

In the York Consistory Court

Kirk Ella, St Andrews

Judgment

1. By a petition dated 7 February 2010, the rector and churchwardens of St Andrew, Kirk Ella seek a faculty for the erection of a church centre by way of a substantial extension to the existing Grade I listed building in the north east section of the churchyard, and for certain ancillary works.
2. The matter has a troubled history and there has been a degree of dilatoriness in complying with earlier directions of the court dated 28 April 2010, 3 August 2010 and 9 February 2011. The poor response, which may have arisen from a misunderstanding with the Registry, has been resolved and the Rector's apology and explanation is noted. The Petitioners, and their advisers, may not be fully conversant with the practice and procedure of the Consistory Court which operates in parallel with the local planning authority in cases such as these where there is dual control by both the secular and the ecclesiastical authorities.
3. Put shortly, what is proposed is the demolition of the northern part of the existing choir vestry of this grade I listed building and the construction of new building for church and community use. The following matters are material:
 - i. A grant of planning permission from the East Riding of Yorkshire Council (LPA) dated 24 March 2010, subject to certain conditions;
 - ii. A certificate of recommendation was issued by the DAC on 31 March 2010 subject to some specific provisos;
 - iii. English Heritage signified by letter dated 22 September 2009 to the LPA that it is content with the proposal;
 - iv. the Ancient Monuments Society, by email dated 21 May 2009 to the LPA has indicated that it does not oppose the application;
 - v. the Council for British Archaeology noted in its email of 1 June 2010 that the proposal did not raise particular concerns in terms of the building's archaeological significance. It commended the use of a sedum roof;
 - vi. the Victorian Society in a letter of 11 November 2009, made reference to comments it had made earlier in the process. It did not consider that the proposal had been ameliorated in any significant way. A letter to the local planning authority of 28 May 2009, whilst accepting the construction of an extension in principle, noted concerns as to certain details of the design. It considered the external appearance of the extension to be unsatisfactory, the massing and detailing detracting from the elegance of the Grade I building. The proposed stair tower was considered bulky and crude in comparison with the finesse and beautiful detailing of the church tower. Particular reference was made to the solid to void ratio as it responds to the existing building. The Victorian Society considered in 2009 (as it had considered

consistently since 2007) that there was a missed opportunity of redesigning the columns and diagonal struts of the interior to produce a lighter and more elegant effect.

- vii. the Society for the Protection of Ancient Buildings in its letter of 2 June 2010 noted that the original proposal had evolved in such a way as to incorporate a number of its observations, it remained of the opinion that the proposed tower was over dominant in relation to the mediaeval west tower. It made practical suggestions for a reduction in height as well as making some observations as to the joint size for ashlar work. Whilst not wishing to raise a formal objection, the SPAB asked that the Court take their observations into account;
 - viii. the Church Buildings Council, in its letter of 3 June 2010, in common with the Victorian Society, welcomed the reduction in the footprint of the proposed extension. The CBC recommended that further attention be given to the detail of the link between the proposed extension and the church. It also raised concerns as to the impact and scale of the stairwell and lift which it considered disproportionately large and overly dominant.
 - ix. English Heritage, entered into correspondence with East Riding at the planning stage. An initial letter dated 18 May 2009 set out substantive objections but these seem to have been met by subsequent amendments to the proposal and by letter of 22 September 2009, Dr Diane Green was content to indicate that subject to two minor matters (which are uncontentious), English Heritage did not object to the revised proposals.
4. I have had the advantage of considering the following salient documentation:
- i. A Heritage Statement prepared by Lindsay Cowle dated February 2009;
 - ii. A document entitled 'Reasoning for the Proposed St Andrew's Centre' dated 18 October 2010, in compliance with the court's directions of 3 August 2010;
 - iii. A letter from I K Caveen, an architect with Byrom Clark Roberts, dated 18 February 2011, in compliance with the court's directions of 3 August 2010 and further directions of 9 February 2011.
5. I am mindful of the line of authority to the effect that the Consistory Court should be reluctant to revisit planning matters which have been determined by the local planning authority and led to the grant of planning permission: see *Re St Mary, Westham* (2010) 12 Ecc LJ 121, Chichester Cons Ct. However, the Court is not a rubber stamp and must properly consider features relevant to the grant or refusal of a faculty.
6. I have considered the points of detail raised by the CBC and the amenity societies. I note the following:
- i. That the link between the church and the proposed extension is now covered with greater specificity as shown in drawing PL-06 (Rev A). As to the over-dominance and scale of the stairwell, rather than address the merits of this aspect of the proposal *per se* (which the Court would have found more helpful) the architect merely refers (in paragraph d. of his letter) to correspondence emanating from other bodies. Reference is made to English Heritage, East Ridings' Conservation Officer and the Diocesan Advisory

Committee. Whilst the lack of objection from statutory consultees may be of significance, it is no substitute for a positive case being made out by the Petitioners.

- ii. Whilst recognising the merits of a sedum roof as advocated by the CBA, the advice of the structural engineer seems to be that the load bearing capacity of the historic church structure is such that this variation, however desirable, would not be feasible;
 - iii. That the architect has clarified that appropriately sized joints will be incorporated into the specification to satisfy the point made by the SPAB in its letter of 2 June 2010. However, for reasons which I cannot fathom, the architect's letter is entirely silent on the more significant point raised, namely the over-prominence of the proposed tower. He does however touch upon this when dealing with the comments of the CBC (above);
 - iv. In relation to the Victorian Society, although the architect addresses the linking doorway (paragraph c.), he again says nothing upon the more substantial issue raised, namely the dominance of the stairwell. He seems to proceed on the assumption that having apparently satisfied the DAC, English Heritage and the East Riding Conservation Officer the matter is closed. I have not found this approach particularly helpful.
7. In this case, as with all petitions for substantial changes to listed ecclesiastical buildings, the Court is animated by the *Bishopsgate* questions, as approved and applied in *Re St Luke the Evangelist, Maidstone* [1995] Fam 63. The first two questions can be simply answered: there is clear and proven necessity for the works, and I am grateful to the incumbent for the clarity and thoroughness with which he has described the needs and hopes of the worshipping congregations and the wider community which the church serves. Self-evidently, the works will adversely affect the character of the church as a building of special architectural and historical interest: the Grade I listing and the content of the listing statement speak for themselves.
8. What remains therefore is the balancing exercise comprised in the third question: is the necessity such that, despite the adverse effect, a faculty should be granted? Whilst I remain troubled by the fact that the Petitioners, whether by themselves or through their architect, have declined fully to address the question of the over-dominance of the stairwell or tower, or to put before the Court evidence addressing this discrete aspect, I do not consider that it would be proportionate to defer an adjudication pending assimilation of relevant comments. This petition has occupied a disproportionate amount of the Court's time already. I suspect that it arises not from a contempt of the Court's process nor a wilful disobedience of earlier directions but through an ignorance of the manner in which the faculty jurisdiction works and its inter-relation with the secular system. I bear in mind that for some reason, these Petitioners saw fit to apply for listed building consent (despite the ecclesiastical exemption taking the proposal outside its scope) and much unnecessary time and (I imagine) expense was taken up in pursuing it, not helped by the matter being called in by the Secretary of State.
9. I am entitled to take into account (a) the grant of planning permission and (b) the views expressed by the DAC, CBC and amenity societies. Whilst noting the

reservations expressed, and expressing disappointment, that the Petitioners have declined to address the more significant ones of them head-on in the course of their submission, I am satisfied (not without some hesitation, however) that the third *Bishopsgate* question can properly be answered in the affirmative and that it is appropriate for a faculty to pass the seal.

10. I therefore grant a faculty for the works proposed subject to the conditions annexed to this judgment. As to the costs of determining this petition, they have been considerable and the amount of time devoted to this matter by both the Registry and by the Deputy Chancellor has been far greater than would have been the case had the petition proceeded in a more orderly, competent and professional manner. It would not be right for the DBF to bear unnecessary costs, as this would be to the prejudice of the work and witness of the Diocese itself, and of other parishes. I therefore order that the Petitioners pay such additional court costs, including correspondence fees, as have been incurred in this matter, to be assessed in the usual way by the Court.

Professor Mark Hill QC
Deputy Chancellor

15 March 2011

Annex (For Registry Use Only)

Conditions:

1. Completion within 3 years, Certificate
2. Carried out under the direction of Mr Ian Caveen of Byrom Clark Roberts
3. Standard condition 28