

In the Consistory Court of the Diocese of Chichester  
In the matter of St Bartholomew, Brighton

No 1162

(1) Christopher Tullett  
(2) Tony Firmin

Petitioners

and

(1) Bryan Graham  
(2) Tony R Tiplady (Trading as TK Installations)

Additional Parties

### Judgment

1. By a petition which was lodged unsigned on 27 February 2020, a faculty is sought for the following works at the church of St Bartholomew, Brighton, which is a Grade I listed building:

To replace existing cold water tap over an open drain and portable urn, with a kitchen sink unit and ZIP boiler for tea and coffee making facility, and a butler sink to allow easy access to hot water for floor cleaning etc.. The work is in a side passage parallel to the nave but out of sight, and accessed only by doors from the nave. The passage/porch is currently used for storage, acts as a first entrance/last exit from the church. The public only use this passage to access the toilet facility for the disabled - located at one end of the passage.

2. This description omits to mention that the works in question have largely been completed. They were commenced without a faculty in January of this year, in circumstances discussed in detail hereafter. They were drawn to the attention of the court, which immediately directed that they cease and that a confirmatory faculty be sought. The petitioners are (1) Christopher Tullett and (2) Tony Firmin, who are the churchwardens. The parish was then in vacancy, but Fr Ben Eadon was instituted as vicar on 26 May 2020.
3. On 6 March 2020, the court directed the joinder of two additional parties: (1) Bryan Graham, the parish's inspecting architect and (2) Tony R Tiplady trading as TK Installations, the contractor who carried out the works. Originally this party was named as TK Installations Limited but it transpired it was not a limited company hence, by amendment, Mr Tiplady was joined in his personal capacity. Directions were also made for the service of witness statements; for consultation with the DAC; and for public notice.
4. On 9 March 2020, the PCC applied for the court's directions to be 'set aside while the necessary action required is undertaken'. However since the PCC was not a party to the proceedings, nor was it required to take any action under the directions, that application was dismissed.
5. Ideally I would have wished to have convened a hearing – or at least a site visit – but the present Covid-19 emergency militates in favour of a prompt virtual resolution. The court has

the benefit of a selection of good quality photographs provided by the secretary to the DAC. There were also likely to be savings in court fees in not having a hearing. In the circumstances, I considered it expedient to determine the matter on written representations under r 14.1 of the Faculty Jurisdiction Rules 2015, and I invited the parties to signify their written consent, which they all did.

6. Before turning to the merits of the petition, enquiry must be made as to the circumstances in which the works came to be undertaken. On this, the evidence of the principal parties is not entirely consistent. Whilst the churchwardens now effectively concede that the works were unauthorised and were carried out under a misapprehension, the inspecting architect's contention is that the works came within List A and accordingly no faculty was required. The contractor's position is that he took it on trust that the requisite permissions were in place.

### **Evidence**

7. The salient part of Mr Tullet's witness statement reads as follows:

The PCC expressed concerns at their meetings in 2019 about the use of a portable urn to provide refreshments after Mass. The need to fill the urn with buckets from a cold tap over an open drain, and the subsequent emptying of residual hot water from the urn into a bucket to dispose of via the open drain, was considered to be a health and safety risk, as well as unhygienic. One member of the PCC, (who has been involved in minor DIY repairs in the church, to chairs for example), offered to undertake the work from standard kitchen units available from DIY outlets. The installation was to be in a passage, which was once a porch entry, but used for the last 25 years as a storage area for concert equipment, dustbins and the location, at one end, of a toilet facility for the disabled.

I was not convinced that this member of the PCC could undertake this work satisfactorily, and consulted our Architect, who agreed that it needed to be undertaken professionally. I felt at the time that as the work was in a passage area, behind doors and therefore out of sight of the Church nave, and against a poor quality wall that had once been the retaining wall of the back yards of houses in London Street (demolished 1960's) that there would be no infringement of the grade 1 listed status of the Church.

Since the work was partly of an electrical nature, I asked TK Installations to examine the work involved. I met them on 28th October 2019, with our architect, and they outlined what equipment and work was required, and that they could project manage the whole job. TK Installations agreed to provide an estimate, which was received on 31st October 2019, subject to any amendments arising from the detailed plans provided by the architect. No changes to the original estimate was needed. The PCC accepted the estimate of £6750 at a meeting held on 7th November 2019. As the cost was below £7000, which I thought was the maximum threshold after which an Archdeacons authority or Faculty was required, I asked TK Installations to undertake the work in the second week in January 2020. The work started and was halted after receipt of the Court Order. An application for a retrospective Faculty has been made to the Registrar in February and similarly to the DAC on 12 March in accordance with the Court Order requirements.

8. Mr Firmin's statement says the following:

The installation of some kind of kitchen facility was first mentioned informally by a member of the PCC several months before last Christmas (2019). The person concerned is a capable DIY practitioner and he has helped with several repairs, the most useful being after a break in when he made good damage at very short notice on a Sunday morning. When this proposal was discussed at the PCC meeting of 7/11/19 (minutes of which, I believe, are in your possession) it was felt that the task should be undertaken by a professional builder. Two experienced members of the PCC believed that a faculty was not necessary since the cost of the installation would be under £7000. I now understand that this may not be the case. I have

been churchwarden for 18 months and was not fully conversant with the protocol. I was rather enthused with the proposition particularly because I clean the church on a regular basis and this often involves carrying buckets of hot water considerable distances. The kitchenette would have alleviated this problem.

There was unanimous agreement at the meeting of 7/11/19 and the work commenced soon after. The installation created a much more pleasant environment in a little used part of the church and has been well received by the congregation. St Bartholomew's has been without a full-time priest for over three and a half years and has relied on a number of retired priests to conduct the services. The day to day running of the church has been carried out by a small group of volunteers who put a great deal of time and effort into keeping the church open to the public for up to six days each week. The fact that we have been told that we should have applied for a faculty has been devastating and has pushed morale to a low level.

From my position I can assure you that that this was undertaken in good faith and certainly not deliberate. I feel very sorry that this came about and am quite upset at the effect that it has had on our small group of volunteers. I hope that the imposition of a post-dated faculty is a real possibility and that St Bartholomew's can then move forward under the new priest.

#### 9. Mr Graham's evidence is as follows:

In the Autumn of 2019 I was asked to advise on the provision of a kitchenette in the side passageway to the church. This was to facilitate the making of tea for those who met after a service. The present arrangement was for an urn to be filled by bucket from a wall-mounted tap situated above an open gully. This was a cumbersome arrangement but it posed a health risk because the same tap was used to fill and clean the mop bucket used for cleaning the floors.

Clearly, separation of the two functions was needed to avoid cross-contamination and provide a more efficient way of making tea. The kitchenette was designed to provide this with a separate sink on a directly plumbed hot water boiler for tea making, with the existing tap being used for the mop bucket. The kitchenette was positioned against the west wall of the passageway, which was a structural remnant of the former railwaymen's housing which previously occupied the site.

My reading of the Faculty Jurisdiction Rules clearly categorised this as a List A item not requiring a Faculty or consultation. Conversely, had we intended to place the kitchenette on the east wall of the passageway (the church wall) we would have sought your advice. This new facility minimised the risk of cross contamination and allowed the church to continue with this very welcome support to the community.

I regret if we have caused you further work, as I can assure you that this was not my intention.

#### 10. The letter from Mr Tony Tiplady, verified by a statement of truth, states:

My Company<sup>1</sup> was contacted by the Church Warden at St Bartholomew's Church about the electrical work involved in the installation of a new sink unit and associated hot water boilers to provide refreshment facilities for the congregation on Sundays.

My Company [*sic*] has been involved with the Church over a number of years regarding electrical matters and certification of the whole electrical installation for insurance purposes.

I met with the Architect and Church Warden on the 28th October 2019 and told them that my Company could manage the whole project, and informed them of the type of equipment that was required. This was firmed up in a written estimate dated 31st October, subject to any issues arising from detailed plans being provided by the Architect. The plans subsequently received gave no reason to vary the estimate provided.

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<sup>1</sup> From the letterhead, there is no corporate entity. No company registration number is given nor are any directors named. Mr T R Tiplady is described as 'proprietor' of T K Installations, and he appears to be registered for VAT in his personal capacity.

Work commenced in the second week of January 2020, and subsequently halted on the instruction of the Church Warden, when I was informed that the necessary permission for the work had not been obtained.

As an electrical contractor, I have no knowledge of the procedures required by the Church of England to authorise such work, and acted in good faith with the Church Warden and Architect.

11. Further directions were issued by the court on 5 May 2020 seeking additional information from Mr Graham, Mr Tullett and Mr Firman which was duly provided.
12. The directions concerning the filing evidence required the witness statements to be accompanied by all relevant documentation in the maker's possession or control concerning the works. None of the statements complied with this requirement and the court may therefore not have seen the totality of the communications passing between parties.

### **Justification for the unlawful works**

13. From the evidence which I have recited extensively above, the petitioners and additional parties advance a number of justifications for the unlawful works which I propose to address in turn.

#### *i. No infringement of Grade 1 status of building*

14. This argument is raised by Mr Tullett in the following terms:

I felt at the time that as the work was in a passage area, behind doors and therefore out of sight of the Church nave, and against a poor quality wall that had once been the retaining wall of the back yards of houses in London Street (demolished 1960's) that there would be no infringement of the grade 1 listed status of the Church. (emphasis added)

15. Mr Tullett appears to have elided a number of concepts. He seems to be suggesting that the works would not trigger civil or criminal process for a breach of the listed building regime. However, the ecclesiastical exemption, as its name implies, exempts church buildings and their curtilages from listed building control. This exemption is predicated on the existence and operation of a parallel and equally robust method or regulation, namely the faculty jurisdiction. One of the factors to be considered when the consistory court determines whether or not to authorise proposed works is the likely impact of the proposed works on a listed building: see the discussion of the *Duffield* framework below. That a proposal may affect a Grade I listed building only minimally (if at all) is a weighty feature in the court's balancing exercise. It does not provide a justification, as Mr Tullett suggests, for completely circumventing the faculty jurisdiction of the Church of England.

#### *ii. Cost below £7,000*

16. Mr Tullett contends as follows:

As the cost was below £7,000, which I thought was the maximum threshold after which an Archdeacon's authority or Faculty was required, I asked TK Installations to undertake the work

17. I cannot see the basis for this contention. Lists A and B were procedural innovations introduced in consequence of the Faculty Jurisdiction Rules 2015. They came into force on 1 January 2016. None of the categories set out in Lists A and B is defined or qualified by reference to financial value.

18. In answer to a request for clarification, Mr Tullett emailed the court in the following terms on 15 March 2020:

My decision to proceed with the kitchenette work was based on my recollection of [the List of Minor Works], which refers to the £7500 ceiling on work and the fact that what was proposed was under this limit. As I could not locate my copy, our treasurer has kindly extracted the section that I had remembered. As far as I was concerned, the work replaced an existing rather ad hoc refreshment facility of table, portable urn, buckets and cold water tap over an open drain, with something more appropriate for the 21st century. It eliminated health and safety and hygiene risks, did not affect any part of the church building, other than a passageway, which already housed a toilet facility for the disabled and dustbins etc. On reflection, I should have checked this edition of the regulations, and would have realised that not only was consent required of the Archdeacon, and in doing so may have realised that these rules had been replaced by [Lists A and B in 2016]. I have already apologised for this error on my part, and by the way, incorrectly advising Mr Firmin, my fellow church warden, that our right to continue was in order.

19. This later evidence suggests Mr Tullett may have had in mind the List of Minor Works for the Diocese of Chichester which were in force prior to the introduction of Lists A and B, and which were expressly revoked when Issue 4 of the Chancellor's General Directions was promulgated on 1 January 2016.
20. However, the installation of the kitchenette does not come within any of the categories of authorised works under the List of Minor Works: it is not A1 (a minor repair identified as such in the quinquennial inspection report); nor A2 (routine maintenance on the fabric of the church); nor A3 (routine maintenance to heating systems, gas, water or other services). This was new work, and could not possibly come within the definition of minor repair or routine maintenance.
21. There is no free-standing provision allowing any works up to a value of £7,000 to be undertaken without authority. There never has been such a provision in any of the previous iterations of the List of Minor Works in the diocese of Chichester, nor, I suspect, in any other diocese.
22. Even if Mr Tullett believed that the introduction of the kitchenette did come within one of the categories A2 or A3, the text is clear. Paragraph A3, for example, reads as follows (the relevant portion of A2 being in identical terms):

Works of routine maintenance to heating systems, gas, water or other services, electrical fittings or other electrical equipment (by approved NICEIC electricians or Gas Safe registered fitters) and furniture up to the value of £7,500 excluding VAT, provided that the Archdeacon has given his prior approval in writing for such work costing between £3,000 and £7,500 before the contract to carry out the work is entered into. (emphasis added)

23. Whilst for the designated works a mandatory ceiling of £7,500 is given, it is subject to a significant qualification, namely that works costing between £3,000 and £7,500 can only be undertaken if the archdeacon has given prior approval in writing. Such prior written approval was not given by archdeacon. It is common ground that it was not even sought.
24. So in summary: (1) the List of Minor Works was not applicable at the material time, having been revoked on the coming into force of Lists A and B; (2) even if it had been in force, the

actual works undertaken did not come within any of the specific categories in the List; and (3) even had the works come within one of the categories, their cost exceeded £3,000 and the prior written approval of the archdeacon was not obtained.

25. Accordingly, there is no merit in this purported justification. Mr Firmin seems to concede this. He says:

Two experienced members of the PCC believed that a faculty was not necessary since the cost of the installation would be under £7000. I now understand that this may not be the case. I have been churchwarden for 18 months and was not fully conversant with the protocol.

26. The faculty jurisdiction is not a protocol. It is a matter of law and not something he can delegate to members of the PCC, no matter how experienced they declare themselves to be. His misconception would have been very swiftly disabused had he consulted the archdeacon, the registrar, or the secretary to the DAC.

*iii. Work within List A*

27. Mr Graham, the parish's inspecting architect says as follows:

My reading of the Faculty Jurisdiction Rules clearly categorised this as a List A item not requiring a Faculty or consultation. Conversely, had we intended to place the kitchenette on the east wall of the passageway (the church wall) we would have sought your advice.

28. In the light of this assertion, the court issued further directions on 13 May 2020, which included the following:

Mr Graham needs to explain the following section of his witness statement: "*My reading of the Faculty Jurisdiction Rules clearly categorised this as a List A item not requiring a Faculty or consultation.*" He needs to identify the particular section of List A into which, he claims, these works fell. Did he seek legal or other professional advice? Did he advise the Churchwardens or the Contractor (Mr Tiplady) that a faculty was not required or advise them to make their own enquiries?

29. Mr Graham responded to this direction in a letter dated 14 May 2020. It reads:

A discussion took place between the churchwarden [unspecified] and myself on the basis that the proposed work could be carried out without a Faculty. I did not ask for further advice since the Act [sic] was quite clear.

The section of the Faculty Jurisdiction Rules 2015 which was pertinent to my decision came under the A List, matters which do not require a Faculty or consultation, and in particular the following paragraphs:

30. Mr Graham then cites five paragraphs under List A (in the form as they appeared prior to substantial revision with effect from 1 April 2020). It is important not to look at the collective effect of generalities enunciated across the totality of List A. Either a proposal comes within one of the paragraphs (in which case it can be carried out without a faculty) or it does not (and a faculty is required). I take each of Mr Graham's contentions in turn, quoting verbatim from his letter.

A1(1) – this makes reference to works which do not affect the fabric or any historic material

31. Mr Graham has been highly selective in his recital of A1(1), the full text of which reads 'Works of repair and routine maintenance to the church building not affecting the fabric or any historic material' (emphasis added). The installation of the kitchenette is not a work of repair nor is it routine maintenance. A1(1) does not cover what was proposed.

A1(2) – this refers to repairs and replacement of fittings in existing kitchens and in our case a very ad hoc kitchen did exist in the passageway in the form of a table, a tea urn on a trolley, a wall mounted cold water tap, and a power point.

32. This strained justification has all the forensic plausibility of a 30 mile drive to Barnard Castle to test one's eye sight. A1(2) reads 'Repairs and replacement of fittings in existing kitchens, lavatories and office accommodation' (emphasis added). By no stretch of the imagination could a tea urn and a tap constitute a kitchen. The intention was not to repair or replace, but to introduce something new. Mr Graham has stretched the words of A1(2) beyond breaking point: this paragraph cannot on any sensible meaning embrace what was proposed.

A1(9) – this refers to introduction, removal or disposal of minor fixtures. Two specific conditions apply, the first to a Vestry which was not affected and to similar rooms. The side passageway was a space left over after planning the church between the west wall of the church and the remnants of the rail workers' housing (now demolished), hence its tapering shape on plan with a combination of various pitched and flat roofs of different materials and different levels

33. Mr Graham has again been somewhat selective in his summary. A1(9) reads: 'The introduction, removal or disposal of furniture, furnishings, office equipment and minor fixtures (other than safes) in vestries and similar rooms' (emphasis added). As is clear from Mr Graham's own description, the location in question is a passageway. It is not a vestry or a similar room. In any event, the works comprised the construction a kitchenette, which does not come within the definition of 'furniture, furnishings, office equipment and minor fixtures'.

A6(1) – which refers to replacement of fittings in the building

34. A6 has no application, It is headed 'Church halls and similar buildings'. The passageway described by Mr Graham is not a church hall or a similar building. In any event, A6(1) refers to 'Routine repairs to the building and the replacement of fittings in the building'. This was not a routine repair to the building, nor the replacement of fittings. It was the introduction of something new.

A6(2) – which refers to removal or disposal of furniture. One condition applies which states that no article of historic or artistic interest is removed or disposed of.

35. Again, this has no relevance as it only concerns church halls and similar buildings (see above). Further, the particular text reads 'The introduction, removal or disposal of furniture'. A wall-mounted boiler and sinks do not constitute furniture. A dictionary definition is probably unnecessary, but the *Oxford Learner's Dictionary* defines furniture as 'objects that can be moved, such as tables, chairs, and beds, that are put into a house or an office to make it suitable for living or working in'.

36. I cannot conceive of any legitimate basis on which Mr Graham could have interpreted List A so as to bring the proposed works within one of its categories. I am sceptical as to whether a meeting took place with one or other of the churchwardens in which the requirements of List A were discussed. It does not appear in the evidence of either churchwarden and Mr Graham has not produced an attendance note or any contemporary correspondence with his client. Mr Graham's statement includes the following:

My reading of the Faculty Jurisdiction Rules clearly categorised this as a List A item not requiring a Faculty or consultation. Conversely, had we intended to place the kitchenette on the east wall of the passageway (the church wall) we would have sought your advice.

None of the paragraphs relied on by Mr Graham make a differentiation based on the particular wall against which the works are to be carried out. Either the work is within one of the categories of List A or it is not. There is no logic in the suggestion that the applicability of List A depended on whether the kitchenette was to be attached to the east or the west wall of the passageway.

37. The court's directions of 13 May 2020 included the following:

[Mr Graham] should clarify if it is his case that the Faculty Jurisdiction Rules then operable categorised the installation of a kitchenette as a List A item, or whether with the benefit of hindsight his view has changed.

Mr Graham's response was the letter of 14 May 2020, from which I have quoted extensively, rejecting each of the paragraphs he cites as authorising the work. I suspect that Mr Graham may have reverse-engineered an *ex post facto* justification. He has selected random words and phrases from List A but has not applied his mind to the meaning, relevance and intent of each specific paragraph upon which he purports to rely. Despite his valiant attempts to shoe-horn the works into several of the paragraphs, it is clear, for the reasons I have given, that the introduction of this kitchenette cannot possibly come within List A.

*iv. Ignorance / good faith*

38. Mr Tiplady states:

As an electrical contractor, I have no knowledge of the procedures required by the Church of England to authorise such work, and acted in good faith with the Church Warden and Architect.

39. As is clear from *Re All Saints, Buncton* [2018] ECC Chi 1, contractors who undertake work in churches 'should always, invariably and without fail' obtain a copy of the relevant faculty before they commence. Mr Tiplady was unwise not to request sight of the faculty. He should have enquired of the churchwardens or architect; although one can only speculate as to the accuracy of what he would have been told had he done so.

40. In sum, I can find no justification for proceeding with these works on any of the bases advanced by the various parties. The introduction of the kitchenette required the prior authority of a faculty and none was sought. It is therefore necessary to consider whether, in all the circumstances of the case, a confirmatory faculty should now be granted.

### **Confirmatory Faculty?**

41. As summarised in Hill, *Ecclesiastical Law* (fourth edition, Oxford University, 2018) para 7.87, where work has been undertaken without authorisation, an application must be made for a confirmatory faculty.

They are not granted as of right and, if granted, may be subject to conditions and provision for the payment of costs. Sometimes misdescribed as ‘retrospective faculties’, a confirmatory faculty does not retroactively legalise what was done, but for the future brings the matter ‘within the four walls of the law’.

42. The test to be applied when the court is considering whether to grant a confirmatory faculty is the assessment of whether a faculty would have been granted had it been sought prospectively. In many instances, this hypothetical question is straightforward and admits of only one answer. In others, the matter is more finely balanced. Had the churchwardens, aided by the inspecting architect and contractor, not circumvented the faculty jurisdiction, they would have had to consult the DAC whose advice might have been rather different had it not been presented with a *fait accompli*.

### **DAC Consultation**

43. On 2 April 2020, the DAC issued a Notification of Advice in this matter in which it recommended the works subject to three provisos:

1. The parish is advised to contact Building Control, if they have not done so already, to check that they are content with the current drainage arrangements.
2. The parish is encouraged to consider the provision of additional storage for crockery and catering supplies.
3. Additional ventilation at the base of the studwork should be considered.

44. In addition, and very helpfully, the DAC provided a minute of its discussions and decision, and with some photographs taken during a site visit. The salient section of the minute reads as follows.

The Committee discussed this confirmatory faculty application in respect of the installation of a kitchenette at the church of St Bartholomew, Brighton.

The DAC noted that St. Bartholomew is one of Wagner group of churches and was designed by E. between 1872 and 1874. It is known for its sheer scale and mass, dominating the Brighton skyline to the east of the mainline station. Internally, the building is set on a north south axis with the chancel at the northern end. Spatially, the interior is one single volume with deeply recessed buttresses creating smaller spaces for chapels, baptistry and pulpit. The church is listed Grade I.

The new kitchenette has been installed along the (liturgical) north wall of the passageway that runs east-west to the north of the nave. The passageway is accessed via a porch or via some double doors from the nave. There is an accessible W.C. to the east of the kitchenette.

Since the installation of a glazed vestibule to the principal south facing entrance doors, the west porch entrance is no longer used as a main entrance, although it can still act as a means of escape and entering and leaving the church when opening up and closing the building.

The tea-point replaces an electric urn that had to be filled by buckets for the preparation of refreshments and then emptied into an internal drainage gully afterwards. Neither operation was satisfactory, and the latter posed a health and safety risk if emptying hot water.

The Committee observed that the Inspecting Architect had designed a rudimentary worktop arrangement, supported on purpose made metal shelf brackets on the basis that the floor is uneven to accommodate a

sink and drainer. The sink and hot water boiler are mounted on a ceramic tiled timber stud wall set off the external wall of the porch to create a ventilation gap. However, there does not appear to be any ventilation at floor level. A butler sink is also installed next to the tea-point arrangement. There are no storage units included, although one of the photographs supplied show a wall cupboard set on bricks.

The Committee noted that foul water from both sinks enters a drainage gully that is believed to enter a storm drain. This arrangement is usually not acceptable for modern installations, especially if detergents and bleach are used for cleaning. However, the Committee understands that, in Brighton, the Council have advised in respect of previous schemes at other churches, that the foul and storm drainage go into the same outlet and have therefore been willing to allow this arrangement. The DAC recommends that, if they have not already done so, the parish should check with Building Control to ensure that they are content with the current drainage arrangements.

The drawings also indicate a water heater to supply hot water to the sink and butler sink, but this does not appear to have been installed, perhaps because the work has stopped under directions of the Chancellor.

The parish should ensure that they have all the appropriate certification in respect of electrical work and Building Regulation consents.

The Committee felt that the tea-point has no visual impact on the interior of the church as it is located in an ancillary space. In that regard, the location is probably a good position for the facilities. The Committee observed that, for a little more expenditure, the parish could have commissioned a tea-point with cabinets below the worktop (these could have been set on a shallow plinth to overcome variations in levels) and perhaps some wall cabinets above, which would have provided more storage for cups and plates and secure storage of tea and coffee etc. The Committee would be supportive of additional storage being introduced in due course, if this would be helpful.

The Committee was aware that the parish has had a very long interregnum and noted that, with an Incumbent, this unfortunate oversight might not have occurred. The Committee also noted from the documentation supplied that the simple hospitality offered at services has been welcomed and successful.

### **The *Duffield* framework**

45. Where changes to a listed building are proposed, consistory courts generally adopt the approach known as the *Duffield* framework which takes the form of a series questions to be addressed sequentially by the chancellor: *Re St Alkmund, Duffield* [2013] Fam 158, para 87, as clarified in *Re St John the Baptist, Penshurst* (9 March 2015, unreported), para 22, and subsequently recited in *Re St Peter, Shipton Bellinger* [2016] Fam 193, para 39.

- (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
- (2) If the answer to question (1) is 'no', the ordinary presumption in faculty proceedings 'in favour of things as they stand' is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals. Questions 3 and 4 do not arise.
- (3) If the answer to question (1) is 'yes', how serious would the harm be?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? The more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm to a building which is listed grade I or II\*, where serious harm should only exceptionally be allowed.

46. St Bartholomew's church is Grade I listed. It dates from 1872-4, designed by Edmund Scott, and is constructed of yellow brick set in English bond with dressings of red brick and Portland stone, with a roof of slate. With a ridge plate 42 metres high, St Bartholomew's is the tallest parish church in Britain. Its interior features were designed by Henry Wilson. I have consulted the listing statement on Historic England's website, but need not rehearse the special architectural and historical features of this building, because the kitchenette has been installed in an unexceptional passageway at the side of the building which is no longer used as the principal entrance to the church. It leads to an accessible lavatory at the far end. I illustrate this judgment with two of the photographs taken by the secretary to the DAC.



47. The kitchenette is in a side passage, described by Mr Graham in the evidence which I have set out above. It is outside the principal footprint of church, and unseen by the congregation. The architects plans lodged with the DAC had not copied well and were difficult to read, and I am grateful to Mr Graham for kindly supplying more legible copies. I assess the harm to the significance of the church as a building of special architectural or historic interest to be nil.

48. It therefore follows that the ordinary presumption in faculty proceedings 'in favour of things as they stand' is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals. It is unnecessary to consider the remaining questions.

49. The handwritten Statement of Needs makes out a cogent case for the introduction of the kitchenette. I need not rehearse the entire content, but the following points strike me as particularly relevant:

- The church offers hot refreshments as a valuable aspect of its ministry of welcome;

- The pre-existing practice of using a free-standing urn filled with buckets from a cold water tap was unsatisfactory, unhygienic and unsafe, as was disposing of unused hot water by pouring it into an open drain;
  - That passageway/porch is something of a lean-to structure, originally bridging the exterior wall of the church and the walls of a row of cottages, since demolished;
  - That the kitchenette cannot be seen from the church interior.
50. The parish has readily rebutted the presumption against change. The DAC recommends that a retrospective faculty may issue. It will be apparent that the PCC have paid some £7,000 for relatively little gain. The problem of damp and mould in the passageway has not been addressed and will remain a problem for years to come. There are no storage cupboards. A second-hand brown cupboard appears to have been placed under the work surface supported on bricks. This item is not included in the current petition. It is unsightly and dangerous and must be removed. Proper provision for storage must be made. Building regulation approval must be obtained, if necessary.
51. Had the DAC been consulted in advance, a more ambitious project could have been explored, perhaps with a servery, that could have been transformative in the mission and outreach of this community. The DAC and the Church Buildings Council have huge experience and expertise in the adaptation of Grade I listed church buildings better to serve the needs of congregations. For the same outlay, or perhaps a little more, the parish could have had a facility which better equips them for providing hospitality after services and secular events. Instead they have paid – perhaps overpaid – for an unadventurous structure which, whilst better than a free-standing urn, falls short of what could have been achieved had they consulted beforehand.

### **Disposal**

52. I considered refusing this petition and encouraging the parish to re-think its proposals for providing refreshments but, having regard to the fact that current works are almost complete and that a considerable sum has been expended in getting thus far, I consider it disproportionate to order these works to be ripped out and begun again with a better and more imaginative project. We are where we are.
53. I therefore authorise the grant of a confirmatory faculty on the following conditions:
- i. that within three months (or such extended time as the court may direct) the parish obtain building regulation approval for the works (particularly in respect of the drainage arrangements), alternatively written confirmation from the local authority that such approval is not required;
  - ii. that within three months (or such extended time as the court may direct) the parish submits to the registry detailed proposals for:
    - (a) the provision of additional storage for crockery and catering supplies; and
    - (b) the introduction of additional ventilation at the base of the studwork.
 Prior to the submission of such proposals, the parish is advised to consult with the DAC.
  - iii. that the second-hand brown cupboard currently propped up on bricks beneath the work surface is removed.

- iv. that the works are not to be resumed until the order for costs herein has been satisfied in full.

### **Costs**

54. Pursuant to the court's direction, the PCC provided security for costs in the sum of £1,500. The PCC is a charitable body and should not bear the court fees of the current proceedings, brought to regularise unlawful works. Had a prospective faculty been sought, the fee would have been £302.00 and this would have properly been payable by the PCC. The balance of the sum paid by way of security for costs will be returned to PCC once the court's order for costs has been fully complied with.
55. As to the balance of the court fees, they will fall to be paid by one or more of the parties. This was heralded in paragraph (7) of the court's directions of 6 March 2020 and should come as no surprise. Each party is responsible to some degree for the works being undertaken unlawfully. Their relative culpability may be a matter for argument. They are fortunate that a confirmatory faculty has been granted, otherwise they would also have had to bear the cost of reversing the unlawful works and making good.
56. My provisional view on court fees is that Mr Tiplady is the least culpable and should contribute 10%, and the remainder should be divided equally between Mr Tullet, Mr Firmin and Mr Graham, with each paying 30%. I will give the parties seven days to make written representations on costs, should any of them contend that the liability should be differently allocated. Such representations are to be sent to the registry, with copies to the other parties. Should it be necessary, I will deliver a supplemental judgment on the issue of costs. If the parties can agree the division of costs as between themselves, that would be in everyone's interests. The registrar and I have indicated that as a gesture of goodwill, the court fees payable will be substantially below the statutory sum due pursuant to the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2019, provided they are settled promptly. An estimate will accompany this judgment.

### **The churchwardens and the architect**

57. In this matter, the parish has not been well served by its churchwardens or architect. Mr Firmin placed undue reliance on Mr Tullet or other members of the PCC. Neither sought advice. Although somewhat belligerent at first, each has now acknowledged their error and apologised to the court.
58. Mr Graham fell well short of the professional standard expected of a competent inspecting architect. Rather than admitting to an error of judgment, he asserted the correctness of his position throughout the current proceedings even when invited to reflect with hindsight on whether he might have been wrong. His arguments that the works came within List A were specious and untenable, but they each had to be dealt with, adding significantly to the length of this judgment. I am concerned as to Mr Graham's loose understanding of the provisions of faculty jurisdiction and its operation.
59. I remind myself of the clear warning contained in the recent judgment in *Re All Saints, Buncton* [2018] ECC Chi 1:

### **The architect's position**

[80] If there is one learning outcome from this case, not merely for the Diocese of Chichester but for the Church of England as a whole, it is that inspecting architects and contractors should always, invariably and without fail obtain a copy of the relevant faculty (or other authorisation) before they commence any works. This should already be best practice, and it is unfortunate that neither the architect nor the contractor in this instance thought of asking for a copy of the faculty. The contractor took everything on trust and assumed that the acceptance of his quotation signified that all consents were in place. He was wrong to do so. The architect's position was already compromised by his mistaken belief that a faculty had been granted for earlier works. If [the architect] had taken the simple expedient of asking for a copy of the relevant faculty before procuring the engagement of [the decorator] in 2013 and again in 2017, neither of the unlawful sets of works would have been undertaken, and the parish would have been alerted by the Court to need to address the long-standing damp problem at All Saints ...

60. The PCC would be unwise to continue to retain Mr Graham as its inspecting architect. The only thing that can be said in mitigation is that the churchwardens appear not to have relied upon Mr Graham's misapprehension as to List A, but instead proceeded upon their own different misapprehension concerning the misremembered contents of a List of Minor Works which had been revoked.
61. I require a copy of this judgment to be sent to the Ecclesiastical Architects and Surveyors Association (whether or not Mr Graham is a member) and to the PCC secretaries of any other parishes where Mr Graham is currently the inspecting architect. Mr Graham might also wish to consider waiving or abating any professional fees he has levied in this matter. At best, his performance has been sub-optimal, and it has also placed Mr Tiplady in a difficult position from which he has learned a salutary lesson.

### **The future**

62. I noted at the outset of this judgment that at the time of the unlawful works, the parish was in interregnum. This case illustrates the dangers of embarking on projects in the absence of an incumbent who is *ex officio* chair of the PCC. Fr Ben Eadon is now in post, and I trust that the parish can turn the page on this unfortunate hiatus and start afresh as his new ministry begins. St Bartholomew's is a well-known and highly visible landmark in this part of Brighton. It has a great Anglo-Catholic tradition which I hope will be renewed and refreshed. I am also hopeful that the parish can now move on from this regrettable incident and continue, though worship and mission, but particularly through hospitality, to make Christ known in the community it serves.