

Neutral Citation No. [2020] ECC Nor 3

IN THE CONSISTORY COURT

DIOCESE OF NORWICH

In the matter of

SUTTON, ST MICHAEL AND ALL ANGELS

-and-

**A PETITION FROM THE REVEREND SIMON LAWRENCE, MRS
MAVIS SMITH (CHURCHWARDEN) AND LT COL KEN GRAPES
(CHURCH BUILDINGS AMBASSADOR) FOR PERMISSION TO
BUILD AN EXTENSION TO THE CHURCH AND ASSOCIATED
WORKS**

Judgment of the Chancellor

September 2, 2020.

JUDGMENT

Application for Faculty – Extension sought for Grade II mediaeval church – Observations on desirability of consulting Church Buildings Council early in suitable or required cases – Taking into account objections in cases with no Party Opponent - Application of “Duffield” principles – Use of Conditions to require compliance or emphasise importance of distinct issues – Assessing time for completion.*

1. The court is asked by Petition dated April 6, 2020 to grant a Faculty for this Grade II* listed church.
2. The works are: the building of a single storey extension with lobby to house a lavatory, a vestry for the clergy and choir and storage for robes; the

- provision of a kitchenette at the base of the West Tower; the repositioning of a screen; and the re-siting of a memorial stone.
3. The Diocesan Advisory Committee (DAC) recommended that permission should be granted.
 4. The DAC was of the view that the work (or part of it) was likely to affect the character of the church as a building of special architectural or historic interest, the archaeological importance of the church and archaeological remains existing within the church or its curtilage. It recommended Historic England, the local planning authority, the Society for the Protection of Ancient Buildings and the Norwich Historic Environment Service be consulted.
 5. The DAC did not recommend that the Church Buildings Council (CBC) was consulted. Its advice was dated March 4, 2020. This was prior to April 1, 2020 when the conditions under which the CBC *must* be consulted widened.
 6. In the Faculty Jurisdiction Rules 2015: Rule 9.6 required consultation with the CBC (unless, to the Chancellor's satisfaction it had already been consulted and its advice was available to the court) if a petition for a Faculty or an application for an Injunction or Restoration Order involved:
 - a. The introduction, conservation, alteration or disposal of an article (including fixtures) of special historic, architectural, archaeological or artistic interest;
 - b. The alteration, extension, re-ordering of a church in a way that was likely to affect the setting of an article of special historic, architectural, archaeological or artistic interest;
 - c. The movement or removal of an article of special historic, architectural, archaeological or artistic interest such that the article might be adversely affected unless special precautions were taken.
 7. It is arguable that the movement of a screen might have been engaged 6(b) above, depending on the significance of the screen, but probably not in the particular circumstances of this case.
 8. The Faculty Jurisdiction (Amendment) Rules 2019, which came into force on April 1, 2020 made substantial changes requiring in certain cases consultation and advice prior to the commencement of Faculty Proceedings and widened the remit of the CBC in mandatory consultations. The relevant change made it compulsory to consult the CBC where the works or proposals involved an extension to the building to such an extent as would be likely to result in substantial harm to its character as a building of special architectural or historic interest or to its setting (Rule 4.6 [b] as amended).
 9. Whilst I have concluded the harm is at the lower end of moderate, I have little doubt that, since April 1, 2020, consultation with the CBC would have been recommended.

10. I nevertheless think it is a pity the CBC had not been consulted about this project at a much earlier stage. I decided that it should be once I received the application, particularly in view of this now widened remit, even though it came into force after service of the Petition. This, of course, meant that the CBC was being asked for its views after all of the consultations had taken place and very late on in the process. This caused understandable frustration on the part of the Petitioners which was shared by the CBC.
11. In light of the fact that the CBC and the Petitioners were not in agreement about some aspects of this project, I directed that the CBC be asked if it wished to become a Party Opponent. It has not sought to do that but nevertheless has maintained its opposition to some aspects of the scheme and so I will take its views into account in reaching my decision.
12. Taking a view into account means that I will consider four things: (1) the views of the CBC, (2) the response of the Petitioners, (3) the advice of other consultees and (4) whether the court needs to have an oral (full) hearing, notwithstanding the absence of any Party Opponent.
13. **The Proposals.** The Statement of Significance (SOS) highlights the historic evolution of this church. It has an early fourteenth century un-buttressed West Tower, a fourteenth century nave south aisle and south porch and a chancel that was substantially re-built in 1849. The building is flint with limestone dressings and has a Tudor porch with an impressive outer arch over the doorway.
14. The SOS further details some fine features including three windows with thirteenth century 'Y' tracery. The furnishings are more recent save for a Jacobean two tier pulpit and reading desk. The octagonal font is fourteenth century, standing on eight stone shafts. The fourteenth century stone seats for the clergy are divided by the altar rail. Two Decalogue Boards from the eighteenth century are on the south wall of the nave. The tower is equipped with a ring of three bells, restored and rehung in 2007. There is reference in the SOS to the proposals to place a kitchenette in the base of the tower and a W.C. in a single storey extension.
15. The Statement of Need (SON) explains that the parish of St Michael and All Angels is one of three in the benefice of Stalham. It has a congregation of twenty to thirty people for most services and a flourishing church community.
16. The SON goes on to say that the kitchenette in the tower base will allow the church to provide refreshment after services and on other church occasions and the Petitioners say that in the modern day and age where the use of a church for social activities and the like is far more encountered than forty or fifty years ago it is right that a modern WC be provided for the use of people participating in activities, visitors and, first and foremost, the congregation. This is particularly the case where the participants are elderly or young. The proposals reflect a longstanding wish on the part of this

- church to have these facilities and there is a resolution passed by the PCC (unanimously) in January 2019 which followed an EGM of the PCC on December 9, 2018. There are also Minutes in early 2017 and throughout that year and as far back as August 2016. Indeed, the Petitioners say the project has been ten years in the making.
17. The organ was moved to one side of its existing location by Archdeacon's Licence in 2017-18 on a temporary basis to allow proper consideration of a reordering scheme.
 18. The existing site plan shows a church of striking but simple design with a tower at the west end leading through to the nave and chancel with a south aisle abutting the nave with a south porch. There is a north door which is presently blocked and one of the proposals is to unblock it. The parish is just off the A149 from Caister-on-Sea and near Stalham, past the by-pass.
 19. The proposal is to build a new single storey building to house the W.C. What was perhaps not clear enough from the proposals originally (at least to me) was that it will also house the vestry and be where the clergy and choir will robe. On the plan it provides a certain symmetry as it will extend from the building in the north-west part of the church in the same way that the south porch extends from the south-west. The building has caused a number of comments from the CBC. There is to be a wall around the building with its construction being handmade 2.5" thick Britannia red bricks.
 20. Planning permission was granted by North Norfolk District Council (NNDC) on November 29, 2019 subject to an archaeological written scheme of investigation being submitted and approved.
 21. **Consultation.** The Petitioners contacted the consultees on March 6, 2020. This was in accordance with the DAC's recommendation and sought the views of Historic England (HE), the Society for the Protection of Ancient Buildings (SPAB) and Norfolk Historic Environment Service (NHES). The walls are to be brick with natural lime render following advice from the DAC. There had been earlier consultation with HE and the proposals were amended to take account of David Eve's (of HE) comments.
 22. In HE's observations dated March 18, 2020 Mr Eve comments that the proposals to extend have been the subject of discussion between HE and the parish for a number of years and HE advised NNDC when planning permission was sought in 2019.
 23. HE accepts (and had previously accepted) the principle of an extension to enable the provision of lavatories and that the location on the north side of the nave, using the blocked door for access, is reasonable. HE also considers the design (provided high quality materials are used) is suitable. HE was aware of the proposal for the brick wall. HE made suggestions in respect of the interior works. The most significant suggestion was in respect of the sloping of the porch floor which the Petitioners accepted.

24. The Petitioners have instructed an archaeologist to assist them and they are aware of the condition in the planning permission and it is up to them to ensure they are in compliance with it.
25. SPAB has not replied within the timeframe (or at all) so I presume it does not have any strong views about this application and does not wish to object.
26. The CBC had a number of concerns and I am grateful to them for achieving clarification of a number of matters.
27. I agree with the CBC that the SOS and SON were surprisingly brief and should have given more detail. I appreciate these things can be time consuming particularly when a number of those dealing with the Petition are already well familiar with the project, but it makes it much easier for the court and is a requirement in any event. Photographs would also have been useful although I managed to access these myself from online sources.
28. The specific issues were:
- a. Why it was necessary to build an extension at all.
 - b. Whether slate hanging was an appropriate material for the façade of the extension.
 - c. Whether the lobby to the lavatories was too large.
 - d. Whether the area of glazing was too large and whether it could be smaller in line with a smaller lobby.
 - e. Whether the insertion of red engineering brick was appropriate to facilitate the junction of the extension to the church.
 - f. Whether it was appropriate to open a blocked door to gain access to the proposed extension discovering when it was blocked up and why.
 - g. The quality of the kitchen units proposed.
 - h. Whether the bells would still be accessible in the tower.
 - i. The need for further detail about the screen about the base of the tower.
 - j. The need for further detail about a partition at the base of the tower which appeared to the CBC from the plans to be going to be removed.
29. **The Petitioners response to the CBC observations.** The Petitioners replied promptly. I have already explained that it was unfortunate the CBC had not been consulted earlier, but I entirely accept that the Petitioners were not advised or required to do so until the Petition came before me in April 2020.
30. They told the CBC and reminded the court of the Archdeacon's Licence (movement of the organ) and a Faculty from Arlow, Ch. to permit water supply and a drain in 2018. They emphasise (as indeed I can see) that they have followed all the advice they were offered and accommodated suggestions in the proposals. So, understandably, they now feel aggrieved.

The CBC says, equally understandably, that it can only comment when it is consulted. Given the widening of the CBC's scope in respect of consultation from April 1 2020, I hope that a repetition of this problem is much less likely to arise.

31. (See para 28a) I accept what the Petitioners say, namely that there is insufficient space at the base of the tower for a lavatory. It would be unsuitable in any event if the kitchenette will be there. I had not understood until reading this reply that the choir also vested there at present.
32. (See para 28a and c) This response explains two matters: first the need for an extension to incorporate a lavatory and second, a place to allow the choir to robe with appropriate storage.
33. (See para 28b and e) HE had already suggested the building should have cavity walls rendered externally with natural lime covering *all* the brickwork. The slates will be on the roof only.
34. (See para 28f) The Petitioners do not know when the north door was blocked. The blocking is by brick and the stonework is much decayed. The proposal is to have the new entrance match the existing masonry.
35. (See para 28h) The kitchenette will be shared by the bell ringers.
36. (See para 28i,j) There is no partition. There is a small screen that is being moved a little way into the church to give the necessary space for the kitchenette.
37. (See para 28g) The kitchen units and all of the fixtures and fittings are necessarily modern but they are in a traditional style appropriate to a mediaeval church.
38. There is not a specific response to (28d) but since the observation about the glazing appeared to me to be predicated on the lobby being too large, the reply in respect of the size of the lobby dealt with that aspect.
39. **The CBC's response.** The CBC said it was pleased to see that hung slates were no longer proposed on the extension. That settles 28b.
40. The CBC says that I must be satisfied that the screen's significance will not be impacted by being moved (28i, j) and that the kitchen units are appropriate (28g).
41. The CBC's comments on the red brickwork still stand (28e).
42. The CBC observes correctly that the plans and statements did not indicate that the area in front of the lavatory was intended to be used as a choir vestry (28a, c, d). This should have been made clear as I have already indicated but I am satisfied that this was the intention of the Petitioners and its use for this purpose should be a condition of any Faculty to put the matter beyond doubt.
43. The CBC makes observations about the degree of privacy provided by glazing in light of its proposed use.

44. **The Law.** In this case, the DAC has correctly drawn attention to the fact that these works will affect the character of the church as a building of special architectural or historic interest, the archaeological importance of the church and archaeological remains existing within the church or its curtilage. This triggered the consultations that were recommended.
45. The test I have to apply is a different one. The particular considerations of *In Re St Alkmund, Duffield* [2013] Fam 158 apply. The Court of Arches in *In re St John the Baptist, Peshurst* [2015] WLR (D) 115, reaffirmed the approach it set out in *In Re St. Alkmund* for performing the necessary balancing exercise when determining petitions affecting listed buildings attracting the ecclesiastical exemption. It is this:
- (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historical interest?
 - (2) If the answer to (1) is “no”, then the presumption is to be in favour of the *status quo* but it can be rebutted more or less easily depending upon the nature of the proposals.
 - (3) If the answer to the first question is in the affirmative, it is necessary to ask is how serious the harm would be;
 - (4) Then, it is necessary to assess how clear and convincing is the justification for the proposals;
 - (5) Generally, the greater the harm, the greater the benefit will need to be to demonstrated to justify the proposals and, importantly, in the case of a building that is listed grade I or II*, if serious harm would result then the justification would need to be exceptional.
46. The first question is not whether overall the building is better or worse following any improvements. Given they are improvements, one would hope the answer would generally be “better”. The question is whether those improvements harm the present significance of the building in any of the ways described. The answer here is yes. A modern extension is being added to a mediaeval church that is largely unchanged. A kitchenette is being placed at the base of the tower.
47. As my answer is in the affirmative, I have to ask how serious the harm will be. The creation of the extension will create moderate harm (lower end) to the stated significance of the church. This will plainly be a modern building attached to the mediaeval church. It is not, in my judgment, a large building although, at first sight, its dimensions did seem large for a lavatory until the intention of creating a choir vestry became known.
48. The kitchenette will cause low harm. It is a modest scheme and it is not causing unreversible damage to the church.
49. The unblocking of the north door will cause no harm. I am satisfied there is no heritage issue involved here.

50. I am also satisfied that the moving of the screen a short distance is unlikely to cause any more than low harm, if any at all.
51. I understand from the Petitioners that all brickwork will be treated with lime render and I regard any harm to the significance as being low in its context. The particular junction causing concern to the CBC does not seem to me to be of such significance that I should require the plans be altered.
52. I do not consider the privacy concerns around the vestry are a heritage concern. It is a somewhat unusual arrangement, but it is a matter for the PCC to decide. It will certainly be vastly better for the choir not to have to share the space with those using the kitchenette and the bells.
53. Having considered the harm, I turn now to the fourth and fifth questions, namely, how clear and convincing is the justification for the proposals and, if the building is listed as at least II*, whether the justification for serious harm is exceptional.
54. The aim of the proposals is to provide two things: first an opportunity to be able to offer some refreshments after services and at events and to provide a lavatory. These are not unreasonable requests. The church is the largest public building in the parish and it has the space to offer the kitchen facilities at the base of the tower. It is neither possible nor sensible to locate the lavatory there. Nor is it sensible to house the choir or vestry there either.
55. The kitchenette is clearly justifiable. Its harm is low and the church has no other facilities. There are reasonable sized congregations at most of its services.
56. It is also reasonable and justified to provide a lavatory. That cannot be provided inside the church and, having it located in a separate small building will in my view cause less harm than trying to place it inside this church. The provision of the kitchenette will also deprive the choir of its robing area and so the new building can provide space for the choir to robe and to have a place to store the robes. I am sure the kitchen equipment provided will be suitable for a church of this type but to put the matter beyond doubt there will be a condition that the DAC approves the design before the items are installed. I have already indicated that the movement of the screen seems to me to be of very limited significance and justified by the need for the kitchenette. The bell ringing activities will not be affected.
57. I have had to consider the new building more carefully because its attachment to the existing structure clearly presents a more obvious alteration and its harm to the existing historic and archaeological significance of the church is moderate (low end). However, again, I am satisfied that the need is justified and outweighs this harm. The project as a whole depends on both parts: the development of the area around the base of the tower to house the kitchenette, and the lavatory and vestry in the separate building. I am satisfied that the lime render to the brickwork is appropriate and that the size of the lobby is also justified, now that I

- understand its purpose. Although I appreciate the Petitioners have agreed that the building will have cavity walls rendered externally with natural lime render covering *all* the brickwork, I shall also impose it as a condition.
58. The opening-up of the north door causes no harm to the architectural, historical or archaeological significance of the church. The need is obvious and it is an altogether better solution than the present position.
59. It is a pity that the memorial stone for one grave has to be moved but I understand why this is necessary. The grave is over fifty years old, attempts to locate descendants of the deceased have failed, the contents of the grave will not be disturbed and the memorial stone will be re-sited. I impose a condition (already undertaken by the Petitioners) that an archaeologist be retained to advise generally on the project and particularly on this aspect. The Petitioners will be aware of the requirement in the planning permission. I shall also impose a condition in relation to the deceased.
60. I have taken into account the views of the CBC in the way described in paragraph 12. I do not need to have an oral (full) hearing but I have approached the matter very much as if I were deciding a contested case on the papers.
61. **In summary,**
- a. I grant permission for the works proposed and order that a Faculty pass the Seal in those terms.
 - b. It is subject to the following conditions. I am aware that the Petitioners have either agreed to these already or even, in the case of the archaeologist, already complied, but they are there to emphasise their importance and ensure compliance throughout the course of the project.
 - i. **Condition 1:** that an archaeologist be retained to advise in accordance with the terms of the Planning Permission, particularly in relation to the removal of the memorial stone and protection of the remains beneath.
 - ii. **Condition 2:** that a record of the movement of the memorial and location of both it and the remains be made in the church's records and that *consideration* be given to the erection of a small plaque close to the location of the remains to mark their presence.
 - iii. **Condition 3:** that the new building be used, in addition to its housing of a lavatory, as a vestry for use of the choir and clergy as required.
 - iv. **Condition 4:** that the design and quality of any fixtures or fitting comprising the kitchenette should be (or have been) approved by the DAC as being suitable for a mediaeval church that is grade II* listed.

- v. **Condition 5:** that the building will have cavity walls rendered externally with natural lime render covering all the brickwork.
- c. In summary, I have taken into account the concerns of the CBC and my judgment upon them is as follows:
 - i. 28a – I have accepted the need for this extension.
 - ii. 28b – I have accepted that the slate hanging would not be an appropriate façade and the Petitioners do not pursue this.
 - iii. 28c – I was troubled initially about the size of the lobby but am now satisfied that the proposed use for the choir vestry justifies the size. It remains a modest extension. I have imposed a condition of use.
 - iv. 28d – I do not consider on this occasion that the extent of the glazing is a heritage matter and I have concluded it is for the judgment of the Petitioners having consulted with those using the building.
 - v. 28e – The brickwork in general will be subject to natural lime render. I do not *in any event* agree it has the significance given to it in the objection although the CBC were correct to raise it for consideration. This is a twenty-first century building and I judge its general appearance taken as a whole to be suitable for what is a very modest extension.
 - vi. 28f – Whilst it was correct for the CBC to raise its concern about the detail surrounding the opening of the north door, I am now satisfied that this poses no heritage issues.
 - vii. 28g – The observation about the kitchen units is important and I have imposed a condition in respect of it requiring the DAC to approve (or have approved) the designs which is the best way of ensuring there are no problems although I am confident the Petitioners have given proper thought to it in light of their response.
 - viii. 28h – The bells will still be accessible in the tower.
 - ix. 28i – I am satisfied that the comparatively small movement of the screen will not cause any issues of concern.
 - x. 28j – It has been confirmed that there is no partition.

62. I have considered carefully the time estimated for this work by the Petitioners which depends in part on the raising of additional funds. Although the Petitioners were optimistic the work could be completed within 9 months, in view of potential delays that may be caused by the present pandemic I have decided that a period of 20 months is more appropriate. The Petitioners have confirmed that public worship in the church will not be disturbed.

Etherington, Ch.
2nd September 2020