



Faculty application – Unlisted, modern suburban church – Fencing of grassed areas bordering the church building – Purpose to provide a safer outdoor space for children’s church activities and for community groups using the open space outside the church building – DAC recommending the application for approval by the court – Two objections received from local residents on the grounds of potential nuisance and annoyance and the breach of restrictive covenants – Neither objector electing to become a party opponent – Faculty granted

Application Ref: 2024-103394

**IN THE CONSISTORY COURT OF
THE DIOCESE OF OXFORD**

Date: Sunday, 26 January 2025

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

St James, Southlake

THE PETITION OF:

The Reverend Laurence Smith (Vicar)

Mrs Christine Clarke (Churchwarden)

This is an unopposed petition, determined on the papers and without a hearing.

Two objections were received from neighbouring residents on the grounds of potential nuisance and annoyance and the breach of restrictive covenants but neither objector elected to become a party opponent to the petition

The following authorities are referred to in the judgment:

JUDGMENT

Introduction and background

1. The church of St James, Southlake is an unlisted, modern church building in the Archdeaconry of Berkshire. According to the generic statement of needs on the online faculty system (the **OFS**), the church serves a lively Anglican parish at Woodley, on the outskirts of Reading. With an electoral role of 150, the church building and its facilities are widely used by the local community, including a pre-school group that uses the building between four and five days a week. Other users include a weekly cafe and many other groups, both church and community based. Church attendance is steadily growing, and the church is committed to their mission to their local area. The parish's ministry to children and families is well developed, and they are especially keen to enhance this aspect of their outreach.

2. By an online faculty petition, dated 18 October 2024, the vicar and one of the churchwardens petition the consistory court for a faculty authorising the fencing of grassed areas bordering the church building. I append an image of the area affected at the end of this judgment. The proposed fence is a 3 foot (0.9m) high wooden picket fence. It will extend for some ten feet from the corner of the church building almost to the pavement adjoining Kingfisher Drive. It will then run roughly parallel to the pavement for some 48 feet before turning roughly 90 degrees away from the public highway to follow Tree Walk for some 60 feet. It will then make a further roughly 90 degree turn to follow the boundary of the rear of the church's land for a further 42 feet until it reaches the far corner of the church building. There will be 100mm x 100mm timber posts every 1.8m, which will be concreted into the ground. All the timber will be pressure treated to a high standard. The fence line will be scanned with a cable detector prior to any digging. A double-width pair of 0.9m x 0.9m picket gates is to be included where the path leading to the church joins the public footpath which will allow for any necessary vehicular access and for easy emergency egress. This double-width gate, and a single-width, 0.9m x 0.9m, picket gate on the north corner of the building, will be fitted with simple release bolts (rather than locks) affording simple and safe access. The cost of the fencing is estimated to be some £5,000; and the PCC currently have more than this available for the purpose. The works are expected to take about a week to be completed. The parish wish to fence in this grassed area of church land in order to provide a safer outdoor space for children's church activities and for community groups using this open space.

3. The statement of needs submitted in support of the present fencing proposal explains that the major need is for increased safety for children using the church grounds. Children often go out into the grounds with parental supervision after church, sometimes to play ball games. With totally open grounds, there is an increased risk of children going after balls into adjacent gardens or the road. The fence, and the need to go round to a gate, would reduce such a possibility. During large scale church events, such as a church BBQ, it has been noted that it has

been challenging for parents of small children to keep a constant eye on them within a large crowd. In particular, there are children with special needs who attend the church, and who could wander off without understanding the possible consequences of doing so. Many community groups make use of the church, as well as church groups (such as Guides, Brownies, and toddlers). The parish would like them to be able to make better use of the outside space, particularly in good weather. The pre-school group does have a limited enclosed area, but others do not.

4. Since the grounds are completely open, the parish have recently had a number of acts of low-level vandalism, such as damage to the noticeboard, a broken bug hotel, and strewn rubbish. It is hoped that a low-level fence would help to deter this. The parish also express the hope that, in due course, they will be able to provide some seating in the enclosed area, to give both church members and local people an opportunity to sit peacefully within the church grounds.

5. The proposal has the full support of those members of the Parochial Church Council (the **PCC**) who were eligible to vote on the proposal and are not affected by any conflict of interest. The PCC have made inquiries of the local planning authority which indicate that planning permission is not required for this fence because it will not exceed one metre in height from ground level.

6. The Diocesan Advisory Committee (the **DAC**) have recommended the proposal for approval by the court. They advise that the works are not likely to affect the character of the church as a building of any special architectural or historic interest, or the archaeological importance of the church building, or any archaeological remains existing within the church building or its curtilage. The DAC have advised the PCC to check the requirement for planning permission with their local planning authority before commencing any works, noting that advice on the planning portal is only an introductory guide, and not a source of legal information. The DAC also recommend that the fence is not to be painted.

7. Applying the well-known *Duffield*¹ criteria, I am entirely satisfied that the petitioners have established that these proposals, if implemented, will result in no harm to the setting, the appearance, or any significance that might attach to this unlisted, modern church building. They have also succeeded in rebutting the ordinary presumption, in faculty proceedings, in favour of things as they stand. Indeed, the petitioners have demonstrated a clear and convincing justification for their proposed works.

8. Had this been all, it would not have been necessary for me to issue a formal written judgment. However, this faculty application has generated two sets of objections, both from neighbouring residents apparently sharing the same interest, and advancing the same, non-*Duffield*, grounds.

The objections

9. The usual public notices were duly displayed during the period from 24 October to 23 November 2024 (inclusive). These provoked two series of objections from neighbouring residents. The first is from a married couple, who write by email to the Registry on 6 November as follows:

¹ See *Re St Alkmund, Duffield* [2013] Fam 158

I am appalled that the Church didn't have the decency or foresight to inform the nearest neighbours of your plans to fence in this area. We have lived here for nearly 54 years, in fact well before the Church was built and we have always been informed of any issues involving us.

In the first place this area is designated OPEN PLAN, meaning no fences can be erected around the front gardens of properties on this estate.

Secondly when the Church was extended, we were assured by the then Vicar that the area facing our properties, which are less than 100 yards from our frontage, would not be used for any gatherings, or anything that would cause a nuisance.

This agreement was kept until a few years ago, since when, we have had a real problem with excessive noise from groups using the church in the evenings, this includes Brownies and Guides, sometimes the noise is so bad that we cannot hear our TV, and in the Summer, we cannot have our windows open. On a Sunday after Church, children run around outside with little adult supervision screaming, kicking footballs, often on to our gardens, again we cannot open our windows because of this excessive noise. This nuisance has escalated since Covid and has made a huge impact on our quality of life.

Your plan will mean that this intrusive behaviour, which we have put up with until now, would be actively endorsed, on a permanent basis, thereby impacting on our quality of life.

I do hope that you will reconsider your decision to fence this area.

10. The Registry responded by email the same day. It made it clear that it merely facilitates the faculty application process, and does not formulate any proposals. It was not able simply to receive comments on the PCC's proposals. Comments of the nature raised by the objectors should be communicated to the PCC, so that they can take them into account. The Registry sought clarification as to whether the email was to be treated as a formal objection in response to the public notice. The objectors replied later that day stating:

We wish to make clear that our comments are certainly an objection to the fencing. We also are objecting to the use of this small area, in front of our property, as a recreational facility. We have always tried to be good neighbours in the past, but find that recent activities promoted by the church, excessive noise and other activities, have created an intolerable nuisance.

As I stated in my previous email, as neighbours, when the church wanted to extend, we were assured that this area would not be used for recreation. The area is less than 100 yards from my front door, and the noise is, in my, and my neighbours' opinion, anti-social. I do hope that the church will show some consideration, as we were not even consulted or informed of any activity which, as you must agree, involves us and our families.

11. The second objection takes the form of an email to the Registry, dated 12 November 2024, from a resident of Kingfisher Drive. It reads:

I would like to make an official complaint regarding the actions of St James Church Centre, Woodley. I have lived opposite the church all my life. In fact I remember the church being built as a small child. I remember the church community being very considerate to us as neighbours, however this is no longer the case.

I have found out from a neighbour that the church plan to fence around their grounds. This has been decided without consultation to us. This is not the first time this has happened. Quite often events and work is carried out at the church without any notice to their neighbours. One time the roof was being repaired which meant the workmen could see right into my bedroom, every time I went into my bedroom, the men would stop work and stare into my bedroom. This was an invasion of my privacy, yet no one considered a note through the door to warn me of this.

When the church extended their property they promised us that they would not hold ANY activities at the front of the church. This promise has been broken continuously for years. On some occasions I have had guests of a wedding party standing on my front lawn! Brownies, Rainbows and Guide groups scream and shout all summer with very little supervision and make it impossible for me to open my front windows during the Summer months. After church services we have children running around screaming and shouting. Their football gets kicked onto my property and they trample neighbours' flowerbeds. The fence will only encourage more noise, less supervision, and, unless it is a 10 foot fence, the balls will still come hurtling over on to my property and children will run out of the fenced area, over mine and my neighbours' gardens.

Now you might say that a fence will stop church members gathering on my property, but I would like to go back to my first point, that the only reason the church was extended was because the neighbours were promised no activities would be held out the front. However, placing a fence around the church would actually encourage this selfish behaviour. If this behaviour is allowed to continue, I will be complaining to the Anti-Social behaviour team at Wokingham Borough Council.

Additionally, Southlake estate is an open plan estate so fences around front gardens are not permitted, therefore I cannot see why you should even be considered by the church.

Please also note that the parking of the church community is very dangerous. Parishioners park on the road even if spaces are free in the local car park. This makes it very dangerous for adults and children to cross the road and drivers to see when pulling out of nearby roads. The brownies are even worse and block roads to pick up their children because they are too lazy to park in the car parks nearby. Having a fenced area will only encourage these parents to block the road unless the only gate is the main car park gate!

I believe the church is becoming a very disrespectful and unneighbourly part of the Southlake area and I don't see why I should continuously tolerate this kind of action any further.

12. The Registry responded by email the same day, in similar terms to its email to the earlier objectors. This provoked the following reply, by email dated 18 November:

I would like it to go on record that the email below is a very strong objection to the proposed fence around St James's Church Centre. Only this Sunday, four children aged about 8 years old were left unattended to play on the church lawn. They screamed, shouted and kicked the football onto my property with no adult to stop them. With a fence, this type of unsupervised behaviour will be even worse.

13. Following the receipt of these objections, the Registry sent both objectors the written notices required under rule 10.3 of the Faculty Jurisdiction Rules 2015, as amended, (the **FJR**) but neither objector has elected to become a party opponent to the petition by completing and

sending the Registrar particulars of objection in Form 5 within the prescribed period, or at all. Thus, although, as residents of the parish, both objectors are ‘interested persons’ for the purposes of FJR 10.1 (1), neither is a party opponent to this petition. In light of this, and in an attempt to avoid enflaming matters still further, I see no reason to identify the writers of the objections by name in a public judgment. Those names are on record at the Registry.

14. In response to a chasing email from the Registry, dated 26 November, the first pair of objectors wrote by email the following day, as follows:

I thought that I had made it quite clear that our objections are to the fence going up around the church. We moved into our house almost 55 years ago, well before the church was built. We were told that there was a legal covenant forbidding us to enclose our front gardens as this area is designated as open plan. I am sure that the church is included in this covenant. We have enjoyed a good relationship with the church, this was until the last few years and were, in the past, always kept informed of anything concerning us. In return we kept an eye on your building, discouraging vandalism, stopping people climbing onto the roof, etc. We have always been good neighbours

Recently as a good neighbour I took a parcel in for you and delivered it to a member of your flock. She was told to tell me never to take a parcel in. I can assure you that in future I will not ever take anything in for the church, neither will I look after your church in any way. My neighbours and I have lived in peace with the church for the last 50 years but now with you building a fence in front of our property so that you can have noisy children running riot and making the area unsightly, we feel that you are deliberately making our lives a misery. Every Sunday children run riot playing football with the ball coming into our gardens, in the summer most evenings we have children screaming and shouting so loudly that we cannot have our windows open, these are guides, brownies, etc. Please bear in mind that it is not even 100 yards from the front of our house. All we ask is that you do not put fences up to spoil our enjoyment of the peace which we have enjoyed for the past 50 years and which we are covered by lawful covenant.

The parish's response

15. The online petition was duly submitted to me on 11 December 2024, with copies of all of these objections. I immediately responded to the Registry by email, directing it to send the objections on to the parish and ask them for their comments (as required by FJR 10.5 (1)). I advised that these should extend to the observations about the land being subject to a restrictive covenant against fencing. I noted that the parish might wish to consult their registered title or title deeds, and supply copies of these to the Registry. If possible, I indicated that I would welcome a reply before Christmas, or at least some indication of when a response was likely to be received. In response, I was told that the petitioning churchwarden needed the opportunity properly to discuss the contents of the objections with the vicar and her fellow churchwarden. This would not be possible until after the Christmas break, with a view to reverting to the Registry before the end of January 2025. To this, I reluctantly agreed.

16. In the event, the parish's response was forwarded to me by email on 21 January 2025. Written by the petitioning churchwarden, this reads as follows:

We have been asked to make representation to the Chancellor in response to the emails objecting to our fencing proposal for St James, Southlake in Woodley.

I have to say that we have been both hurt and somewhat shocked by the tone and content of these emails. We understand that objections to church plans and activities have been made by these residents at times in the past, but in recent years there have been no complaints at all.

As required, I posted a statement of intent on the church door and details of the proposal with our statement of needs on the PCC notice board. I then gave a notice in church to say that we were planning to have a low fence and folk should look at the details or come to me with questions. In response to my notice, a member of the church went to warn these neighbours, but without discussion or looking at any detailed information. Objections were then made, making it very difficult for us to go and explain our plans. Reading through these emails, as regards the fence proposal, I believe they are based largely on misunderstandings or inaccuracies.

We certainly do not want to offend or upset our neighbours and will endeavour to meet with them so that we can explain our proposals for the fence and give them an opportunity to explain their grievances.

Our main aim is to make the outside space safer for children. I think we have had two large gatherings outside during the past 9 years since I came to St James. One was to celebrate a Pentecost and the other was to mark the Coronation of our present King. A good number of folk from the local area joined with the church family for these free BBQs. However, it was noted that it was very easy for small children to wander off, particularly those with special needs.

We also want to provide a calm place for people to go within the church grounds. We are hoping to provide at least one memorial bench and have already cultivated wild flower areas, bird nesting boxes and bug hotels to improve the grounds. This would be accessible to anyone as the gates would not be locked. It would also be good to have less litter in the church grounds.

There is no fence near the car park, it would be in a different part of the grounds. We are mindful of the need to be considerate to neighbours over parking and have recently purchased bollards to protect garage exits on the adjoining service road.

We are very aware that we are in an open plan area, which is why our fence would be less than 3 feet high, as are others in the area. Our vicar, Rev Laurence Smith, and my predecessor as churchwarden went some time ago to Church House in Oxford to check our church deeds (about 20 pages) to verify that there are no further relevant restrictions.

In our view the organisations and groups that use our church premises during school term times are well run and do not make excessive noise. They do sometimes use the outside space in the summer term and we could ask leaders to be more mindful over noise when outside.

We cannot commit to supervise children or adults using the area outside of organised activities, as we don't at the moment. The small group of Hong Kong children that sometimes play outside after the Sunday service and before their lunch in church have already been asked to be more careful and try not to allow a ball to encroach onto the neighbouring gardens. They have been asked to get a parent to retrieve if necessary. A fence would help with this as the parents could forbid children to go out of the gate.

As mentioned, we do want to be good neighbours and will invite these folk to meet with us to air their grievances and to correct inaccuracies or misunderstandings. There are clearly other objections too that are unrelated to the fence proposal.

Analysis and conclusions

17. Since this faculty petition is unopposed, I am satisfied that it is expedient, and in the interests of justice, for me to determine it without a hearing, and on the basis of the material that has been uploaded to the OFS and has been considered by the court. Doing so will help to further the overriding objective of the FJR of dealing with this case justly, cost-effectively, proportionately, expeditiously and fairly. Since the drawings and the image that have been uploaded to the OFS present a clear picture of the proposals, it has not been necessary for me to undertake a view of the church building and its surrounding grounds.

18. As required by FJR 10.5 (2), in reaching my decision on the petition, I take account of the various objections, and also of the comments upon them received from the petitioners.

19. In my role as the Chancellor of Blackburn Diocese, I recently had occasion to consider objections to a faculty petition founded upon assertions of potential nuisance in my judgment in *Re St Paul, North Shore, Blackpool* [2024] ECC Bla 6. The issue there arose in the very different context of the refurbishment and conversion of existing female toilets into four unisex toilets. At paragraph 14 of my judgment, I explained that:

It is no part of the function of the consistory court to adjudicate upon complaints of nuisance to adjoining land; that is a matter for the civil courts. Nor does the grant of a faculty authorising particular works operate to render them immune from challenge in the civil courts, in accordance with the general law governing the tort of nuisance. Just as the grant of planning permission cannot render works immune from challenge under the civil law of nuisance, neither can the grant of a faculty by the consistory court. The grant of a faculty merely renders the carrying out of the works thereby authorised immune from challenge under ecclesiastical law, or (in the case of a listed building) from challenge for want of secular listed building consent. It does not operate to derogate from any rights enjoyed by the church's neighbours under the general law of nuisance.

I would repeat, and endorse, those observations in the present case. I should add that similar considerations apply to assertions of the threatened breach of any relevant restrictive covenant. As with the tort of nuisance, the enforcement of restrictive covenants is a matter for the ordinary civil courts. The grant of a faculty cannot operate to discharge or modify the operation or effect of a restrictive covenant. There is a statutory jurisdiction to discharge or modify a restrictive covenant in clearly defined circumstances laid down in s. 84 of the Law of Property Act 1925 (as amended). However, the jurisdiction to do so is vested, not in the Consistory Court, but in the Lands Chamber of the Upper Tribunal.

20. In *Re St Paul, North Shore, Blackpool*, I was able to suggest certain concrete measures that might be taken to limit, or moderate, any potential nuisance to the neighbouring residential occupiers. No such similar measures occur to me in the present case. It is clear from the parish's response to the objections (cited at paragraph 16 above) that the church "*do want to be good neighbours*" and are prepared to meet with the objectors "*to air their grievances and to correct inaccuracies or misunderstandings*", recognising that "*There are clearly other objections too that are unrelated to the fence proposal*". I do not consider that I can do any more to address the objectors' concerns. The grant

of the faculty sought by the petitioners on behalf of the church will in no way derogate from the objectors' civil rights and remedies.

21. For these reasons, I will grant the faculty sought. In the first instance, I will allow three months for the completion of the fencing proposals. As recommended by the DAC, I will include the condition that the fence is not to be painted. In the usual way, I charge no fee for this written judgment; but the petitioners must pay the costs of this petition, including any fees incurred by the Registry in dealing with this application.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Third Sunday After Epiphany

26 January 2025

View from Kingfisher Drive

