

Neutral Citation Number: [2023] ECC Yor 1

IN THE CONSISTORY COURT OF YORK

PARISH OF THE MOST HOLY AND UNDIVIDED TRINITY, HULL

HULL MINSTER, THE CHURCH OF HOLY TRINITY, KINGSTON UPON HULL

**IN THE MATTER OF AN UNOPPOSED APPLICATION BY HIGHWAYS ENGLAND FOR AN
INTERIM FACULTY IN RELATION TO TRINITY BURIAL GROUND**

JUDGMENT

Background history

1. On 8th August 2018 two faculties were issued in relation to the detached burial ground of Holy Trinity Church, Hull (“Hull Minster”) which burial ground was closed by Order in Council in 1861. They were issued pursuant to my judgment delivered in writing on 6th August 2018. Highways England (HE) either as a body (in the second matter) or in the person of their delivery director, Sandie Fort-Gill (in the first matter), were a party to the two petitions for those faculties.
2. The first faculty (161.18) was to “carry out archaeological excavation including the removal of burials and their safe storage pending reburial, the removal and safe storage of affected memorials, partial demolition and safe storage of the northern boundary wall, and the subsequent re-interment of burials in the northern part of the burial ground to allow construction of a new slip road forming part of the A63 Castle Street Improvement Scheme...”. These works have largely been completed.
3. The first faculty was amended on the 30th July 2021 to permit the retention and the display in Hull Minster of items that had been recovered in the course of the excavation and the examination of the recovered items.
4. The second faculty (160.18) was to “repair and reconstruct the northern boundary wall and carry out landscaping works to include replacement and relocation of removed memorials, the installation of the gates and pillars formerly at the entrance to Holy Trinity churchyard, construction of access points and pathways, and the planting of trees in the remaining part of the burial ground not sacrificed to the A63 Castle Street Improvement Scheme...”. These works have yet to be undertaken.

5. In addition to the faculties, HE had also been granted licences to occupy parts of the land. The initial licence was granted by the then Archbishop of York on the 2nd March 2020 and it expired on 22nd June 2020. A supplemental licence dated 29th June 2020 was granted by the Bishop of Whitby, acting under powers delegated to him in accordance with section 14 of the Dioceses, Pastoral and Mission Measure 2007 during the vacancy in the see of York. That licence expired on 20th March 2021.

Current Position

6. Matters have progressed more slowly than was originally intended and although the works under the first faculty are almost complete, the substantial works envisaged in the second faculty have barely begun.
7. 48 months were allowed for the completion of all the works permitted to be done by faculty. That period was due to expire on 7th August 2022 but on 27th June 2022 I extended the time for the completion of the works in relation to Faculty 160.18 (the second faculty) until 31st August 2023.
8. One significant development has been that when I dealt with the matter in 2018 there had been two options available to HE. I set out those options in paragraphs 19 and 20 of my judgment. My understanding was that HE had the choice of either going down the faculty route with a perpetual licence from the Church or seeking a Pastoral Scheme which would ultimately transfer the ownership of the land to HE. At the time their stated preference was to go down the faculty route with the expectation of obtaining a Development Consent Order (DCO) in due course transferring the land to themselves.
9. Unfortunately the timing of things has continued to drift and the current position is that they have a DCO to build the road scheme, and they have been negotiating for a Pastoral Scheme to be organised, which will vest the relevant part of the burial ground in the York Diocesan Board of Finance, who will then sell it to HE and hold the proceeds of sale in trust for the parish. However that Pastoral Scheme is not yet in place and HE have remained on the land.
10. As there was some concern as to the lawfulness of HE carrying on work without any permission to be on the land, the Archdeacon of the East Riding attended on site in December 2022 to enquire into matters. It was apparent to him that HE were in occupation of the land and doing works preparatory to the major road works which had yet to commence.
11. The position therefore is that HE have been continuing to carry out works under the second faculty and are also carrying out other preliminary works for the road widening without any licence or other lawful authority. I understand that they had anticipated both completing the faculty works and by now to have obtained lawful authority through other means to do the further works.

Application for Interim Faculty

12. So, to bridge the gap until the Pastoral Scheme can be completed and the land transferred to HE, HE now seek an interim faculty to authorise them to carry out the works under the DCO which they need to do immediately and before the Pastoral Scheme is in place and the land is transferred to them.
13. Everyone is apparently confident that the Scheme will be in place before the major road building works and particularly the commencement of the construction of the underpass. That confidence is based on the fact that the excavation of the underpass is not scheduled to begin until December 2023 and will run through to late Spring 2024. The Pastoral Scheme is agreed in draft and now needs to go through its various stages which it is anticipated will be completed well before the end of this year. It is therefore unlikely that the main A63 road construction will begin before the Pastoral Scheme is executed, and so that main construction element has not been included in the request for an interim faculty.
14. The works that are currently under way or that need to be done in the near future are the works comprised in “Work No. 5” and “Work No. 27” in the DCO (S.I. 2020 No. 556 Infrastructure planning: The A63 (Castle Street Improvement, Hull) Development Consent Order 2020, made 28th May 2020, in force June 2020)
15. Those works are defined in Schedule 1 of the DCO as follows:
 - a. Work No.5 — The improvement and realignment of the existing dual carriageway of the A63 commencing at its junction with Ropery Street, and terminating at a point 130 metres east of its junction with Market Place. Works to Trinity Burial Ground – archaeology, exhumation and reintering of exhumed remains.
 - b. Work No.27 — The construction of a new westbound A63 off-slip and retaining wall, to the east of Mytongate Junction. Work to Trinity Burial Ground – archaeology, exhumation and re-interring of exhumed remains.
16. Taken together these works can be summarised as follows:
 - Ground stabilisation work (deep dry mixing, jet grouting);
 - Installation of Diaphragm walls (which form the sides of the underpass) including capping beam;
 - Tension piles installation and cropping;
 - Full road construction including road box construction, surfacing and white lining (for the slip road);
 - Construction of new footway adjacent to the road;
 - Movement of utilities into newly constructed footway;
 - Excavation of the underpass (including temporary propping as required).
17. They will also require an extension of time for completing the works permitted under the faculties of the 8th August 2018 and already extended in relation to the 2nd faculty.

Conclusions

18. I am satisfied that these matters have arisen simply with the passage of time since the original faculties were granted and with HE's unfamiliarity of managing working on church property, especially when it is detached from the church.
19. I am also satisfied that the works need to be done and that work under way must continue.
20. I shall therefore grant an interim faculty to permit HE to remain on the land and to do the works set out in Work No. 5 and Work No.27 of the DCO and as particularised in the eight above bullet points.
21. I will also extend the time for the completion of the works under the two faculties (which have already been extended for the 2nd faculty) until the 7th August 2024.
22. In this matter Highways England will pay the cost of obtaining this interim faculty, which will be taxed by the Chancellor in the normal way when the Registrar draws up her bill.

HH Canon Peter Collier KC
Diocesan Chancellor

27th February 2023