

IN THE COMMISSARY COURT OF CANTERBURY
IN THE MATTER OF WHITSTABLE, ST PETER

JUDGMENT

INTRODUCTION

1. The Petitioners are the Reverend Simon Christopher Tillotson (Team Vicar), Mr Peter William Frederick Clements (Church Council Secretary) and Mr Barry Charles Toogood (Churchwarden). By their Petition they seek authorisation for the following proposal:

"Introduction for an initial period of six months of a portacabin from which a temporary Post Office will be run under a legal agreement with the Parochial Church Council, in accordance with a Statement of Need, details of the portacabin, a Specification by the Inspecting Architect covering any fixing arrangements and the provision of services and a draft legal agreement".

2. The background to this Petition is a decision by the Post Office to close the main ("Crown") office in Whitstable. This decision has provoked great local concern and some protest. Mr Tillotson has become involved with the community in liaison with the Post Office over this issue. The current solution – a service in a portacabin on a Council car park – is universally recognised to be unsuitable. It lacks basic services such as electricity, users have to queue outside in all weathers and it became necessary to close it in January to repair weather damage. Since many of those who regularly use the Post Office are elderly, this situation is one of genuine concern.

3. Following an assessment of options, the Post Office approached St Peter's Church with a view to the installation there of a temporary office in the form of a "pod" inside the church. The pod would be assembled inside the building and rest on the floor, supported solely by its own weight.

4. The Post Office's long term plan is to provide a permanent facility elsewhere in the town.

5. Guided by the Diocesan Communities and Partnerships officer, the Reverend Caroline Pinchbeck, the Parish decided to respond positively to the request. At an extraordinary meeting of the DCC on 17 May 2015, it was resolved:

"in principle, that a temporary Post Office, comprising a secure pod situated between the back of two arches on the north side of the church could be fitted. They also accepted that a waiting area could be situated opposite the pod on the south side of the church. This arrangement is proposed to be temporary for a period of six months initially. There is the option of being extended to a maximum of a further six months.

The arrangement is subject to obtaining a Faculty ... and subject to agreement by the community."

6. It has also been necessary to obtain planning permission to authorise the proposed change of use. Canterbury City Council granted full planning permission on 5 February 2016. Conditions 2 and 3 are in the following terms:

"Unless otherwise agreed in writing by the local planning authority the development or work shall only be carried out in accordance with drawing 14539_201 received on 28 September 2015."

"The hereby approved Post Office facility (defined as Use Class A2 in terms of the Town and Country Planning Use Class Order 2015) shall cease within 365 days of the date of this permission at which time all associated structures shall be removed from the site and the church building shall be reinstated to its original form."

7. On 14 October 2015, the Diocesan Advisory Committee issued its Notification of Advice recommending approval subject to standard conditions concerning electrical wiring.

FORM OF PETITION

8. There has been much discussion of details, particularly with regard to insurance. As a result of this discussion, the Fire Service indicated that a barrier between the pod and

the chancel was required because of their concern that children could otherwise hide in areas such as the organ and, in the event of fire, be difficult to find.

9. I indicated that I would be prepared to deal with a barrier as part of the current Petition, rather than requiring a separate Petition for its installation.

10. Apparently the Fire Officer's comment about a barrier is not legally binding and both the Post Office representative and Mr Tillotson consider that a barrier is unnecessary and undesirable for a number of reasons. The DAC has been consulted on this point and is content to accept the Post Office's suggestion of taping off a queuing area. Ecclesiastical Insurance does not require a barrier. No representations about fire risk were made to the Local Planning Authority and the Fire Service has not objected to the Petition.

11. The Petition has not, in the event, been amended. For completeness, I should say that it seems to me that the risk of a child becoming lost or hidden is slight, not least because there are unlikely to be unaccompanied children drawn to the church by the temporary Post Office. Naturally, if the matter were to arise again in the context of any procedures connected with a Fire Certificate, then it could be reconsidered.

12. Mr Tillotson has indicated that standard Fire Exit signs above relevant doors would be useful and I agree. Moreover, the Parish has consented, in response to concerns expressed by its insurers, to extinguish votive and other candles during the hours of Post Office operation, which would reduce the risk of fire-related accidents. Imposition of the DAC's suggested electrical wiring conditions would further reduce fire risk.

REPRESENTATIONS ON THE PETITION

13. Public Notice of the Petition was given in June/July 2015. The Notice generated two expressions of support from nearby residents. The local Member of Parliament, Julian Brazier, has also publicly supported the project.

14. Two local residents have objected. I am satisfied that these objectors are interested persons for the purposes of the Faculty Jurisdiction Rules 2013,¹ either by virtue of living in the Parish or of having a sufficient interest in the subject matter of the Petition. Each of the objectors has been offered the opportunity to become a Party Opponent but neither has indicated a desire to do so. I shall therefore take into account their written representations in the determination of the Petition.

15. Ms Jane Bowell, who lives in nearby Reservoir Road, objects on the following grounds (in summary):

¹ Rule 9.1(1)

- (i) Whitstable needs a full “Crown” Post Office rather than a temporary expedient;
- (ii) there is a parking problem for local residents being caused by the current portacabin, which occupies six spaces in the public car park and generates parking demand in surrounding streets;
- (iii) the church is not on the main route into town and is therefore poorly located to serve elderly and disabled users in particular,
- (iv) parcel collection from the temporary Post Office would be difficult because the residential streets are narrow and heavily parked;
- (v) concern about hours of operation and potential closures due to weddings, funerals and so forth.

16. Mr Whorlow lives in Sydenham Street. He acknowledges the work done by Mr Tillotson for the community but he objects to the Petition for the following reasons (in summary, continuing the numbered points above):

- (vi) parking congestion in residential streets, depriving residents of on street spaces anywhere near their homes;
- (vii) security concerns both for the church and surrounding residents, with consequential increased insurance costs;
- (viii) bespoke litter collection service will not be possible because of parking congestion due to users “*popping in*” to the Post Office;
- (ix) more consultation should have been undertaken.

17. Mr Tillotson has responded to the objections as follows (annotated by reference to the numbered points (i) to (ix) above):

- (i) the former Post Office closed because its lease expired and the building has now been demolished;
- (ii) the Post Office wish to move the service out of the current portacabin to enable more counters to be operated and to facilitate indoor queuing;
- (iii) wherever the service is situated, there will be parking implications but St Peter’s Church is within a few minutes’ walk of three areas of public parking and has no less access to public parking than the current temporary site; the church is likely to attract many customers on foot from these car parks and is well located in relation to the shops on Harbour Street; moving the service will liberate six public parking spaces;
- (iv) the Post Office anticipate low numbers of vans because the facility will not be a sorting office therefore parcel operations will be confined to collection of packages for delivery rather than vice versa; although navigating heavily parked narrow streets is difficult, existing Royal Mail and other vehicles currently manage to deliver internet orders on a regular basis;
- (vi)

- (v) hours of operation are, in the main, intended to be 9am to 5pm;² on Tuesdays, however, it has been agreed that the Office would not open until 11am to enable the regular midweek Eucharist to be celebrated; occasional offices are very infrequent – one funeral a year and one wedding every two or three years according to Mr Tillotson;
- (vii) security is not dealt with in Mr Tillotson’s response to objections but it is clear from correspondence which he has had with Ecclesiastical Insurance and the secular planning material that the issue of security has been carefully considered; the pod is described in the planning application as a “*temporary fortified structure for security purposes..... it would be constructed of metal*”; all church valuables are required by Ecclesiastical Insurance to be locked away during hours of Post Office operation; Post Office staff would be responsible for unlocking the church except on Tuesdays and on all days for locking it on their departure.

DISCUSSION

18. I consider that the principal issues are as follows:

- (i) lawfulness of the proposal under Ecclesiastical Law;
- (ii) practical implications for the worship and mission of the church;
- (iii) off-site impacts;
- (iv) balance of considerations;
- (v) licence and other practicalities.

(i) Ecclesiastical Law

19. No consecrated church may be sold, let or otherwise disposed of, in whole or in part, except in pursuance of powers contained in the Mission and Pastoral Measure 2011. Section 68 of that Measure specifically empowers the Commissary Court to grant a Faculty for the grant of a lease of part of a church subject to the Court’s ensuring that the premises remaining unlet, together with the premises let are, taken as a whole, used primarily as a place of worship. This provision, originally enacted by the Pastoral (Amendment) Measure 2006, was expressly stated to be to enable secular use of churches by organisations which needed the security of a lease, provided such uses were not inconsistent with the primary use as a place of worship. Licences could already be authorised by Faculty, therefore the amending legislation did not include such arrangements within its scope³.

20. Two potential sources of jurisdiction therefore exist. I am unsure what is intended by the Petitioners by use of the term ‘*Legal Agreement*’. For reasons which I shall

² Source: Planning Application and Officer’s Report to Committee, paragraph 13

³ See generally 23rd Report by the Ecclesiastical Committee on the Pastoral (Amendment) Measure, especially paragraphs 2 and 3 (HL Paper 132; HC 930)

explain, my preference would be for a Licence under Faculty, which is a tried and tested route in this Diocese for collaborations with providers of services such as broadband.

21. A Licence seems to me to be the appropriate mechanism for the following reasons:

- (i) the only part of the church in respect of which exclusive possession could be given is the small area to be occupied by the “pod”, yet access to it by staff and customers, as well as shared use of WCs, would be required;
- (ii) the arrangement is to be short term, which makes a Licence inherently more suitable and avoids the need to consider the implications of Part 2 of the Landlord and Tenant Act 1954 (Business Tenancies);
- (iii) a suitably drafted Licence should be capable of ensuring appropriate flexibility to allow necessary ecclesiastical use.

22. With regard to point (iii) above, I note Mr Tillotson’s response to Ms Howell on the subject of weddings and funerals. Weddings, of course, tend to be planned well in advance and the proposal is for six months only. I therefore assume that it is unlikely that there will be an unforeseen wedding during this period. Funerals are, by definition, harder to predict. In his response to objections, Mr Tillotson makes a number of points about the ageing nature of the church’s congregation and the need, irrespective of this proposal, to find ways of ensuring that St Peter’s church makes its mark in the community. Firstly, I must stress that I have taken no account of possible future projects, since these are not before the Court. Certainly, any legitimate objections to the current Petition cannot be met on the basis that future proposals would have similar or worse impacts. Secondly, I am not convinced that the question of funerals can adequately be left on the basis of an annual average of one. Doubtless many interments occur at a crematorium without a service in church, nevertheless, the church needs to be available for this purpose. There is therefore the potential for incompatibility between Post Office use and the church’s primary ecclesiastical use and function.

23. I have been provided with a standard form of Licence issued by the Methodist Property Office. Allowing for necessary adaptations for Church of England use, it forms a sensible basis for a Licence in this case. A refinement which is required, in my view, however, is that the church must be able to require (on reasonable notice, say seven days) the Post Office not to open for the requisite period to allow any funeral and/or associated memorial service to be held. I consider that the relevant clause should also cover weddings and baptisms, although I recognise that the latter two offices are unlikely to be required in practice. The insertion of such a clause is much more natural and straightforward in a Licence than a Lease and this is a reason for preferring that form of agreement.

24. As to Ms Howell’s related point about regularity of service, I agree that, ideally, a Post Office should be open Monday to Saturday during all regular business hours. Regrettably, however, that optimal situation does not obtain in Whitstable now. The

current portacabin has recently been closed due to weather damage and its future must, in any event, be regarded as precarious to some extent since it does not have planning permission.⁴

25. Although this is the first proposal for a Post Office in a church within the Diocese of Canterbury, there are precedents in other parts of the country.⁵ The practice is noted with approval by the Church of England's Church Buildings Review Group in their recent report.⁶

26. In principle, therefore, the grant of the Faculty sought would be lawful.

(ii) Practical Implications for the Worship and Mission of the Church

27. S.1 Care of Churches and Ecclesiastical Jurisdiction Measure 1991 requires me, in the exercise of my functions, to have due regard to the role of a church as a local centre of worship and mission. In this case, as with any proposal for a new use for part of an active church, I must therefore consider the effects upon the use of the building for Christian worship and the implications of the proposal for the church community's engagement with the wider population.

28. The church is not listed, although it appears to be an interesting early twentieth century reinterpretation of the Byzantine style.⁷ The nave is supported by eight arched pillars and it is proposed to site the pod mostly within the aisle area formed by two of these near the north door, also extending a little way inside the two pillars into the nave. Seating in the nave consists of movable wooden chairs and, as noted above, the pod would not require any physical attachment. Disruption to the church's layout would, therefore, be minimal and wholly reversible.

29. Average congregation numbers at present are in the twenties, according to Mr Tillotson's response to objections. There would therefore be ample room for them at services, with a great deal of seating and most of the sightlines to the High Altar and pulpit wholly unaffected. The font is centrally located near the west wall, well away from the proposed pod.

30. The Post Office would not be open on Sundays and special arrangements are envisaged, as explained above, to ensure that the regular Tuesday Eucharist would continue. This service is held in a chapel on the south east side of the church, furthest away from the proposed Post Office location. It appears to me from the plans that this chapel would remain accessible and unaffected by Post Office activity for private

⁴ Planning Officer's Report, paragraph 12

⁵ St James West Hampstead; St Giles, Langford

⁶ Paragraph 122

⁷ I have referred for this paragraph of the Judgment to the Statement of Significance and to photographs of the church available on the internet.

devotions during hours of operation. There has been discussion with Ecclesiastical Insurance about limiting the use of votive candles to service times. I do not know whether the Blessed Sacrament is reserved in the church, but doubtless if it is, a battery powered light could be used to mark its presence. Subject to the provision in the Licence for occasional offices to have priority, as I have suggested, I consider that the impact of the proposal upon worship in the church would be minimal and acceptable. I also bear in mind that the proposed use is temporary.

31. Although the test in s.68 of the 2011 Measure does not apply as a matter of law to the grant of a Licence, it does express the policy of the Church and the legislature in relation to the introduction of secular uses into consecrated spaces. To that extent, it seems to me that it is a helpful guide to the application of s.1 of the 1991 Measure in Licence cases. Using the test as a guide – and nothing more – I conclude that it would, as a matter of fact, be met in this case because the church as a whole would undoubtedly remain primarily a place of worship.

32. Turning to the mission element of the 1991 Measure, I note that the rationale for the Petitioners appears to be twofold. Firstly, they wish to serve the local community which does not, at present, enjoy adequate Post Office services. I bear in mind and give weight to the importance of such services, especially for elderly people and others who may find it difficult or expensive to travel to other towns and who should not have to queue outside unprotected from the elements. Having regard to these factors, these objectives seem to me to be worthy ones, wholly in line with Biblical teaching about ensuring the welfare of the elderly and vulnerable. Secondly, there is a desire to highlight the presence of the church to Whitstable residents and, by encouraging visitors to come into the building, signal the presence of a Christian community. The Statement of Needs says that it is proposed to mount display boards presenting the church's activities and points out that there would be times when members of the congregation would be in the building, giving them the chance to speak to visitors. Again, these aims and objectives are entirely valid and I accept that "*putting the church on the map*" in this way would offer greater opportunities for engagement with residents of the town. As I have said, such initiatives are promoted by the Church Buildings Group and the combined Churches document referred to above contains many examples of successful schemes involving churches, post offices and community shops. In principle, therefore, I find that the Petitioners' proposal has the potential to make a strong contribution to the mission of their church.

33. I have set out above the DCC's resolution in respect of the proposal, which includes a caveat that its support is "*subject to agreement by the community*". This is a loosely drafted condition. In particular, it is not stated what "*community*" is intended to mean in this context. Within the wider Christian community, such projects, as I have indicated, are strongly supported. Turning to the secular community, I note that the project has been considered by elected representatives with democratic responsibility for planning control and found to be in the public interest. The proposal is supported by the local Member of Parliament. In a general sense, therefore, there is community agreement.

34. Locally, the proposed Faculty has generated numerically balanced expressions of support and objection. Clearly, it is important for the church to be a good neighbour. This obligation, however, does not include a guarantee that there will be no change in circumstances and, specifically, activity levels. With these general points about neighbour relations in mind, I turn to consider off-site impacts and the specific points of objection in this regard. In doing so, I take as my starting point the fact that planning permission has been granted for a change of use, limited to twelve months from February 2016. In the absence of cogent or convincing evidence to suggest that this decision was wrong, I am entitled to, and do, assume that the permission was appropriately granted: see Re St Laurence, Alvechurch (2003) 22 CCC 25, 7 Eccl LR 367.

(iii) Off-Site Impacts

35. The objections under this heading relate principally to traffic and parking. These matters were considered by the Local Planning Authority, in the face of similar objections from local residents and the City Council's Transportation Department. Essentially, the concerns relate to increased congestion in the network of narrow streets surrounding the church, which are already heavily parked. There would also, potentially, be inconvenience for residents if they were unable to park on street near their homes. The Planning Officer's report states that on street parking capacity is mainly used by local residents and is, to some extent, vacated during working hours. He witnessed this on his site visit, when he saw around 15 spaces within 50 metres of the church. Like Mr Tillotson, the Officer also notes the availability of public car parking. Additionally, he points out that there are bus stops about 250 metres away.

36. Neither of the objections to this petition has introduced any material to demonstrate that the Planning Officer's assessment was wrong. I also bear in mind the fact that, contrary to popular belief, there is no right to park a vehicle on the highway, even outside one's home. Hours of opening of the Post Office would reflect normal working hours, so, for many working local residents, any associated parking and traffic movements would have ceased by their return home. I also bear in mind Mr Tillotson's evidence to the effect that delivery vehicles manage to traverse the streets at present, doubtless by driving slowly and exercising care. I have seen no evidence to support the suggestion that the Serco vehicle would be unable to operate with the proposed use.

37. Security of the church building and artefacts has been fully considered. Once again, there is no evidence before the Court to support the assertion that domestic properties would be put at risk or that their insurance premiums would increase.

(iv) Balance of Considerations

38. Properly regulated by Licence, I find that the implications of the proposal for the worship of the church are very slight. There would, however, be considerable benefits

in terms of the church's mission through service to and engagement with the wider community, which would both effect improvements in an important public service and give the church good opportunities for recognition and outreach.

39. I am not convinced that traffic generated by the proposal, comprising customer and delivery vehicles, would have material adverse effects on highway conditions or the quality of life of surrounding residents. Nevertheless, I need not rely solely upon my own judgment of this matter, since the Local Planning Authority has determined the traffic impacts to be acceptable and I have seen no evidence to demonstrate that this conclusion was flawed.

40. Finally, objections are raised to the provision of a temporary expedient because it is felt that Whitstable needs a permanent, high quality Post Office. Evidently the Petitioners and the officers of the Post Office agree. It is not for me to pass comment on the question of a permanent solution. All that the Petitioners seek from the Court is authorisation of the proposed arrangement for "*an initial period of six months*". Subject to the matters addressed in the next section, I consider it appropriate to grant such a Faculty for the reasons set out in this Judgment.

(v) Licence and other Practicalities

41. I have indicated my strong preference for a Licence rather than a Lease and believe this to be the nature of the "*legal agreement*" referred to in the Petition. I direct that such a document be prepared and submitted to the Court for approval before the Faculty is issued. It should contain a clause ensuring priority for occasional offices as outlined above.

42. The Faculty will be limited to a period of six months. If, within four months of the date of the grant of the Faculty, it is desired to extend the period (though not beyond 5 February 2017 when Planning Permission will expire) an application to amend the Faculty may be made. Any such application is to be made the subject of public notice and the two Objectors mentioned in this Judgment are to be notified personally in writing by the Petitioners of any such proposal. I note that Mr Whorlow believed that public consultation was inadequate. I do not consider that complaint to be justified, since the statutory requirements were met, he found out about the proposal and objected to it. Nevertheless, as he and Ms Bowell have expressed concerns, they should be informed of any proposal to continue the arrangement and given the opportunity to comment.

43. The DAC's suggested electrical wiring conditions will be imposed, together with the standard condition requiring insurance to be in place and conditions of any relevant policy or contract to be met.

44. I therefore direct that this Judgment be issued and that the necessary Licence be drafted with a view to the issue of a Faculty in due course for the works and to authorise the Licence under Faculty.

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

MORAG ELLIS QC
4 March 2016