

Neutral Citation Number: [2024] ECC Win 1

In the Consistory Court of the Diocese of Winchester

In the parish of Oakley with Wootton St Lawrence

In the church of Oakley St Leonard

In the matter of: New extension building and entrance linked to the west door including kitchen and WC facilities; pew removal and re-ordering of main building

**Mr Derek Felton
Mr Mark Peryer
The Reverend Ben Kautzer**

Petitioners

-and-

The Victorian Society

Party Opponent

Introduction

1. In these proceedings the Petitioners seek a faculty to reorder the Grade II* listed church of Oakley, St Leonard in the parish of Oakley with Wootton St Lawrence, and to create a sizeable extension and new entrance linked to the west door.
2. The proposals, or parts of them, have attracted adverse comment from Historic England (“HE”), the Church Buildings Council (“CBC”), the Local Planning Authority (“LPA”), the Society for the Protection of Ancient Buildings (“SPAB”). The Victorian Society (“VS”) alone has opted to become a party opponent.
3. The Petitioners and VS have both consented in writing (that is, by email) to the matter being dealt with by way of written representations if appropriate. I conducted a site visit on the 13th of January 2024. In view of that, and the copious written material, I consider that it is expedient for me to determine this matter by way of written representations and so order under rule 14.1 of the Faculty Jurisdiction Rules 2015.
4. I have read and understood all of the documents submitted to me; I have however confined my reasoning in this judgment to what seem to me to be the principal important controversial issues between the Petitioners and the objectors.

The objections

5. I have already referred to the various parties objecting to the scheme. Their objections have been maintained over several years, but do not always demonstrate a

clear understanding of the proposals being consulted on. Furthermore, the objectors do not all speak with one voice.

6. As matters now stand, I would synthesise the following list of matters of concern:
 - a. Location, size and design of the extension;
 - b. Location, design and materials of the storage shed;
 - c. Loss of main body of the pews;
 - d. New location for the pulpit;
 - e. New location for the effigies;
 - f. New location for south aisle screen;
 - g. Impact of raising the nave floor;
 - h. Whether underfloor heating is the best option.
7. Most concerning for the viability of the proposals as a whole, the LPA has previously assessed the harm to the listed building at the high end of less than substantial harm (together with finding harm to the conservation area). On that basis it concluded that planning permission would not be granted (24 March 2021). Whilst the design of the proposed extension has changed since then (in a way which, ironically, attracts criticism from other objectors), the LPA informs me that its “core concerns” remain such that the proposals are “unlikely to gain planning permission” (9 November 2023).
8. The Petitioners say they are “confident of a positive outcome” from a planning application (Form 6, 11 January 2024). Based on what I have read I am rather less confident than the Petitioners. Be that as it may, I will evaluate the petition on its merits as they appear to me.

The DAC’s recommendation

9. The DAC recommends approval of the proposals, but subject to an extensive set of provisos. In respect of the proposed extension the DAC has reservations about the pitch of the roof, the materials proposed, and the glazed design feature. It also recommends that conditions provide for the removal of the organ to an appropriate new home, electrical works, and appropriate archaeological provision.

Issues for determination

10. The framework for the court’s consideration of this petition is provided by reference to *In Re St Alkmund, Duffield* [2013] Fam 158 and *Re St John the Baptist, Peshurst* [2015] PTSR D40. Paragraphs 21 and 22 of the *Peshurst* judgment set out the guidance of the Court of Arches, as follows:

21. For those chancellors who would be assisted by a new framework of guidelines, the court suggested an approach of asking:
“(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
(2) If the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted

more or less readily, depending on the particular nature of the proposals.....Questions 3, 4 and 5 do not arise.

(3) If the answer to question (1) is “yes”, how serious would the harm be?

(4) How clear and convincing is the justification for carrying out the proposals?

(5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the character of a listed building ... will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm to a building which is listed grade I or II*, where serious harm should only exceptionally be allowed”.

22. We make four observations about these questions: (a) Question (1) cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church. ... (b) In answering questions (1) and (3), the particular grading of the listed church is highly relevant, whether or not serious harm will be occasioned. ... (c) In answering question (4), what matters are the elements which comprise the justification, including justification falling short of need or necessity (see Duffield paras 85-86). ... (d) Questions (1), (3) and (5) are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article.”

11. I will accordingly first consider the special interest of the listed church, and then address the five questions identified by the Court of Arches.

The significance of St Leonard’s Church

12. The church is listed at grade II*. All listed buildings are of national importance, but the II* grade puts this church in the top 8% of such buildings. It is what the National Planning Policy Framework describes as an asset “of the highest significance”. This much cannot be in dispute.
13. It is important to understand what it is in particular that makes this church so special. In this task I have been greatly assisted by the detailed and helpful Statement of Significance (February 2020) submitted by the Petitioners and endorsed to a greater or lesser extent by some of the objectors.
14. The key to understanding the significance of the church appears to me to be in the comprehensive and “more than usually expensive” (Pevsner) restoration completed by T. H. Wyatt in 1877. This produced the well-proportioned and appealing external form of the building that is still visible today, incorporating some subtle but important medieval elements (particularly at the west door). I agree with the assessment that the various elements of the exterior, and its setting, are of ‘high’ significance (i.e. meriting a listing at Grade II*).

15. Wyatt's restoration also produced the finely detailed finishes that add interest to the interior (such as the tiling in the sanctuary and chancel, and the pulpit by Earp). The juxtaposition of these elements with surviving medieval features is a further aspect of the church which merits its listing at Grade II*. It is notable that, of the medieval elements, the font and the effigies in the south aisle have been altered and/or repositioned already; they are not intact survivals of the medieval period.
16. The organ and pews also appear to date from the Wyatt restoration, but in my view are less special and do not make such an important contribution to the overall character of the church. They do give the impression of a historic/Victorian interior, albeit one that is already compromised. Similarly, the floor of the nave has no ledger stones or other notable features. It is an unexceptional jumble of stone and unremarkable tiles, albeit of some historic interest.
17. 20th century changes post-date the original listing at grade II* in 1957 and in my view have added little to the significance of the church; indeed, they have tended to detract from it (for example, by the removal of the dwarf walls separating nave and chancel, and by laying carpet to the sanctuary steps). The screen in the south aisle is unremarkable in artistic or architectural terms and, to my mind, adds value primarily by the evidence it provides of the connection with the Colman family.

Harm to significance

18. It is common ground that harm to significance would arise; it is also readily apparent to me that the Petitioners have demonstrated justification more than sufficient to overcome the 'presumption in favour of things as they stand'. This therefore leaves me to consider question 3, namely how serious would be the harm to significance?
19. Focussing first on the exterior, any physical impact would be largely immaterial. However, the ability to appreciate the important western elevation and the exterior as a whole would be severely compromised, including from important views within the setting of the church.
20. Furthermore, I tend to agree with the DAC's reservations about the detailed design of the extension. As currently presented it appears incongruous, competes visually with the historic building, and introduces an entrance which is aptly described by Historic England as "utilitarian" or "functional" rather than beautiful.
21. It may be that these concerns could be resolved or moderated by a different design, but I do not think it is appropriate in a case of this sensitivity to leave the design for consideration pursuant to a condition. I must assess the proposal that is before me.
22. The impact of the proposals on the interior of the church would be somewhat less. There would be some loss of historic fabric (the organ and pews), but not of the elements which I have found contribute the most in terms of significance. The proposals would in fact allow a better experience of the 1877 tiling, and the font, both of which are important contributors. The replacement of the nave floor would cause

some harm but this could be mitigated by requiring that it is done in stone rather than the ceramic tiles originally proposed (and I see that the Petitioners are amenable to such a condition).

23. The effigies have been moved before and moving them again would not be greatly harmful. The south aisle screen contributes little *per se* so I do not find that moving it would cause much harm to significance. The pulpit, however, is in its original location and I would tend to agree with Historic England that the new location would diminish its contribution to significance and leave it “looking like a piece of unwanted furniture”.
24. Taking the harm together, it is considerable – although (in the light of the survival of most of the physical features that currently contribute to significance, and in light of the various positive features of the scheme) not such as to reach the threshold of “serious” harm referred to in *Penshurst* (which corresponds with the concept of ‘substantial’ harm in the secular system).

Justification

25. I now consider questions 4 and 5, and specifically whether harm to significance would be outweighed by the justification provided.
26. St Leonard’s is said by the Petitioners in their Statement of Need (2023) to be a “thriving” church which is “experiencing growth at every level” and hosting “a buzzing community”. This growth, however, has been delivered “*despite* the serious limitations of our primary church building”. The proposals are the result of a process of discernment and consultation called ‘A Church for Our Time’, and aim to deliver significant public benefit by making the church more suitable for the community it serves.
27. The proposals aim to free up more space in the church building (by removing the organ, and relocating the vestry from the chancel to the new extension), and to make the existing space more flexible (by removing the fixed pews). The church is to be freed of its dependence on the nearby St Leonard’s Centre by the provision of toilet and kitchen facilities in the new extension. Other services and facilities (including the heating, lighting and AV systems) are to be improved. A further benefit would be that the church would become more accessible – both because (with the vestry relocated to the extension) the church could be left open throughout the week but also because the more open layout would allow more space for those with mobility problems, and for children and families.
28. It will be apparent from this brief summary of the much more compelling and extensive materials presented by the Petitioners that the overarching justification is to put the church into a state in which it can be used more flexibly and effectively as a local centre of worship and mission. I give great weight to that as a benefit.

29. Certain individual elements of the proposals have their own particular justifications (e.g. in respect of the moving of the pulpit). However, it is apparent that the two major parts of the proposal (the extension and the internal re-ordering) are intrinsically linked. In particular, the proposals for the internal works assume that an extension will be provided (so that the vestry can be relocated there, and so that there is no requirement to provide toilet or servery facilities within the church building, for example). It follows that there is no real scope for me to disaggregate these two elements and make a split decision. They must stand or fall together.
30. This is not a church that is struggling or in need of drastic modification in order to fend off a threatened closure. Nor is it devoid of any flexible space or facilities; it has those in the nearby centre (albeit that that space is already in use to deliver public benefit and is not a direct equivalent for what is proposed here). It is thus a thriving church which is already generating very considerable public benefit from its activities in the church building and centre. I consider that it would continue to do so even without these proposals.
31. The proposals seek to deliver further public benefit by expanding the range and nature of activities that can take place at the church. I can see that there is a clear and convincing justification here for *some* change to the church as it currently is so as to provide more modern facilities and more flexible space. It seems to me however that this justification does not support change, and harm, of the degree proposed.
32. The balance might well fall differently if the proposals were more modest. However that may be, confronted with the proposals as they stand I do not find the justification outweighs the harm.

Further remarks

33. In view of what I have said above about the need, in this particular case, to consider the proposals as they stand and as a whole, it is not strictly necessary for me to go any further. However, I have had the benefit of a very extensive discussion of the various aspects of the proposals and it strikes me that it might assist the Petitioners (and the Objectors) if I were to set out the views I have formed on some individual aspects of the scheme.
34. The most harmful part of the proposals is the new extension. This impacts on what I have found to be one of the most important elements of the church's special interest – namely its external appearance, including views from its setting and the important west door. I can see that the location proposed may be the best (or, least worst) option for an extension of the size contemplated. However, the options appraisal does not consider the possibility of a more modest extension; it might be possible to deliver a smaller extension to the south (as SPAB has suggested) with much less impact on the overall significance of the listed building. In any renewed application I would expect to see serious consideration of options for a more modest extension.

35. The proposals for the interior of the church, on the other hand, are less objectionable. The improvements to heating, lighting and AV, for example, seem to me to bring much benefit for little, if any, harm. The proposals to provide more flexible and accessible space by removing the pews, the organ and reconfiguring the southern part of the chancel are harmful but that harm is limited by virtue of the fact that it accrues to parts of the interior that make a less important contribution to significance. The proposal for a new floor in the nave would do some harm, but it seems to me that that could largely be mitigated by the use of an appropriate material (which, if not agreed, could be dealt with by way of a condition).
36. There are also countervailing heritage benefits to the internal proposals in terms of better revealing the significance of more important features of the interior (the font, the chancel tiling).
37. The proposal for moving the pulpit is, by contrast, more harmful, because it moves an important feature of the 1877 scheme from its original location. I am also very unpersuaded by the justification offered for this aspect of the proposals. The pulpit was clearly designed and positioned with sight lines in mind. From my site visit I did not find that the sight lines from the pulpit were unduly constrained. Furthermore, the diagram in the Petitioners' Form 6 does not convince me that there would be much benefit in this respect by moving the pulpit; indeed by moving it to a more peripheral location I think the overall change to its functionality would probably be negative. Even if I had approved the rest of the proposals, I would have refused permission for this aspect of them.
38. I appreciate that this decision will be very disappointing to the Petitioners, especially after such a long process of development of their proposals. However, I hope that my remarks in this section will help them as they seek to develop new proposals which, hopefully, will prove more acceptable to all concerned.

Disposal

39. I refuse a faculty. If any party wishes to make representations as to costs, those should be sent to the registry by 4pm on Friday the 8th of March 2024. Otherwise, there will be no order as to costs save to require the Petitioners to pay the court costs, as is usual.

Cain Ormondroyd
Chancellor of the Diocese of Winchester

29th February 2024