

KENARDINGTON, ST MARY

JUDGMENT (NO.2)

1. INTRODUCTION

1.1. On 21 May 2013 I gave Judgment in this matter and made the following

Order:

1. That a confirmatory Faculty be issued in respect of:
 - (a) works of archaeological excavation undertaken in the churchyard
 - (b) works of construction undertaken to the proposed toilet block up to and including 18 May 2013.
2. That a Faculty be issued in the terms sought in the Petition but only in relation to the further construction of the toilet block.
3. That no further work shall be undertaken in respect of the proposed pentice until further Order.

4. That a report of the archaeological excavations be prepared forthwith and lodged at the Registry.
 5. That the name and contact details of the builder and any of his subcontractors undertaking the project be lodged at the Registry forthwith.
 6. Liberty to apply.
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- 1.2. I have received the information which I sought in Paragraphs 4 and 5 of that Order and I am now in a position to reach a final determination. The outstanding matters relate to the proposed pentice. A confirmatory Faculty is required in relation to the works carried out prior to 18 May 2013 and a Faculty is also required for the completion of the building.
 - 1.3. My first Judgment sets out the legal framework for consideration and I need not repeat the relevant provisions and case law.
 - 1.4. As well as the information which I sought by Order, I have also received a letter from the incumbent/Petitioner, the Revd. Rod Whateley which apologises for allowing the building work to proceed without due authority. He explained the long and complicated procedural history of this matter and said that work on the brick piers to the pentice was begun by the builder without his authority. He also set out his understanding that the car park and services building were fully authorised by the Local Planning Authority under the secular system of planning control. I accept his

apology and have already expressed my thanks for his courteous letter. For the avoidance of doubt, however, the fact that works within a churchyard or external works to a church may require and gain planning permission does not remove the need for a Faculty. The existence and terms of any planning permission are likely to be important considerations when exercising the Faculty jurisdiction but the need for a Faculty still exists.

2. THE LEGAL QUESTIONS

2.1. I am now able to consider the questions which arise under section 17 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. Mr Whateley has confirmed that *“as the parish church of Kenardington, St Mary’s will continue to provide the full range of Church of England Liturgical rites, both on a Sunday by Sunday basis together with the full range of pastoral rites; baptisms, weddings and funerals”*. Section 17(3)(a) is therefore satisfied. In order to consider granting a Faculty under that provision, however, the stringent procedural requirements of subsections (4) and (5) would need to be met. Whilst I have no doubt that they could be met in this instance, the necessary procedures would add considerable delay and expense to a process which has already been lengthy. I have therefore considered the alternative provision of subsection (3)(b).

2.2. Taking into account the Statement of Needs and the Business Plan, I find that the limited demolition required to implement the project is *“necessary for the purpose of the alteration of the church”*. This is because the church’s isolated position and lack of modern facilities clearly constitute severe limitations on the parish’s ability to make use of the building to serve the needs of its people. Recognising this, the parish has sought to find a new way in which it can utilise this historic asset in mission. Whilst the proposal for the works in question has been led by the vision for the Church’s new role as *“a resource for education, training, spiritual formation and retreat”*,¹ it is also intended to serve the parish through regular worship and greater opportunities for community activities. Preservation of the church as it is might seem superficially appealing from an aesthetic perspective but I am entitled and obliged to have regard to the mission of the church and, indeed, the long term viability of the building to continue in its historic use as a place of worship. A great deal of detailed testing of different design solutions has been carried out and I am satisfied that it is necessary to re-open the blocked arch in order to provide the necessary link between the existing church building, which will be used for worship, and the proposed addition, which will serve as a refectory. I am also satisfied that the partial demolition of a bricked up arch in the east wall of the tower to link with the pentice is necessary on the same basis. Therefore I find that the demolition is necessary for the purpose of the alteration of the church.

¹ Business Plan

2.3. The next question for consideration arises under s.17(6)(a). I recorded in my first Judgment² that the DAC had certified that it did not consider, amongst other things, that the proposals would be likely to affect the character of the church as a building of special architectural or historic interest. The works of demolition in question comprise, in reality, merely the unblocking of apertures which, at some stage, must have been open. Subsection (6)(a) requires me to consider the effect of proposed demolition on the assumption that the relevant alteration has been completed. Whilst the alteration would materially affect the appearance of the church, the works of demolition, in my opinion, would not do so. They would be invisible from the outside and I do not consider that the replacement of rubble with a glass door or the unblocking of a bricked up aperture would materially affect the internal appearance. I take into account the DAC's certified opinion as to the overall effect of the project and note the non-objection of the heritage bodies (or anyone at all). I find that no material effect on the architectural, archaeological, artistic or historic character of the church would be caused by the proposed works of demolition, allowing for the completion of the total plan.

2.4. Lastly, then, I must consider the outstanding elements of the Petition in the light of the St Alkmund, Duffield guidelines. The first question is:

² Paragraph 1.4

" Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?"

2.5. In the first Judgment, I expressed concern about the potential archaeological impacts of the proposed pentice. I have now received a report of the investigations from Mr Paul Bennett, an Archaeologist who carried out an evaluation in April 2012 by digging four trial trenches outside the church and three test pits within it. The report includes a short impact assessment which considers the effects of the proposed pentice and works inside the church building. It appears that much of any archaeological interest in the area of the footprint of the pentice was lost as a result of works undertaken some time ago to address a damp problem. Mr Bennett has carefully considered the impacts in the light of proposed floor levels for the pentice and the church and he concludes that they would all rest well above any remaining intact deposits (which are, in any event, limited). The report concludes that there would be no impact on archaeological deposits or historic fabric.

2.6. Lastly I turn to the appearance of the works. The pentice would sit along the north wall of the main body of the remaining church building and in front of the tower. The effect of unblocking the arches in the north wall of the nave and the east wall of the tower would be to reunite the nave and tower by the construction of the new extension on the footprint of part of the original (pre-sixteenth century) building. I consider that this linkage

would be historically appropriate and would enable a better appreciation of the way in which the church was laid out before the sixteenth century fire. The new structure is appreciably lower than the eaves level of the nave and much lower than the tower; it would be lightly fixed to the north wall, leaving the wall and its buttresses fully revealed inside it. The DAC suggests that a final choice of materials is made in consultation with it but I understand that ragstone and timber are likely to be used; these are natural materials which would be historically appropriate, durable and sustainable. It is proposed to insert an engraved window into the tower, partly occupying the bricked up arch. I consider that this would be an enhancement and the benefits of bringing natural light into the base of the tower are obvious.

2.7. The ridge line of the pitched roof of the pentice would reach part way up the windows in the north wall of the nave but, being pitched, the structure would not be hard up alongside them and I consider the relationship to be satisfactory. Overall, the pentice would appear subservient to the nave and tower, which I consider an appropriate design response since the original building would not be rivalled or obscured by the new.

2.8. In answering the first St Alkmund, Duffield question, I bear in mind that planning permission has been granted, that there is no objection from EH or any other heritage body, that the DAC has issued a certificate and advise me that, in its view, the special character of the building is not

likely to be affected. Although there would be obvious changes as a result of constructing the pentice, physically speaking they are limited because of the plan to build a structure alongside the existing parts of the church rather than a more integrated form of extension. This is an ingenious design solution, in my opinion, which involves minimal intervention to the remaining historic structure. Therefore the changes would be reversible with very little further intervention. The scheme would enhance appreciation of the building by reuniting nave and tower and by removing utilitarian blockages which are not suggested to be of historic significance.

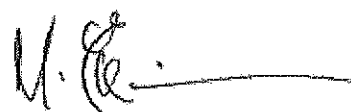
- 2.9. The proposed modernising works inside the nave would be discreet and I find that replacement of the twentieth century parquet floor with stone would be an enhancement.
- 2.10. Having regard to all the evidence, I conclude that the proposals would not result in harm to the significance of the church as a building of special architectural or historic interest.
- 2.11. I have already signalled my strong support for the rationale of the scheme. It seems to me to be an optimal solution to the twin problems of securing a suitable use for the historic building and making the most of it in the mission of this church community both within the parish and in the life of the wider church. I am satisfied that the case is made out to implement

the proposals. The other St Alkmund, Duffield questions do not therefore need to be addressed.

2.12. I therefore order that a confirmatory Faculty be issued in respect of:

- (1) The works to the pentice undertaken up to and including 18 May 2013
- (2) The remainder of the works the subject of the Petition, subject to conditions:
 - (1) limiting the Faculty to 12 months from the date of issue
 - (2) protecting bats during the works
 - (3) providing for an archaeological watching brief during works and for the protection of any archaeological remains discovered
 - (4) protecting any human remains discovered
 - (5) ensuring that the electrical and lighting installations comply with the guidance documents referred to in the DAC certificate
 - (6) providing for detailed lighting positions to be agreed with the DAC
 - (7) providing for the DAC to approve details of materials and engraving

- (8) requiring a specification for the dismantling and re-erection of the vestry scheme to be provided to and approved by the DAC in advance of such works.

A handwritten signature in black ink, appearing to read 'M. Ellis', followed by a long horizontal line extending to the right.

MORAG ELLIS QC
5 June 2013