

**IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD**

**CLIFTON CAMPVILLE: ST MARY THE VIRGIN (NO MAN'S HEATH)**

**JUDGMENT**

- 1) The church of St Mary the Virgin in No Man's Heath was built in 1863 and has a grade II listing. It was declared redundant in 2001 and in 2005 it was leased to The Friends of St Mary on the Heath for a term of 99 years. In those circumstances the church building is no longer subject to the faculty jurisdiction. The church is in the parish of Clifton Campville and the churchyard remains open and is subject to the faculty jurisdiction.

**The Petition.**

- 2) The chairman, secretary, and treasurer of The Friends of St Mary on the Heath seek a faculty for the construction of a trench through the churchyard. The trench is to take a foul drain from a disabled toilet which is to be installed in the church building. That installation is intended to facilitate and to encourage community use of the church building and the project as a whole has an estimated cost of just over £10,000.
- 3) On 11<sup>th</sup> June 2021 North Warwickshire BC as the relevant local planning authority gave planning permission for the proposed works imposing a condition that the trench was to be dug by hand and that works should cease in the event of human remains or items of archaeological interest being found in the course of the excavation.

**The Procedural History.**

- 4) Following the public notice Mrs Patricia Teal wrote a letter of objection and she subsequently became a party opponent and made further representations.
- 5) I formed the view that it would be expedient to determine this matter on the basis of written representations. Mrs Teal and the Petitioners were all

supportive of that course. I made an order to that effect and have received representations from Mrs Teal and the Petitioners.

- 6) On 25<sup>th</sup> January 2022 I directed that the faculty should issue subject to conditions and this judgment gives the reasons for that decision.

### **Mrs Teal's Objections.**

- 7) Mrs Teal advanced a number of points in opposition to the Petition. She said that the building was "mainly used for storage" and that in those circumstances it was "absolutely ridiculous" to spend thousands of pounds on it. She questioned the need for the church to be used for community events saying that No Man's Heath already has a well-equipped village hall at which such events could be held and on which the funds earmarked for this project would be better spent. Next, Mrs Teal expresses concern about the burden which will be placed on the village's sewerage system saying that this is already "stretched to the limit". Finally, she questioned whether a survey of the churchyard had been made saying that it is "sacred ground" and pointing out that not all burials are marked.

### **The Petitioners' Response.**

- 8) The Petitioners say that the matters raised by Mrs Teal are neither relevant nor persuasive as grounds of objection.
- 9) They point out that North Warwickshire BC expressed no concerns about the impact on the sewerage system. They say that in the year before the lockdowns imposed in response to the Covid-19 pandemic the building was used for approximately six public events and six committee meetings. They say that such a level of usage of the toilet facility is unlikely to overload the existing infrastructure although in that regard I note that part of the justification for the proposal is to encourage increased use of the building.
- 10) As to the disturbance of burials the Petitioners say that they believe that the churchyard may never have been used for burials. They have checked the parish register of burials and the graves book in the keeping of the local Family History Society neither of which record any burials in this churchyard. I also note that no memorial stones appear in the photographs of the church

and churchyard with which I have been provided (though as Mrs Teal points out that is not conclusive as to the presence or absence of burials).

### **The Views of other Bodies.**

- 11) The Diocesan Advisory Committee has recommended approval of the petition. The Notification of Advice records the view of the diocesan Archaeology Adviser that it is unlikely that human remains will be encountered in the course of the excavation.
- 12) The Council's decision was preceded by a report from its officers. That does not exclude the possibility that human remains will be disturbed during the excavation but does say that "the position of the drain has been selected to minimise the likely exposure of graves". The report characterised the work to the church building as a "necessary upgrade".

### **Discussion and Conclusion.**

- 13) Most of the matters raised by Mrs Teal are not relevant considerations for my decision.
- 14) The need for an upgrading of the church building and the question of whether the money would be better spent on the village hall or elsewhere are not material to my assessment of whether a faculty should be granted for a trench through the churchyard. It is a matter for the Friends of St Mary on the Heath as to how they spend their funds. The church building is outside the faculty jurisdiction and so the question of whether a toilet should be installed is not one for me.
- 15) Similarly, the question of the potential impact on the local sewerage system cannot be an argument against the grant of a faculty in circumstances where the local planning authority has granted planning permission for the works. That body is best-placed to assess the impact of the works on wider community and I must assume that the council has concluded either that there will be no adverse impact in that regard or that the benefits of the proposed works outweigh such impact.
- 16) The potential disturbance of burials and the impact on human remains interred in the churchyard is a relevant consideration for this court. If there were to be a significant risk of human remains being disturbed I would have to

reflect on whether the benefit of the proposed works would justify such disturbance and the extent to which the impact could adequately be minimised by conditions providing for the seemingly re-interment of disturbed remains. However, I am satisfied that in the circumstances here there is no significant risk of human remains being disturbed. The points made by the Petitioners are telling particularly when supported by the assessment of the diocesan Archaeology Adviser. The likelihood is that there are no graves to be disturbed in this churchyard. Moreover, I am satisfied that even if the churchyard does contain graves the risk of the disturbance of human remains is minimised by the condition imposed by the council on the planning permission and by the conditions which I have imposed. The latter conditions provided for the seemingly reinterment of any disarticulated human remains which are found in the course of the works and for the cessation of the works in the event that articulated human remains were found with resumption being dependent on the court being provided with information as to the prospect of any further disturbance. It follows that in the circumstances of this case the risk of the disturbance of burials is not a factor which should cause me to decline permission for what is otherwise an appropriate proposal.

- 17) It was for those reasons, therefore, that I found it appropriate to grant the faculty sought.

*STEPHEN EYRE*  
Mr. Justice Eyre  
Chancellor  
3<sup>rd</sup> February 2022