



*Faculty – Unlisted church building in a deprived area of Blackpool constructed as a church hall in 1898 and converted to a parish church when the earlier church building was demolished c. 1992 – Faculty application for refurbishment and conversion of existing female toilets into four unisex toilets (one accessible) and conversion of existing male toilets to office space – DAC recommending proposals for approval – Objections by neighbouring homeowners on grounds of proposed nuisance – Objectors not electing to become parties opponent – Whether complaints of nuisance to adjoining land relevant to grant of faculty for works – Faculty granted but with permission for the petitioners to reverse the locations of the proposed unisex toilets and the new office – Alternatively, condition imposed that the petitioners are to use their reasonable endeavours to introduce acoustic insulation to the party wall between the church building and the objectors’ home*

**Application Ref: 2023-082374**

**IN THE CONSISTORY COURT OF  
THE DIOCESE OF BLACKBURN**

Sunday, 22 December 2024

**Before:**

**THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR**

**In the matter of:**

**St Paul, North Shore, Blackpool**

**THE PETITION OF:**

**THE REVEREND DEBORAH PREST (Incumbent)**

**HAZEL NICHOLLS and LYNNE CROFT (Churchwardens)**

This is an unopposed petition determined on the papers and without a hearing.

Objections were received from two neighbours on the grounds of alleged nuisance but neither of them has elected to become a party opponent.

The following cases are referred to in the judgment:

*Fearn v Board of Trustees of the Tate Gallery* [2023] UKSC 4, [2024] AC 1

*Lawrence v Fen Tigers Ltd* [2014] UKSC 13, [2014] AC 822

*Re St Alkmund, Duffield* [2013] Fam 158

## JUDGMENT

### Introduction and background

1. This online faculty application was presented on 30 September 2024 by the minister and the two churchwardens. It relates to an unlisted church building in a deprived area of Blackpool. The building was constructed as the church hall in 1898. It became the parish church when the earlier church building (by Garlick & Sykes) was demolished in or around 1992. The building has no special architectural or historic, and no significant archaeological, interest. The faculty application seeks permission for the refurbishment and conversion of the existing female toilets into four unisex toilets (one of which will be wheelchair accessible) and the conversion of the existing male toilets to office space

2. According to their Statement of Needs, the parish is in one of the most deprived areas of the country, and the church is very much needed for all ages. The church building is open for worship services on Sundays and Wednesdays, and is open every other day for community activities. The toilets serving the building are long past their best, with tiles falling off the ceilings and the plaster around the windows falling out. Elderly church users remember using the toilets when they were children. The kitchen, the office and the ‘vestry’ are all below ground level and are therefore very damp. The kitchen is of the same vintage as the toilets. All these parts of the building need to be updated to current standards. The parish also need to provide meeting spaces for local groups, and a safe space for people to have conversations about occasional offices and pastoral concerns. The parish propose stripping out the current ladies’ toilet facilities, replacing them with four unisex cubicles, one of which will be fully wheelchair accessible. They also propose removing cupboards in the small hall to the south of the church in order to facilitate this. The gentlemen’s toilet block will be converted into office space. The existing storage space will be adapted to replace the cupboards that have been removed. It is said that these works have been needed for a long time. The building is not fit for use as it is.

3. The plans show the existing male toilets to the north of the altar, at the east end of the church. These will be converted into the new office space. The existing female toilets are to the south of the altar, also at the east end of the church. There are presently two cubicles, with the toilets and cisterns adjoining the southern party wall. The toilet space will be extended to the west, and four unisex cubicles will be created. One will be in the north-west corner of the new toilet space and another opposite it, against the eastern exterior wall. Two cubicles will adjoin the southern party wall. In the cubicle on the east side, the toilet and cistern will be re-orientated so that they now adjoin the eastern exterior, rather than the southern party, wall, although the handbasin will be on the south wall. In the wheelchair accessible cubicle on the west side, the

toilet and cistern will still adjoin the southern party wall, with the handbasin on the western wall. The estimate for the works to the toilets includes provision for acoustic insulated walls.

4. The proposals have the full support of the Parochial Church Council (the **PCC**).

5. At its meeting held on 8 May 2024 the Diocesan Advisory Committee (the **DAC**) considered the proposal for works to convert the existing gents' toilet to office space and reconfigure the existing ladies' toilet to provide unisex toilet facilities, including an accessible toilet; all in accordance with Overton Architects' drawings numbered 2465/01/01, 02 and 03. The DAC recommended the proposals for approval by the court, advising that they will not affect the character of the church as a building of any special architectural or historic interest, any archaeological importance of the church, or any archaeological remains existing within the church or its curtilage. The DAC did not consider it necessary to consult on the proposals, or to recommend the imposition of any conditions on the grant of any faculty for the works.

6. Applying the well-known *Duffield*<sup>1</sup> criteria, I am entirely satisfied that the petitioners have established that these proposals, if implemented, will result in no harm to the setting, the appearance, or any significance that might attach to this unlisted church building. They have also succeeded in rebutting the ordinary presumption, in faculty proceedings, in favour of things as they stand. Indeed, the petitioners have demonstrated a clear and convincing justification for their proposed works.

7. Had this been all, it would not have been necessary for me to issue a formal written judgment. However, this faculty application has generated two objections, albeit from two persons sharing the same interest, and advancing the same, non-*Duffield*, grounds.

#### The objections

8. The usual public notices were duly displayed between 2 October and 1 November 2024 (inclusive). These have elicited two emailed letters of objection, both dated 25 October 2024, from Mr Young, of 1B Egerton Road, Blackpool, and from Ms Young, of the same address. Both objections are in materially the same terms. Both writers:

*... formally object to the proposed reconfiguration of the existing ladies' toilet at St Paul's Worship Centre to provide unisex toilet facilities, including an accessible toilet. The current location of the toilet facilities directly adjoins my living room, and the impact on my property and quality of life has already been significant.*

*My main objections to this proposal are as follows:*

*(1) Noise Disturbance and Lack of Privacy: The toilet cubicles adjoining my living room produce a loud banging noise that echoes and vibrates through my property when the cubicles are used. This noise is not limited to the slamming of doors but also includes the lack of privacy when people use the facilities, which is very unpleasant as we can clearly hear individuals urinating.*

*(2) Impact on Quality of Life: Every time the toilets are used, the doors slam shut loudly, causing a thumping effect that vibrates through my entire house. This constant noise has become a significant disturbance to my family and me. Due to the lack of sufficient sound*

---

<sup>1</sup> See *Re St Alkmund, Duffield* [2013] Fam 158

*insulation between the adjoining walls, we are regularly subjected to the sound of flushing, door slamming, and other unpleasant noises emanating from the toilet area.*

*(3) Evening and Night-time Nuisance: As St Paul's Worship Centre has become more active in the evenings and at night, this disturbance has escalated to the extent that my family and I have stopped using our living room altogether. The noise generated by the toilet cubicles is not only confined to the living room but also echoes throughout the downstairs and upstairs rooms that adjoin the property.*

*This situation has greatly affected our ability to enjoy our own home. The proposal to convert these facilities into unisex toilets, which will likely increase their usage, will only exacerbate the issues we are currently experiencing. I believe that without addressing the noise insulation and privacy concerns, this reconfiguration will have a detrimental impact on our quality of life.*

*I respectfully urge you to reconsider the current proposal for the reconfiguration of the toilet facilities at St Paul's Worship Centre and to propose relocating the reconfigured facilities to the opposite side of the entrance of St Paul's Worship Centre, where toilet facilities currently exist. This change would ensure that the toilet facilities are not adjoining any third-party building.*

*I trust that my objections will be given due consideration, and I look forward to your response.*

*Should you require any further information or wish to discuss my concerns in more detail, please do not hesitate to contact me.*

#### *The response to the objections*

9. Upon receiving these objections, the Registry wrote to both objectors, informing them of the two alternative courses of action open to them under rule 10.3 of the Faculty Jurisdiction Rules 2015 as amended (the **FJR**), and enclosing copies of Form 5 for them to complete should either of them choose to become a party opponent. No replies have been received from either objector. They have not therefore chosen to become parties opponent.

10. In accordance with FJR 10.5, the Registry invited the petitioners to comment on the objectors' letters. The petitioners' comments are set out in an email dated 29 November 2024, as follows:

*Thank you for raising your concerns about our proposed restructuring plans.*

*Hopefully our response will help to alleviate your concerns,*

#### *1. Noise disturbance and lack of privacy*

*Our toilets have been located in that position for nearly sixty years and this is the first time that we have received any complaints.*

*One of the reasons that we want to update the toilets is that over the years the cubicle frames have warped. Over recent months leaking windows in the kindergarten room which is next to the toilets have made the building very damp.*

*We have been trying hard to get this resolved.*

*We believe that new cubicles will eliminate the need to slam doors.*

*In the interim we will try to remove as much damp as possible when the windows are made watertight.*

*We will also cost having a soundproof layer added to the adjoining wall as part of the refurbishment, and include that in the design.*

*We are already planning to have low volume, silent fill toilets installed, as the toilets are so old. Modern toilets use around half the amount of water per flush.*

## *2. Impact on quality of life.*

*Hopefully the mitigations above will stop the banging, vibration and noise.*

*The available hours from 9am to 9pm amount to 84 hours a week.*

*We are a little surprised that the noise is constant given that the building is only in regular use for around 18 hours a week and the latest that any regular group stays is 9 pm (Wednesday, Thursday and Sunday) with the Thursday group only meeting in term time.*

*None of our regular user groups have lots of people, and most groups are in for two hours or less so not a lot of people will need to use the toilets - quite a number of people actively avoid them because they are so dilapidated*

*There is occasional use on Monday morning by a handful of people setting up for Jumble sales that are held on Monday evenings (9 times a year). These events finish by 8.30 pm.*

*Occasional events are held on Saturdays mainly in the morning..*

## *3. Evening and night time nuisance.*

*As outlined in point 2 above the building is only in regular use three times a week during term times in the evening. Refurbishment of our facilities should significantly reduce any noise currently caused by the infrequent use of the toilets.*

11. The DAC discussed the objections received in response to this faculty application at its meeting on 13 November 2024. The DAC sympathised with the comments from Mr and Ms Young, and it suggested that this should be something they should raise with their landlord, who might be able to help with soundproofing. The DAC did not consider it appropriate to make further comment because it was unable to verify whether the existing toilets create excessive noise through the party wall. New toilets would not change the situation, and it is not clear whether refurbishing the toilets will ease the situation or make it worse. Two of the DAC members offered to visit Mr and Mrs Young to verify the noise levels so further DAC advice might be given to the parish about noise reduction as part of the works. However, it is not clear whether Mr and Mr Young would welcome a visit from the DAC.

### *Analysis and conclusions*

12. Since this faculty petition is unopposed, I am satisfied that it is expedient, in the interests of justice, for me to determine it without a hearing, and on the basis of the material that has been uploaded to the Online Faculty System (the **OFS**) and is available to be, and has been, considered by the court. Doing so will help to further the overriding objective of the FJR of dealing with this case justly, cost-effectively, proportionately, expeditiously and fairly. Since the

drawings that have been uploaded to the OFS present a clear picture of the proposals, it has not been necessary for me to undertake a view of the existing interior of the church building.

13. As required by FJR 10.5 (2), in reaching my decision on the petition, I take account of the two letters of objection, and also of the comments upon them received from the petitioners. I also take into account the observations of the DAC, for which I am grateful.

14. In my judgment, it is not possible, appropriate, or necessary, for this court to adjudicate upon the substantive merits of the objections received from Mr and Ms Young. The court notes the petitioners' assertion that the existing "*toilets have been located in that position for nearly sixty years and this is the first time that we have received any complaints*". In common with the DAC, this court is unable, at least without the benefit of expert evidence, to verify whether the existing ladies' toilets create excessive noise through the party wall. Nor is it clear whether refurbishing the existing ladies' toilets will ease the situation or make it worse. On the one hand, extending the area occupied by the toilets, and increasing the number and class of users, including those who presently "*actively avoid them because they are so dilapidated*", may serve to aggravate the present situation. On the other, the introduction of more modern facilities, the re-orientation of one of the toilets and cisterns, and the addition of a soundproof layer to the party wall as part of the refurbishment, may operate to alleviate the present situation. It is no part of the function of the consistory court to adjudicate upon complaints of nuisance to adjoining land; that is a matter for the civil courts. Nor does the grant of a faculty authorising particular works operate to render them immune from challenge in the civil courts, in accordance with the general law governing the tort of nuisance. Just as the grant of planning permission cannot render works immune from challenge under the civil law of nuisance, neither can the grant of a faculty by the consistory court. The grant of a faculty merely renders the carrying out of the works thereby authorised immune from challenge under ecclesiastical law, or (in the case of a listed building) from challenge for want of secular listed building consent. It does not operate to derogate from any rights enjoyed by the church's neighbours under the general law of nuisance.

15. In the case of *Lawrence v Fen Tigers Ltd* [2014] UKSC 13, [2014] AC 822 the Supreme Court considered the law governing the tort of nuisance by interference with the enjoyment of land. The Court held that the existence of planning permission is not a major determinant of liability for the tort of nuisance. As Lord Neuberger PSC explained (at paragraphs 94 and 95):

*94. Accordingly, I consider that the mere fact that the activity which is said to give rise to the nuisance has the benefit of a planning permission is normally of no assistance to the defendant in a claim brought by a neighbour who contends that the activity causes a nuisance to her land in the form of noise or other loss of amenity.*

*95. A planning authority has to consider the effect of a proposed development on occupiers of neighbouring land, but that is merely one of the factors which has to be taken into account. The planning authority can be expected to balance various competing interests, which will often be multifarious in nature, as best it can in the overall public interest, bearing in mind relevant planning guidelines. Some of those factors, such as many political and economic considerations which properly may play a part in the thinking of the members of a planning authority, would play no part in the assessment of whether a particular activity constitutes a nuisance – unless the law of nuisance is to be changed fairly radically. Quite apart from this, when granting planning permission for a change of use, a planning authority would be entitled to assume that a neighbour whose private rights might be infringed by that use could*

*enforce those rights in a nuisance action; it could not be expected to take on itself the role of deciding a neighbour's common law rights.*

In my judgment, analogous considerations apply to the grant of a faculty by the consistory court.

16. Nor, in the present context, is it necessary for the consistory court to have regard to principles of law derived from the European Convention of Human Rights. In a later case of nuisance by interference with the enjoyment of residential property (*Fearn v Board of Trustees of the Tate Gallery* [2023] UKSC 4, [2024] AC 1), the Supreme Court has made it clear that there is no need, or any justification, for invoking human rights law when the common law has already developed tried and tested principles, under the tort of nuisance, which determine when liability arises for this type of legal wrong.

17. However, that does not mean that the court should ignore the objectors' concerns entirely. The second of the two great commandments – to love one's neighbour as oneself – has a particular resonance in the present case. I would invite the petitioners to consider whether they can accommodate their neighbours' concerns by reversing the locations of the proposed unisex toilets and the new office, so that it is the new office, rather than the toilets, that immediately adjoins the party wall between the church building and the objectors' home. If this can be done without causing any inconvenience to the parish, and at no material additional financial or other cost, then, as good neighbours, the parish should seek to adopt this as a solution to their neighbours' concerns. If this is not practicable, then the parish should seek to introduce acoustic insulation to the party wall between the church building and the objectors' home at 1B Egerton Road, Blackpool. In this connection, I note the parish's expressed willingness to add a soundproof layer to the design of the party wall as part of the refurbishment of the toilets.

18. For these reasons, I will grant the faculty sought, but with permission for the petitioners to reverse the locations of the proposed unisex toilets and the new office, so that it is the new office, rather than the toilets, that immediately adjoins the party wall between the church building and the objectors' home at 1B Egerton Road, Blackpool. If this is not practicable, there will be a condition that the petitioners are to use their reasonable endeavours to introduce acoustic insulation to the party wall between the church building and the objectors' home at 1B Egerton Road, Blackpool (with permission for the petitioners to apply to the court by letter for this condition to be varied or relaxed). I also impose the usual condition that before implementing these proposals, the parish are to notify their insurers of the proposed works; and they must comply with any requirements or recommendations that their insurers may make or impose. Although I hope that the proposals can be implemented more quickly, I will allow up to 18 months for the completion of these works to allow time for the parish to raise any necessary further funding. In the usual way I charge no fee for this written judgment; but the petitioners must pay the costs of this petition, including any fees incurred by the Registry in dealing with this application.

*David R. Hodge*

The Worshipful Chancellor Hodge KC

The Last Sunday in Advent, 22 December 2024