

Neutral Citation Number: [2022] ECC Bla 1



*Faculty – Unlisted east Lancashire village church designed by R. B. Preston in 1903-5 – Temporary use of eastern part of churchyard for compound to facilitate development of land to north for housing partly on surplus church land disposed of pursuant to earlier faculty – DAC recommending proposal – Objection from local resident with family members buried in churchyard becoming party opponent – Faculty granted*

**Application Ref: 2021-065365**

**IN THE CONSISTORY COURT OF  
THE DIOCESE OF BLACKBURN**

Date: Tuesday, 8 February 2022

**Before:**

**THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR**

**In the matter of:**

**ST MICHAEL & ALL ANGELS, FOULRIDGE**

**Between:**

**THE REVEREND JOHN WENSLEY KNOTT (Rector)  
and MRS KAREN WILKINSON (Churchwarden)**

Petitioners

- and -

**MR STEPHEN BERRY**

Party Opponent

Determined on the papers and without a hearing

No cases are referred to in the Judgment

## JUDGMENT

### *Introduction and background*

1. On 10 March 2021 this court granted the rector (the Reverend John Wensley Knott) and the churchwarden (Mrs Karen Wilkinson) of the village church of St Michael & All Angels, Foulridge (in the Archdeaconry of Blackburn) a faculty (Ref: 2020 – 052678) authorising:

- (1) The sale of surplus land adjoining the church jointly with land owned by the Diocese of Blackburn and land owned by Mrs C Tinniswood;
- (2) The re-ordering of the church driveway, necessary to allow permanent access to the housing development and to meet Local Authority Planning Permission requirements; and
- (3) The movement of the ‘Preaching Cross’ monument from the current car-park area to a new position to the east of the main church building, necessary to allow the re-ordering of the driveway and the re-positioning of church car-parking spaces.

The works were to be completed within 24 months from the date of the grant of the faculty or such further period as the court might allow.

2. According to the certificate of publication (which was signed by the Reverend John Knott) the public notice for this original faculty application had been displayed on a notice board outside the church from 27 January to 26 February 2021. No objections were ever received to the grant of this faculty.

3. In giving my reason for granting this unopposed faculty application, presented through the online faculty system, I noted as follows:

“The sale is intended to generate funds which can be reinvested in the church's future, securing the church financially for the medium term. For the first time since the church was consecrated in 1905, the church was unable to pay its full parish share in 2020. This sale will enable it to start paying its parish share in full again. The sale will also improve the connection between the church and the village, as well as significantly improving the environment by replacing a current local eyesore of dilapidated garages with a quality housing development, thereby generating potential benefits for the church’s mission. It is proposed to move the preaching cross some 20 yards from the middle of the existing car park to a piece of land between the car park and the graveyard. As a consequence, space for car parking will be improved without impacting upon the prominence of the preaching cross.

The proposal has the support of a majority of the PCC; and it has been recommended for approval by the DAC, who advise that it is not likely to affect the character of the church as a building of special architectural or historic interest.

This proposal will not harm the setting, the appearance or the significance of the church or the churchyard. It will release much needed land for housing and funds for the church and, by releasing land owned by the Diocese, the Diocese.”

4. By a further online faculty application dated 20 September 2021 (under Reference 2021-065365) the original applicants now seek a further faculty authorising:

- (1) a temporary compound in relation to the earlier faculty;
- (2) the temporary use of land for parking of visitor and staff vehicles during the proposed and approved (17/0736/OUT) house-building project;
- (3) the erection of temporary heras fencing and the temporary siting of two movable 3m x 5m metal site office units; and
- (4) the formation of a temporary vehicle crossing from the existing church access road.

The petitioners state that the temporary compound was implicit in the earlier faculty and that this supplementary faculty now makes this explicit.

*The Diocesan Advisory Committee's Notification of Advice*

5. At their meeting held on 10 September 2021, the Diocesan Advisory Committee recommended the proposals for approval by the court. The Notification of Advice, issued on 17 September 2021, advises that the proposals are not likely to affect either the character of this unlisted church as a building of any architectural or historic interest, or the archaeological importance of the church, or archaeological remains existing within the church or its curtilage.

*The objection*

6. The usual public notices were duly displayed between 20 September and 20 October 2021. These provoked one letter of objection, dated 18 October 2021, from Smith Sutcliffe, solicitors with offices in Burnley, as follows:

“We act for Mr. Stephen Berry of Westcliffe, Skipton Road, Foulridge, Colne BB8 7NN. Our Client lives in the parish and on the opposite side of Skipton Road to the Church.

We note that an application has been submitted to the Diocese for permission to carry out proposed works at Foulridge Church and that a planning application has also been submitted for the proposed development, which includes the erection of two site office units, security fencing and parking in connection with the development of nearby land as the site of 9 dwellinghouses.

Our Client has instructed us to submit an objection to you on his behalf to the works and proposals described in the Notice dated 20<sup>th</sup> September 2021, a copy of which is enclosed.

We enclose a plan which shows the Church and the graveyard, where we understand the proposed building compound is to be located. The area is part of a burial ground set apart for the purpose of interment and is part of the curtilage of the Church.

Our Client instructs us that his late mother and great-aunt are buried in the graveyard. His mother died on 4<sup>th</sup> April 2020 and her burial is accordingly recent.

Our Client considers that the proposed use of part of the burial ground as a building compound is completely inappropriate and disrespectful to the families of those with relatives whose remains have been interred in the graveyard.

We note that the intended security fence will be a short distance from existing graves apparent from inspection. Our Client is also concerned that there may have been burials approximately one hundred years ago within the land now proposed for the building compound and there is concern that the proposed works may disturb human remains.

We submit that the proposal is an inappropriate use of the site where dignity at Church services weddings and funerals should be respected. In addition to the disruption to the Church access arising from use of the compound, funerals would usually be arranged during the working day when the compound would be in use.

Our Client also considers that the location of the proposed compound between Skipton Road and the Church building will have an adverse impact upon the appearance of the Church and the graveyard. The site of the proposed compound is a grass area and provides an attractive frontage to the Church and graveyard when viewed from the A56 road. We understand that the proposal also includes the removal of trees, including the Millennium Yew Tree.

We trust that you will take account of these representations when considering the matter.”

7. By letter dated 29 October 2021 Smith Sutcliffe submitted formal particulars of objection (in Form 5) to all of the proposed works or proposals on behalf of Mr Berry. His grounds of objection are:

- (1) Inappropriate development in burial grounds, and
- (2) Adverse impact on appearance of church and graveyard.

Reference was made to the previous letter of objection dated 18 October. Mr Stephen Berry thereby became a party opponent to the petition.

*The petitioners' response*

8. Upon receipt of the Form 5, I directed:

- (1) Pursuant to rule 10.4 (3) of the Faculty Jurisdiction Rules 2015, as amended (the FJR), that the petitioners were to serve both the objector and the court with a reply in Form 6 within 21 days of service of the objector's Form 5; and
- (2) Pursuant to FJR 14.1 (2), that within 14 days after service of the petitioner's reply, the parties were to submit in writing their views (with reasons) on whether the proceedings should be determined on consideration of written representations or at a hearing.

9. The petitioners' Reply (in Form 6) was submitted on 19 November 2021 by Donald Race & Newton, solicitors of Colne. So far as material, it reads:

“In response to the objection letter issued by Smith & Sutcliffe and dated 18th October we wish to make the following points.

1. The developer, as required by the local planning authority as part of their reserved matters planning application, have provided a construction method statement which sets out the guidance to all staff, contractors, sub-contractors and suppliers on the measures

that the developer expects them to take to minimise the environmental impacts and prevent nuisance to the local community.

2. The salient points, in respect of the temporary compound, within the construction method statement, are as follows:

- Hours of work are limited by a planning restriction to 7.30am – 5.30pm Mon to Fri and 8.00am – 13.00pm Sat.
- In agreement with the Diocese, a temporary parking area will be created for church visitors and construction staff.
- Areas within the compound area will be stoned up and materials and welfare units placed on top, the ground will not be excavated.
- There will be a site manager and banksman on site to manage deliveries and co-ordinate with the church.
- Deliveries to the site will be avoided where possible when church events are taking place.
- Once the main access road is constructed, deliveries will be prioritised to be delivered to the development site, not necessarily to the compound area.
- The ground will be re-instated and re-seeded by the developer when the developer leaves site.

3. The development of the proposed 9 dwellings is expected to be completed within 12-15 months depending on market and building conditions at the time.

4. Whilst it is understood that the temporary compound will be situated on consecrated ground, there have not been any burials in the immediate vicinity of the compound, the compound will be screened and the churchyard protected most reverently and appropriately.

5. The developer is acutely aware of the close proximity of the graveyard and church buildings and has confirmed that they and their contractors will proceed with the utmost sensitivity given the position of the proposed compound and other works adjacent to the burial grounds.

I trust the above is satisfactory, that it demonstrates there will be minimal impact to the local community, the development will be delivered in accordance with the requirements of the local planning authority who have approved the development at outline stage and the developers detailed proposals have been accepted in principle.”

*The objector's reply*

10. On 22 November I directed the Registrar to write to the parties inquiring whether they were content for the matter to be dealt with by way of written representations. If so, and since the Form 6 from the petitioner was the most recent document, I suggested 14 days for written representations from the party opponent and 14 days for written representations in response from the petitioner (unless the parties were content to rely upon the documents they had already filed).

11. By letter dated 12 December 2021, Smith Sutcliffe confirmed that Mr Berry agreed that the matter might be dealt with by way of written representations, rather than by a court hearing. They enclosed a statement from their client, dated 10 December 2021, in which he made the following representations:

“1. I am informed that a petition requesting a faculty for a temporary building compound in Foulridge Church graveyard has been submitted in accordance with drawings and details provided with the petition for the works. The proposal is for development supplemental to a housing development on nearby land.

2. I am a resident of the Parish and my family has a grave in the churchyard where my mother and other family members are buried. I am accordingly an interested party.

3. The temporary compound is located in the graveyard at Foulridge Church. The graveyard is marked on the attached drawing marked ‘SB 1’. This graveyard is not disused. The area is part of the burial ground set apart for the purpose of interment and is part of the curtilage of the Church.

4. The use of the burial ground as a building compound is completely inappropriate and disrespectful to the families of those with relatives whose remains have been interred in the graveyard. It does appear that the security fencing for the proposed compound will be immediately adjacent to graves which are marked with headstones and it is not known whether there are other graves located within the boundaries of the proposed compound.

5. The Church is in a prominent village setting and the graveyard presents a green and attractive frontage to the Church when viewed from Skipton Road which will be lost by the intended building compound. This should be preserved. I understand that the proposal involves a spoil heap and reinstatement of the ground following completion of the use of the compound will be challenging.

6. Access to the proposed compound is from the existing church driveway which is not suited to building construction traffic.

7. This is a site where there should be dignity for Church services, weddings and funerals and the present appearance of the graveyard should be respected.

8. The proposed use will involve disruption to the Church access from use of the compound, which will share the same entrance drive as the Church itself. Funerals would usually be arranged during the working day when the compound is in use and parking is already an issue for those attending funerals at the Church.

9. Local parishioners still require churchyard burial space.

10. Whilst I have no knowledge of the funding arrangements for the proposed compound I submit that the proposed compound does not promote the mission of the Church of England and quite the opposite.”

12. On 14 December the Registry informed me that the petitioners wished to rely upon the contents of their Form 6.

Further evidence

13. On further reviewing the papers, I was not satisfied as to the sufficiency of the evidence that had been placed before the court in support of the petition. I therefore directed the Registry to ask the petitioners to prepare and file a witness statement addressing the following matters:

- (1) Whether there is any alternative location for the site compound.
- (2) Whether the parish are to receive any compensation for the use of the land occupied by the compound.
- (3) Whether any formal licence is contemplated.
- (4) Whether the parish are under any legal or moral obligation to the developer to permit this use.

This the Registry duly did on 21 December 2021. I also directed that when the petitioners' further evidence was received, this should be provided to the party opponent for any comments he might wish to make.

14. I also indicated that if I were minded to grant a faculty – emphasising that I had not yet determined whether or not to do so - I would be likely to impose conditions as follows:

- (1) Before any works commence, the petitioners are to notify the church's insurers and are to comply with any recommendations or requirements they may make or impose.
- (2) The contractors are at all times to comply with the construction method statement required by the Local Planning Authority.
- (3) No deliveries to or from the site compound are to be made during the period from two hours before until two hours after any funeral, wedding or scheduled service at the church.
- (4) The boundaries of the site compound are not to encroach within fifteen yards of any headstone, ledger stone or grave plot or grave space.
- (5) The compound is to be removed within eighteen months of the grant of the faculty and the site is to be re-instated and re-seeded by the developer before leaving the site.

I invited the Registry to ask the parties if they wished to comment on these conditions.

15. The Reverend John Knott, one of the petitioners, made a witness statement dated 12 January 2022. In it, he addressed the court's concerns as follows:

“1. I have considered possible alternative locations for the site compound in conjunction with the professional advisers in this matter and we have not been able to identify a practical alternative location.

2. The temporary compound is a key facility to enable deliveries of materials to site. The compound will also provide six temporary car parking spaces for use by visitors to the church during the period of development. The overall sale price was agreed in contemplation of there being an available temporary compound and the Parish are the significant beneficiary.

3. A form of Licence will be drafted and agreed between the legal advisors dealing with the transaction as part of the suite of transactional documents.

4. The availability of a temporary compound was within the contemplation of all parties in discussing and agreeing the assembly of the site sale and agreeing the sale to the developer. If the temporary compound is not available, the developer will re-negotiate.”

The Reverend Knott noted all of the suggested conditions without comment, save in relation to condition (4), where he proposed that 15 yards should be reduced to 5 metres, as shown on an attached plan JK1. He also expressed a wish to ensure that privacy screening should be provided between the graves and the site compound. The notation to the plan states that all post-1965 new graves are on the west side of the church (i.e. on the side of the church furthest from the proposed site compound).

16. Mr Stephen Berry has submitted a statement in response dated 7 February 2022. He attaches (as SB1) a copy of the plan which was attached to the statement of the Reverend Knott upon which Mr Berry has sketched a line marked red which is approximately fifteen yards from the nearest grave headstone. This would result in the loss of about half the proposed site compound, including five of the six temporary car parking spaces for use by visitors to the church during the period of development, and the whole of one of the proposed site cabins and most of the other. Mr Berry attaches two photographs of grave memorials showing that there have been a number of burials in the graveyard to the east of the church since 1965 (notably in 1980 and 2015) which are adjacent to the proposed site compound. He states that he has been informed by villagers that there may also be unmarked graves in the position of the proposed compound, although he has no personal knowledge of this. Mr Berry is concerned that the normal use of a compound in the position proposed will interfere with access to the church up the driveway; and he submits that it will be difficult to enforce any restrictions regarding use of the driveway two hours before, during, and two hours after any funerals or other church services. Whilst noting that the church does not consider there to be any practical alternative location for the compound, Mr Berry says that he would normally expect a site compound to be located within the development site itself. If the church driveway is considered suitable for access to the new housing development, and for construction traffic, then he considers that access for other deliveries should not be an issue. Mr Berry notes the assertion that the compound was within the contemplation of the parties; but he points to the fact that there is no evidence of any legal or moral obligation to provide any compound in the position now proposed.

17. Mr Berry attaches (as SB2) a drawing from the planning portal (described as “Surface water drainage to watercourse”) which appears to indicate a proposal to construct an underground water storage tank in the graveyard in a location within the proposed compound, suggesting that the intended work within in the graveyard may be more substantial than a temporary building compound. Mr Berry says that such use would clearly be inconsistent with the use of the land as a graveyard.

18. Mr Berry has spoken with other villagers and he confirms that the proposed use of the graveyard as a temporary building compound is not popular. The proposal was not common knowledge in the village; and Mr Berry understands that the Council has treated the compound as “permitted development” which does not require planning permission in its own right, nor has it given public notice of the proposal. Mr Berry has organised a petition of residents (which he exhibits) in which they have registered their opposition to the proposal that part of the graveyard should be used as a building compound. I have counted the names of some 50

signatories. Mr Berry considers the proposal for a temporary site compound to be inappropriate for a church burial ground.

### Analysis

19. Since both parties have agreed to this course, I am satisfied, having regard to the overriding objective of enabling the court to deal with this faculty application justly, and, in particular, the saving of costs, that it is expedient to order (pursuant to FJR 14.1) that these proceedings shall be determined on consideration of written representations instead of by way of a hearing. Given the nature of the issue between the parties, and the temporary nature of the works, I have not considered it necessary to visit the church. I note that neither of the recent statements of the parties are verified by statements of truth; but since they are not to be presented at a hearing, the requirement of a statement of truth in FJR 11.4 does not apply. Both statements are signed and dated.

20. Foulridge is a village in the east of Lancashire, a little to the north of Colne and not far from the south-western boundary of the West Riding of Yorkshire. The current (2009) volume of *Pevsner's Buildings of England for Lancashire: North* (ed. by Clare Hartwell and Nikolaus Pevsner) describes the church of St Michael and All Angels (by R. B. Preston in 1903-5) as “an excellent, quite personal composition”. According to the Statement of Significance filed in support of the original faculty application, the church is on the edge of the village, on the main Colne to Earby road, and it is slightly cut off from the rest of the village. It is surrounded by an open, and well-maintained, churchyard on three sides, with a car park and entrance drive on the fourth side. There is an open remembrance garden for the interment of ashes. There is said to be a regular flow of visitors to existing graves; and there are currently around ten interments a year. According to the original Statement of Needs, the church is an attractive venue for weddings and funerals. The proposed temporary compound will occupy part of the churchyard, to the east of the church building and south of the existing church driveway which separates the churchyard from the vicarage to the northeast (described by Pevsner as “rather severe Elizabethan”, and probably also by Preston).

21. The Reverend Knott states that the availability of a temporary compound was within the contemplation of all parties in discussing and agreeing the assembly of the development site and the sale to the developer. The present proposals should therefore have been included within the scope of the works for which permission was sought within the original faculty application. Had this been done, the need for this second petition, with its additional attendant costs, would have been avoided; and it would then have been possible for the court to have considered the proposals as a whole.

22. The present faculty application, as originally presented, was woefully lacking in supporting evidence and detail (as evidenced by the queries I had to raise through the Registry). Developers normally have to accommodate their compounds on the site they are developing, and they should therefore be well-used to structuring their works around such a compound. It should therefore have been apparent to the petitioners that the court would require some explanation as to why that was not possible in the present case, and also some assurance that any fee being paid to the church, or the terms on which the church was disposing of its land to the developer, adequately reflected the saving to the developer in not having the compound on the site being developed. Mr Berry was right to complain about a lack of any knowledge as to the funding arrangements for the proposed compound. Even now, there is a lack of detailed

information before the court. Mr Berry is also justified in pointing to the lack of any detailed evidence of any legal or moral obligation to provide any compound in the position now proposed.

23. I can understand, and I sympathise with, the objections presented by Mr Berry to the proposed use of part of the churchyard as a site compound. The churchyard is consecrated land, which is set aside for sacred purposes, and this essentially excludes secular ones, even if intrinsically unobjectionable and, indeed, beneficial in the general public interest. Mr Berry therefore has a valid point; and if faculty permission were to be given too lightly in a case such as the present, one would not be giving consecration its appropriate due weight. However, when a building project is taking place on church land, as in the case of the construction of a church extension or a church hall, it is not unusual for a site compound to be created in a discrete part of the consecrated churchyard where there are no burials, subject to clear terms regulating its use, and protecting any existing graves and archaeological remains. Here, the proposed housing development has a clear connection both to the church and to the diocese, each of which will derive a direct financial benefit from it in these financially straightened times. Unless there are particular reasons affecting the present case that militate against the grant of a faculty, then even though the position of the party opponent is entirely reasonable and understandable, the court should not regard the present faculty application as wrong in principle, subject to sufficient proof of a reasonable need for the compound to be placed on this part of the churchyard, and to adequate safeguards to protect all existing graves and persons visiting them. Since the proposed compound is temporary in nature, and will not impact upon the significance of the church building, it is unnecessary for the court to consider the *Duffield* guidelines.

24. The court has had regard to, and has weighed in the balance, all the points made by the party opponent. Whilst noting the support for Mr Berry's opposition to the building compound generated in response to the petition which Mr Berry has organised, the court also notes that Mr Berry is the only person formally to object to this petition. In the light of the representations received from the petitioners, as set out at paragraph 15 above, the court is satisfied that the petitioners have demonstrated a sufficient need for this part of the churchyard to be made available as a temporary site compound to facilitate the construction of this proposed housing development. The red line drawn by Mr Berry on his plan (SB1) clearly shows that it is not possible to create an adequate site compound unless its boundaries encroach within a minimum of five metres of any headstone, ledger stone, grave plot or grave space. Any disruption to the churchyard will be merely temporary; and it will, in any event, be ameliorated by the conditions which the court will impose on the grant of the faculty. Even accepting that there have been relatively recent burials in the part of the churchyard next to the proposed site compound, there is no evidence of any burials within the area of the proposed site compound itself. The present faculty application does not extend to the construction of any underground water storage tank within the proposed site compound; and this faculty will only authorise the works outlined at paragraph 4 above.

25. For these reasons, the court will grant the faculty sought by the present online petition, subject to the following conditions:

(1) Before any works commence, the petitioners are to notify the church's insurers and are to comply with any recommendations or requirements they may make or impose.

- (2) The contractors are at all times to comply with the construction method statement required by the Local Planning Authority.
- (3) No deliveries to or from the site compound are to be made during the period from two hours before until two hours after any funeral, wedding or scheduled service at the church.
- (4) The boundaries of the site compound are not to encroach within a minimum of five metres of any headstone, ledger stone or grave plot or grave space. Appropriate privacy screening is to be provided between the site compound and the grave plots and grave spaces.
- (5) The compound is to be removed within eighteen months of the grant of the faculty; and the site is to be re-instated and reseeded by the developer before leaving the site.

The petitioners will be responsible for paying the court fees in the usual way.

*David R. Hodge*

Chancellor Hodge QC

8 February 2022