **Discussion of CBC communication:** I think I need to say something about these views at this stage. The CBC comments are positive in many ways, and their criticisms may appear rather more negative and worrying than they were intended to be. As their letter itself states, Swarkestone is a small village of 168 individuals, although there is much new housing at Chellaston close-by. As I have pointed out above, the meeting room is very small in area, and it would be crowded if 15-20 people gathered there. This is not a space for large gatherings, concerts, public meetings or anything similar. It is at best a small meeting room, and will also provide some capacity to provide refreshments for worshippers or visitors. I have a deal of difficulty in imagining what *'the likely range of uses and users'* could be. Once one accepts this is a small church, heavily-pewed, with no facilities of the kind now generally expected in a place of worship, these proposals seem to me a very modest, albeit very expensive way, of

making the building more useful, as the Council's own comments accept. There seem to be no realistic other ways of doing that, and providing 'assessments of the spaces, features and views which would be affected', does not seem to me likely to achieve any useful purpose. Either this scheme is adopted or nothing remotely similar is possible. There has to be access between the WC and the body of the church through part of the east wall, and it is accepted the kitchenette is to be placed in the existing east wall, so considerable changes to that wall will inevitably occur. The present east wall – or what remains – will become an internal wall and require suitable finishes. As to the screening, if reflections prove to be a problem in practice, then curtaining can be introduced later (subject to faculty, of course), but I would not be confident that omitting the full-height screens would provide privacy or preserve heat. Curtains collect dust and can become shabby in a short time. I think the parish's choice in this is understandable and reasonable.

28) **Later correspondence.** Correspondence was still passing between various parties thereafter. I note the following:

- a) Nigel Sherratt, the DAC Secretary, was still pressing the architect, Mark Stewart, for information about the proposed new heating in the meeting room in late November. Apparently this is to be provided by 'flat white suspended panel type' of radiant heater, the exact type not so far specified, as market choice is still expanding. I have now seen a Note from one of the DAC architect members, Richard Taylor, following a site visit on 28th October, when he met with Mr Luke. The church has a number of electric ceramic heaters mounted at high level, and some tubular heaters in the pews. He is happy with the proposals for heating the meeting room. A new mains water supply is required from Severn Trent, which is likely to specify various matters about the connection into the church. The DAC architect dealing with the application is now apparently content with the heating aspect of the proposals.
- b) The Registrar and Mr Stewart had an exchange of emails on 7th December, and I have incorporated the information provided in the earlier paragraphs.
- c) Following our site visit on 10th December, the Registrar emailed both CBC and EH providing copies of the plans of the proposed screens and inviting any further comment.
- d) EH replied on 8th January 2019 regretting they had not been afforded further discussion on the subject of lower screens. They ended by saying: *'however we do not object to the application and are content to defer to the DAC in relation to the detailed design'*.
- e) CBC responded on 21st January indicating the drawings were very much as previously supplied, and re-iterated the contents of their letter of 18th March 2018.

29) I consider that correspondence on the exact form of the proposed screens and other detailed design matters, has now gone as far as it usefully can, even if there are regrets expressed that the amenity bodies have not had

as much 'return' from the petitioners to their correspondence or requests, as they would have wished. The DAC *Recommends* the proposals.

30) Claire LaCombe of **University of Leicester Archaeological Services** ('ULAS') has provided a Written Scheme of Investigation' dated 15th February 2018 in relation to the groundworks for the small extension and mains water supply. (It is likely that human remains may be present as, as I understand it, the footprint of the building was enlarged in the 1874/5 re-building and that areas close to the original building would have previously been used for burial).

31) I have to come to a decision. The test (or framework or guidelines) within which the court is **required** to come to decisions about proposed alterations to listed buildings is set out in paragraph 87 of the decision of the Court of Arches (the ecclesiastical court of appeal) in the case of *Duffield, St Alkmund* 2013 Fam 158 in a series of questions:

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 assumption 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 (No 2)** {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 be exceptionally be allowed.*

This provides a structured and logical method of coming to a conclusion.

32) Let me deal with the two areas separately. In principle the need for the basic changes are accepted by all. The essential changes to the meeting-room, relate to introduction of the heating, the full-height glazed screening, and introduction of the kitchen facility into the east wall. The first of these does not seem to have attracted any criticism from the amenity bodies, but both the others have. We are dealing with Victorian

stonework that is *not* in its original plastered condition. The wall is quite rough and irregular. Despite the concerns expressed by CBC and HE, I find myself in some difficulty grasping quite what importance either body gives to it. The reference to s66(1) in the 1990 Act (in the correspondence by HE with SDDC), speaks of '*special architectural or historic interest*'. I am not persuaded this wall now has either, if it ever did.

- 33) The screening also seems to me to have taken on greater significance by CBC and EH than it can warrant. As this space was at one time the location of the organ (though I do not know if that began with the 1874/5 re-ordering), it was not for many years an open space affording views through parts of the building. At one point in their letter, CBC state in reference to the screening: '*Enclosure of the former vestry chamber would remove what was architecturally – if not liturgically – an integral part of the principal space*'. I am not sure I have fully gathered the import of this, but I consider it gives an importance to this space that is not deserved.
- 34) As to the external space that is to be enclosed for the WC, it is accepted that the location selected is the most suitable of the various possibilities considered. There have been detailed comments offered about the exact placement of the new build in relation to features of the existing architectural details. These have been listened to.
- 35) Turning therefore to Questions 1 and 3, I accept there is some harm to the significance of the listed building by each of the proposed areas of change, but I am clear it is '**Low**'.
- 36) *How clear is the justification?* I accept the reasons for the upgrading or addition of these facilities have not been spelled out in great detail by the petitioners. However what is to be achieved, is to a large extent, self-evident.
- I consider that despite the fact worshippers and visitors have managed without toilet facilities for around 140 years or more since the last major re-ordering, that is quite long enough. This is an isolated building. All public buildings, including churches, need such facilities. Anyone attending the church, particularly for occasional offices, will expect to have access to them.
- 37) The changes to the meeting-room are in all honesty quite minor. The area is not being altered in size, or set apart for some new use. The kitchen facility is again very moderate in extent. The provision of hot drinks is a useful addition making the use of the building after worship or small meetings more inviting and convenient. The changes to access into the space helps provide a more accessible entrance into the room, and hence, to the WC. The screening appears to me necessary for retention of heat and for privacy. I accept that various other solutions to achieve this may have been possible in theory. I am not convinced solid screens with glazing above, as CBC seemed to favour, has any overall advantages. If reflections prove to be a problem, then the petitioners can consider what steps are needed to ameliorate the situation.
- 38) This has been a much more complex matter than most, though it is perhaps difficult to see exactly why that has been the case, but it has involved the Registrar and her staff in far more work than normal. She has

asked me to allow an enhanced 'correspondence fee' to reflect that. She herself has spent an extra two hours at least. It seems to me a sum of **£350.00 plus VAT** is justified.

Outline of Order

39) On the basis the DAC has now seen and approved the WSI (archaeological scheme) and is content with the proposals for the east wall,

IT IS ORDERED

1) that the Petition be approved, and a faculty may issue, as sought, including the removal of the Stevens memorial, which is to be re-located somewhere convenient nearby, on condition

- a) the church insurers are notified of the work to be carried out**
- b) the Recommendations in the Written Scheme of Investigation by ULAS are followed**
- c) the Disturbance of Human Remains Directions apply to the work, in respect of matters not covered by the WSI, and a copy is to be provided to the contractor carrying out work in the churchyard**
- d) the work is to be completed by 29th February 2020, (or such further time as may be allowed)**
- e) there be permission to seek Further Directions, by letter or email to the Registry.**

2) The petitioners must pay an enhanced 'correspondence fee' to the Registry, in the sum of £350.00 plus VAT, as a condition of, and prior to, the issue of the faculty.

John W Bullimore
Chancellor
1st March 2019