

In the matter of St Mary, Billingshurst

Judgment

1. By a petition bearing the date 24 November 2010 (which may be an error for 2011), the incumbent, churchwarden and chairman of the reordering team seek a faculty for the reordering of St Mary, Billingshurst. The works comprise:
 - i. Installation of underfloor heating and levelling of the stone floor throughout the church;
 - ii. Replacement of existing pews with stackable chairs;
 - iii. Enclosure of vestry and of the Lady Chapel with doors;
 - iv. Provision of kitchenette;
 - v. Replacement of lighting and power facilities and introduction of audio visual system;
 - vi. Provision of lavatory within the tower, together with new glass doors, storage and improved access to ringing chamber.
2. The proposals have been the subject of revision and development over a lengthy period of consultation in which the DAC, CBC, SPAB, Victorian Society and English Heritage have all participated. Both the parish and the consultees are to be commended on the constructive manner in which they have engaged from design stage onwards. The full extent of this is helpfully set out in a detailed chronology included with the petition.
3. The petitioners have placed before me a Statement of Significance and a Statement of Need dated August 2009 and April 2010 respectively and it is obvious that these two documents, the latter in particular, have informed and animated the consultation process. In addition there is a fulsome Impact Assessment dated 20 October 2011 which gives a balanced assessment of the effect of these proposals on the heritage aspects of the church building.
4. St Mary's is of Norman origin, parts of which date from the twelfth century. The church underwent a major restoration in 1866. It is Grade I listed.
5. The identified and documented need is the provision of flexibility, space and facilities necessary to transform the building for its role in the twenty-first century.

Diocesan Advisory Committee
6. The DAC issued a certificate on 14 November 2011 recommending the works subject to certain detailed points of clarification which have duly been addressed by the inspecting architect, Mr Richard Glover, in a letter of 4 January 2012.

Church Buildings Council

7. The CBC gave advice in a letter of 1 March 2010 and, following revisions to the proposal, in a further letter of 4 January 2012. The CBC was content that the works now comprised in the petition were broadly in line with the advice which the CBC had previously offered, although it still considered that the petitioners had not made out an adequate case for the removal of the pews.

English Heritage

8. Mr David Brock of English Heritage visited the church in the latter part of 2011 and wrote to the inspecting architect on 4 January 2012. He was pleased to note the adaptation of the proposal in so far as it related to the tower floor. Not without reluctance, Mr Brock accepted that the existing floor slabs were not in a good enough condition to re-use although one stone was marked for reinstatement. He accepted the case for resiting the brass memorial, and could see no adverse effect in lowering certain floor levels.
9. Mr Brock commended changes to the floor pattern to facilitate 'west-to-east movement' in the floor, a matter on which English Heritage's view seems to be at variance with that of the DAC. Mr Brock's letter makes practical observations for the lintel required for the glazing aspects of the chapel screens, which the inspecting architect was happy to adopt, ensuring that fixings for the new screens coincided with mortar joints in the fabric. He commended caution in respect of the positioning of audio visual screens existing due to their impact on the aesthetic of the church interior.

Society for the Protection of Ancient Buildings

10. The petitioners consulted with the SPAB during the evolution of the proposals and latterly in a letter dated 21 November 2011. Representatives visited the church on 6 January 2012 and wrote to the inspecting architect on 17 January 2012. The letter was extremely thoughtful and constructive noting how the petitioners had revised the proposal in the light of earlier input and categorising the proposed works to the tower as 'a good compromise'. It noted the less intrusive nature of the plans for underfloor heating but urged further consideration to be given to a specific brass memorial and to the retention intact of stone paving slabs in the floor.

Victorian Society

11. The Victorian Society's stance on the proposals is contained in a letter dated 27 January 2010 from Heloise Brown, conservation adviser. Whilst acknowledging much of the thinking behind the proposed works it advocated the retention of pews in the nave and expressed concern about changes to the nave floor, the link between the nave and the chancel and the removal of the altar rail. A substantive reply to these matters was made in a letter from the inspecting architect dated 2 June 2010, indicating revisions to the scheme to take account of the views of the Society.
12. A further letter enclosing revised plans was sent by the inspecting architect on 21 November 2011 which addressed directly the petitioners' stance in persisting in their proposal to remove the pews, level the floor and replace the fixed altar rail with one which is movable. The Victorian Society sent a constructive and pragmatic letter in response dated 26 January 2012 indicating that whilst it regretted the loss of the pews and other changes to the interior it did not wish to enter a formal objection and deferred to SPAB in relation to matters concerning works to the medieval fabric. It noted that the grade I listed

status derived primarily from the superb splay footed wooden spire which would be unaffected by the reordering.

Letters of objection

13. Following public notice of the proposals, and a notice published in a local newspaper, a number of letters were received from local residents. These comprised a letter dated 13 December 2011 from Ms Elizabeth Pratt, who subsequently wrote stating that she did not wish to become a formal objector; and a letter dated 20 December 2011 from Mrs M R Daniel.
14. Mr John Woolliscroft, the chairman of the reordering team and one of the petitioners, dealt with matters of funding in a letter of 31 January 2012 and responded substantively to the above correspondence in a letter of 8 February 2012. Following expiration of the deadline for the receipt of letters of objection, a letter was received from Mr Roger Burst dated 14 March 2012. I permitted the reception of this letter out of time and afforded the petitioners the opportunity of responding to it which they did by letter dated 29 March 2012. Even later still a letter was received from Mr David Lowe which I have read and considered but have not sought any input from the parish. Clearly the weight which I can afford to Mr Lowe's views is limited due to late receipt of his letter. There is a considerable overlap, however, between the points raised in Mr Lowe's and those of the writers of the other letters.
15. I hope that I do no disservice to the objectors when I take their points generically and summarise as follows:
 - i. That the proposals go well beyond the original intention of providing access for the disabled and updating the heating, and in any event the heating could be updated in a much cheaper way than the proposed underfloor system, and there are simpler ways of accommodating wheelchairs;
 - ii. That there are already adequate facilities in the vicinity in St Mary's Room;
 - iii. The estimated cost (in excess of £600,000) cannot be justified when the parish cannot meet its running expenses. There has been no adequate indication of how fund raising has been proceeding to date;
 - iv. That in a period of national austerity, such a grandiose plan sends the wrong message to the general public. It cannot be justified when there is so much poverty in the country and the wider world;
 - v. That the proposals are being pursued by the incumbent and a small 'clique' and there is no widespread support amongst the congregation or community. It is 'being bulldozed through with uncompromising conviction by the incumbent';
 - vi. Making the seating more comfortable will not bring more people to the faith;
 - vii. It is not permissible to use the proceeds of sale of Billingshurst Social Club for the reordering of the church as it should be applied for the benefit of the whole village;
 - viii. That pews removed from the Lady Chapel pursuant to a temporary licence from the archdeacon have not been restored and their current whereabouts are unknown;

- ix. That the proposals amount to a departure from established Anglican worship into something more evangelical which is out of keeping with the traditions of the parish;
- x. That St Mary's is a divided community which needs a time of healing and not the distraction of large scale fund raising and a major reordering.

The law

16. Where, as here, we are concerned with a listed building, the Court of Arches has prescribed an approach which consistory courts are to follow in determining whether or not a faculty should issue. See its judgment in *Re St Luke the Evangelist, Maidstone*, [1995] Fam 1, which adopts what are generally styled the '*Bishopsgate* Questions', first posed in the unreported decision of *Re St Helen, Bishopsgate*, (26 November 1993, London Consistory Court, noted in (1993) 3 Ecc LJ 256). Those questions are:

- (1) Have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of [the parish] or for some other compelling reason?
- (2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?
- (3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?

17. As I stated as Deputy Chancellor of the Diocese of Winchester in *Re St Mary, Longstock*, [2006] 1 WLR 259, and as I adopt in relation to the present matter:

... for the purpose of disposing of this petition, I take as my starting point the fundamental premise upon which the ecclesiastical exemption is based, namely that in the case of listed buildings, there is a powerful presumption against change. The burden of proof lies on the proponent of change, and the burden is not easily discharged.

18. The word 'necessity', although a very convenient shorthand which carries a clear meaning that is well understood by those who practise in the ecclesiastical courts, needs to be properly understood as I sought to make plain in the following passage from the judgment of this Court in *Re St Mary, Newick* (4 July 2008, Chichester Consistory Court, unreported) at paragraph 6:

['Necessity'] should not be taken in isolation as an abstract concept. Rather it should be read in its clear context which imports the wider concept of pastoral well-being or some other compelling reason. Seen in this way, the meaning and effect of the *Bishopsgate* approach is readily comprehensible, continuing to impose a high standard of proof on those who seek to discharge the presumption against change applicable in the case of listed buildings, yet admitting of factors concerning the role of the church as a local centre of worship and mission. This is central to the operation of the faculty jurisdiction in consequence of the overriding consideration set out in section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

19. The task of this Court, therefore, is to address each of the *Bishopsgate* questions in turn.

(1) Have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of [the parish] or for some other compelling reason?

20. The letters of objection suggest that the proposals go beyond what is required to make the heating functional and to secure compliance with disability discrimination legislation. It is said that adequate facilities exist elsewhere, not least St Mary's Room.
21. For my part, I consider that the case of necessity made by the petitioners is overwhelming. The Statement of Need is exemplary and the evolution of these proposals through timely and engaged consultation over a substantial period is amongst the most impressive that I have seen in more than a decade as Chancellor of this diocese. Doubtless the thoroughness and comprehensiveness of this process contributed to the fact that what is currently proposed comes before me with the general concurrence of the consultative bodies and amenity societies which are generally considered to be somewhat conservative and reactionary in their outlook.
22. I have particular regard to the following:
 - i. That St Mary's Room is already well used but has limitations in the number of people it can accommodate;
 - ii. That the inflexibility of the reordering in the 1860s imposes significant liturgical limitations;
 - iii. That the current heating system is at the end of its technical lifespan and urgent and substantial work needs to be undertaken, which presents an appropriate window of opportunity for a more extensive reordering;
 - iv. The provision of modern lavatories within the church building eliminates the need for those attending worship and secular activities walking to another building;
 - v. The provision of a crèche would foster and promote increased involvement of young families in the life of the church, and coupled with a kitchenette and improved access greater use can be made of the building;
 - vi. The church cannot meet the needs and aspirations of the local community in the twenty-first century;
 - vii. The chancel can be given greater focus and character;
 - viii. Proper storage facilities will enhance the aesthetics of the interior;
 - ix. Secular events such as concerts, dance and drama can be facilitated.
23. It is appropriate to make an observation here which I trust will be noted throughout the diocese. It relates to Christian stewardship in an age of austerity. Several of the letters of objection suggest that this petition should be dismissed either because the parish does not have the funds immediately available, or because it is a wasteful indulgence for the faith community to expend large sums on the beautification of a building when many are suffering considerably from the effects of a sustained national recession. The correspondence from the Diocesan Secretary seems adequately to deal with any question over the propriety of applying the proceeds of sale of Billingham Social Club and I do not consider that this constitutes a valid ground of objection.
24. On the matter of finance, it is not unknown for a faculty to be sought before funding is in place; it is often difficult to persuade donors to support a project which is yet to receive

the go ahead. Any permission which is granted, however, will be incapable of implementation until the funds have been raised and this is generally a condition of any faculty. The second point is a genuine concern: social ministry sends out a variety of messages and fine judgments must be made. However, it is not the function of this Court to make value judgments such as these. As I stated in *Re Mary Magdalene, South Bersted* (Chichester Consistory Court, 19 March 2002, unreported) at para 11:

The PCC, being an elected body, is entrusted, *inter alia*, with the financial administration of the parish. It must act in accordance with ecclesiastical law and the requirements of the charity commission. In the absence of bad faith, it would be a usurpation of the PCC's function for this court to interfere in its decisions on the use of its resources.

25. I can see no element of bad faith. This is not a vanity project unconnected with the mission and witness of the Church. On the contrary, it is carefully thought through and focused on the current and future needs of the Church and its continuing outreach in the community. The petitioners are confident that funds can be raised and time will tell whether their optimism is misplaced.

(2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?

26. The proposals will undoubtedly affect the appearance of the interior of the church and, to some degree, its character. Whether the effect will be adverse is a matter of subjective judgment but for the purposes of this determination I will proceed on the assumption that they will.

(3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?

27. This third – and generally the crucial – question is the balancing exercise namely whether the proven necessity justifies the change and, on this aspect, the burden of proof lies on the petitioners. Mindful of the heavy presumption against change, I am nonetheless of the opinion that in this instance the burden of proof has been clearly and decisively discharged.

28. The proposal is for the holistic thoughtful reordering of the church building, works to the tower including the introduction of a mezzanine floor, and the installation of modern underfloor heating. It is imaginative and has been developed in full consultation with the congregations, the local community and with the various bodies qualified to give advice. I reject the suggestion in certain of the letters of objection that there has been insufficiency of consultation or that the project is only supported by a small tightly knit group. These insinuations do not stand up to scrutiny in the light of the documentation which goes back some years.

29. Looking at all the material which has been placed before me and having regard to the comments and opinions expressed by all concerned which I have merely outlined in the course of this judgment, I am inevitably drawn to the conclusion that the balancing exercises come down firmly in favour of the grant of a faculty.

Conclusion

30. It therefore follows that a faculty will be issued subject to the following express conditions:
- i. That no contract is to be signed and no works are to be commenced until the Chancellor has certified in writing that the petitioners have satisfied him that sufficient funds have been raised or pledged for the purpose of such phase of the works as the petitioners are minded to undertake;
 - ii. That an appropriate archaeological watching brief is put in place;
 - iii. That no audio visual equipment (including any screens) is to be introduced until prior written authority has been obtained from the Chancellor;
 - iv. That the works are to be completed within three years of the grant of the faculty or such extended time as may be ordered by the Chancellor;
 - v. That the works are to be undertaken under the direction of Mr Richard Glover MRICS.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

30 April 2012