

In the Consistory Court of the Diocese of Worcester

Archdeaconry of Dudley: Parish of Halas: Church of St Peter, Lapal

Faculty petition 15-11 relating to ramped access to west end

Judgment

1. St Peter's Church Lapal is a striking building, built in the mid-1960s, in the style of Coventry Cathedral, in an otherwise unremarkable suburban streetscape. It is oriented north-south, and to the east is a hall of apparently similar date.
2. This proposal arises as a result of the concern of the parish to cater as well as possible for the needs of those with limited mobility who would otherwise be disabled. It appears that there is already step-free access to the premises as a whole, but only via the rear entrance to the Hall. The proposed ramp along the front of the hall is designed to enable those in wheelchairs and buggies to enter the Church directly via the front door. In order to achieve this, the existing four parking spaces at the front of the church would have to be removed.
3. The petition has given rise to two objections. Those making them have not chosen to become parties opponent, and I consider that it is expedient to determine the petition on the basis of written representations.
4. This is a case where a few years ago I would have made a site inspection in person. However, happily, the advance of technology means that I have been able to see all that I require, in remarkable detail, from web-based bird's eye and streetside photography.

The objections

5. The first objection is from Mrs Stenson, who has attended St Peter's for over thirty years and has twice been church warden. She makes two points.
6. The first is that the relevant form (4A) was placed on a relatively used church door, and not brought to the attention of the congregation; and the plans were behind closed doors and could not be inspected. In response to this comment, the parish indicates that the form was displayed on the front door to the church, with a copy facing the narthex; and that the drawings were on display in the narthex. It also points out that several people commented directly concerning the proposals.
7. Secondly, Mrs Stenson raises various points with regard to the substance of the proposals:
 - (1) the design is aesthetically unsatisfactory;
 - (2) the layout of the ramp will mean that those in wheelchairs (or on skateboards) will arrive at a blind corner, leading to a potential danger from cars leaving the car park;
 - (3) most users of the church arrive by car, and will continue to use the door at the rear of the hall, as at present, so the ramp will only be used by those not arriving by car, who will generally be able to use the existing steps; and
 - (4) the ramp will make it difficult to load and unload material for the hall; and will impede exit from the hall in case of fire.
8. The second objection is from Mr and Mrs Paxton, who are members of St Peter's and also live immediately opposite. They repeat the first point raised by Mrs Stenson, and raise in addition two further points:
 - (5) the loss of four spaces at the front of the church will lead to additional parking in the road, impeding access to residential driveways; and

(6) the ramp is likely to be used by children on skateboards.

9. In response to those points, the parish comment as follows:

- (1) there has to be a barrier of some kind, for safety reasons; the alternatives to the railings proposed (brick or glass) would be just as obtrusive, and possibly more expensive; the materials to be used will be sympathetic; and in any event step-free access is more important than aesthetics;
- (2) the proposed arrangement is no less safe than the current position – and additionally protects those leaving the hall from passing traffic;
- (3) access to the church via the hall is not satisfactory; separate access should be provided;
- (4) the introduction of the railing may impede deliveries to the hall, but it will enable step-free access to the church, which is more important; and all fire exits from the hall will comply with the relevant Building Regulations;
- (5) the loss of four spaces will not be a problem, as the car park at the rear is rarely full, and the road has unrestricted parking at present;
- (6) the ramp may be used for skateboarding; but that is a price worth paying to achieve step-free access.

The diocesan advisory committee

10. The Diocesan Advisory Committee has considered the proposals and recommended them for approval, subject to one or two points as to details.

Publicity

11. Rule 5.3 of the Faculty Jurisdiction Rules 2013 provides as follows, so far as relevant:

“(2) Where a petitioner is the minister, a churchwarden or a parochial church council (or a person acting on its behalf) the public notice must be displayed as follows—

- (a) it must be displayed for a continuous period of 28 days;
- (b) in the case of a petition relating to a parish church or its churchyard, it must be displayed at the parish church;
- ...
- (e) where the public notice is displayed in accordance with paragraphs (b) or (c) it must be displayed—
 - (i) inside the church on a notice board or in some other prominent position; and
 - (ii) on a notice board outside the church or in some other prominent position (whether on the church door or elsewhere) so that it can be read by the public; ...”

12. This requires that in a case such as this the notice relating to the petition be displayed “at the church”, “on a notice board” or “in some other prominent position”.

13. Clearly it is always possible to argue that proposals should have been “better” advertised. However, in this instance, clearly at least some people were aware of what was proposed; and of course two went so far as to object to them – which is relatively unusual. I also note that 22 members of the PCC (out of the 23 present) voted in favour of them.

14. I am therefore satisfied that the petition was sufficiently advertised, in accordance with the requirements of the Rules.

The substance of the proposal

15. I deal with the six points raised by the objectors, numbered as above. Before doing so, I draw attention to the provisions of the Equality Act 2010, replacing those of the Disability Discrimination Act.

16. Parishes will, for entirely proper reasons, often be happy (or at least willing) to comply with the spirit as well as the strict letter of the Act. That is of course right in principle,

but such an approach may also likely to lead to requests to spend considerable sums on building works, which will have to be justified when balanced against competing demands on limited resources, or which may – as in the present case – be perceived to have practical consequences that are unfortunate; and so it is wise to consider first what is actually required by law, before then going on to consider whether further works are merely desirable as opposed to mandatory.

17. The Court of Appeal has on several occasions held that the purpose of the legislation is that the provider of services to the public should “provide [to disabled people] access to a service as close as it is reasonably possible to get to the standard normally offered to the public at large”¹ – the word “services” being used here, of course, in its general sense, and not referring only to the more limited concept of public worship. The quoted phrase originated in the decision of this court (*Pershore, Holy Cross*) relating to the re-ordering of a church, which also determined that the vicar, churchwardens and PCC are “providers of services” for these purposes.² And the Court of Arches (in *Eccleshall, Holy Trinity*) has recently confirmed that the duty, now under the 2010 Act, does indeed apply in the context of churches.³

18. Parishes are thus under a duty not to discriminate against disabled people; and discrimination includes failing to make reasonable adjustments where a disabled person is placed at a substantial disadvantage in comparison with a person who is not disabled, by:

- a practice or policy adopted by the parish (such as a requirement that animals are not allowed into services, which would disadvantage a blind person); or
- a physical feature of a church or other building (such as a flight of steps from the car park to the main entrance, which would disadvantage a person in a wheelchair)); or

¹ *Roads v Central Trains Ltd* (2004) 104 Con LR 62; *Ross v Ryanair Ltd* [2005] 1 WLR 2447, para 32.

² *Pershore, Holy Cross*, [2002] Fam 1, paras 105, 100.

³ *Eccleshall, Holy Trinity*, Court of Arches [2011] Fam 1, para 68.

- the absence of an auxiliary aid to mitigate the disadvantage (such as a hearing loop, to assist people who are hard of hearing).⁴

19. The concept of "disability" in the Act is broad and all-embracing, in that it is any physical or mental impairment that has a substantial and long-term effect on the ability of the person concerned to carry out normal day-to-day activities.⁵ And a "physical feature" includes any feature arising from the design or construction of a building, or of an approach to, access to, or exit from one, or a fixture or fitting, or furniture, furnishings, materials, equipment or other items in one.⁶

20. The duty is to take such steps as are reasonable in all the circumstances,
- to avoid the disadvantage, by removing or altering the physical feature in question, or providing a reasonable means of avoiding it, or
 - to adopt a reasonable alternative method of providing the service.⁷

In other words, it is the availability of the service in question that is the focus of the requirements under the Act, not the physical features of the building as such.

21. Further, the 2010 Act imposes a duty on public authorities to have due regard to the need to eliminate unlawful discrimination against disabled people; and the Court in *Eccleshall* accepted that consistory courts should operate on the basis that it also applied to them.⁸

22. In particular, a parish should aim to provide, if at all possible without unreasonable expense, full access to and from a church by, for example, making a suitable number of wider car parking spaces available for use by those with buggies and wheelchairs,

⁴ Equality Act 2010, ss 20, 21, 29.

⁵ Equality Act 2010, s 6, Sched 1; Equality Act 2010 (Disability) Regulations 2010.

⁶ Equality Act 2010, s 20(10).

⁷ Equality Act 2010, s 20; Sched 2.

⁸ Equality Act 2010, s 149(1); *Eccleshall, Holy Trinity*, Court of Arches [2011] Fam 1, para 68.

eliminating steps, steep ramps and doors that are difficult to open, or making it possible to avoid them without a major detour. And if at all possible access to all areas should be obtained by all through a single route; it is demeaning to require the person in a wheelchair to go to a secondary door round the back, or ring a bell to gain entry. Sometimes such separation may be unavoidable, at least in the short term; but it is always second-best.

23. It follows from the above that the duty for a parish to make reasonable adjustments to its church is not an absolute one, but merely a duty to take such steps as are reasonable in all the circumstances. Nor does the Act itself justify taking any steps that happen to assist people who are disabled; any particular proposal still has to be examined to see whether it is the most appropriate way to achieve that result.
24. The overall intention behind the present proposal is thus commendable, and in accordance with the spirit of the 2010 Act. It is at least possible for those in wheelchairs to gain access to the church at present; but it would undoubtedly be preferable for them not to have to come in via the hall, if that is perceived to be awkward. The question is therefore whether the proposal will give rise to problems such the adjustments proposed to be made are unsatisfactory in their detailed effect. If so, that would not absolve the parish of its duty under the Act, it would merely mean that it would have to continue to seek a way to accommodate disabled people that does not give rise to so many problems.
25. Finally, experience suggests that, although such concerns currently arise primarily from considering the needs of those in wheelchairs, any resulting alterations also benefit those with infants in buggies and pushchairs.

The substance of the proposal

26. The first point raised relates to the design of what is proposed. It seems to me that, provided it is satisfactorily detailed, and subject to my comments in relation to the second point below, the new ramp will be a suitable addition to an entirely modern group of buildings. The parish notes that a brick wall would be unsatisfactory; I agree, and I also note that low brick walls sometimes fail structurally. Glass too would be expensive. The DAC indicates that the current proposal is that the railings are to be in a colour to match that of the brickwork. It prefers a light neutral colour (dove grey or similar). I wonder, looking at the photographs, whether a dark colour to match that of the window frames might also be appropriate. But that should be largely a matter for detailed approval by the DAC.

27. The second point raises the possibility of conflict between those coming down the ramp and vehicles entering and leaving the car park. I agree that this does indeed seem to be a potential problem. After brief discussion with the Secretary of the DAC, it seems to me that one way to overcome this difficulty would be to ensure that those in wheelchairs (and indeed those on skateboards) would be forced to undertake a right-angled turn at the base of the ramp, and thus be protected from colliding with vehicles. This could be achieved by separating the “landing” at the lower end of the ramp from the vehicle route by a new railing – in a style similar to the railing to be used elsewhere in the new scheme – in line with the eastern elevation of the hall, and running approximately 1500mm south from the south-eastern corner of the hall. That would mean that a landing of 1500mm x 1500 mm would need to be created at that point, as opposed to the 1500mm x 1200mm currently proposed; and that the lower end of the ramp would need to be moved some 300mm westwards from its currently proposed position, with the ramp to that extent being very slightly steeper. The new railing between that landing and the vehicle route would need to be very robustly designed and detailed if it is to avoid being easily damaged. And the new steps and ramp must be adequately and attractively lit.

28. The third point questions the extent to which the new facility will actually be used. I can see the force of that concern. And I have already noted that there is already, and will continue to be, an alternative way in at the rear, via the hall. However, I do not think that implementing the new facility will in principle cause any difficulty; and it may be helpful. Those not in wheelchairs have a variety of routes into and out of the building available to them; it would do no harm to provide a similar variety to those in wheelchairs. Indeed, one may suspect that many facilities (such as lifts, ramps and tactile paving) introduced to assist disabled people are only used rarely. But that does not mean that they are undesirable. And it is a matter of judgment for the PCC to determine how it should best use its resources.
29. The fourth point concerns access for deliveries to the hall. I agree with the parish that there is a balance to be struck here; and I note that there will presumably be ready access for those with larger items – which are likely to arrive and depart in vehicles – from the car park at the rear.
30. The fifth point is clearly true, as far as it goes – the loss of four dedicated spaces will cause greater pressure on on-street parking. However, there is a car park at the rear, which is generally sufficient; and there is always likely to be a pressure on on-street parking at certain times, such as school carol services and large funerals. But the parish will need to keep this under review, and if necessary assist with signage to deter anti-social parking.
31. Finally, there is the issue of children on skateboards using the new ramp. I agree that they probably will; but I am not sure that this is likely to be a problem – children have to entertain themselves somehow. And in fact the proposed additional railing at the lower end of the ramp will assist in preventing the one serious problem that might arise from such activity.

32. Overall, therefore, I can see the force behind some of the points raised, but I do not think that any is sufficient to indicate that the proposal should be refused. And only one suggests that the detailed design should be revisited.

Conclusion


33. A faculty should therefore issue for this proposal, subject to conditions:

(a) that no works should be carried out until a detailed specification, including:

- (i) including cross section through the retaining wall and ramp;
- (ii) details of the handrails (to show confirmation with Building Regulations);
- (iii) details of a new railing at the base of the ramp, to prevent collision with vehicles; and
- (iv) paving, lighting and signage

has been submitted to and approved in writing by the Diocesan Advisory Committee (DAC) or, in default of such approval, by the Court;

(b) that the works be thereafter carried out in accordance with the details thus approved.



CHARLES MYNORS
Chancellor

23 February 2015