

In the Consistory Court of Bristol

In re Bristol; St Bartholomew

JUDGMENT

1. To say that the events in this application are unfortunate would be an understatement. In 2017 and 2018 the petitioners carried out two items of work unlawfully and have applied for retrospective permission for them to be allowed.
2. This case has had a long history which has been drawn out because I have endeavoured to ascertain how and when precisely the unlawful works were carried out, and whether they were done deliberately and, if so whether I should make restoration orders. I was not assisted, originally, by the attitude of the first petitioners. I deal with that in my judgment.
3. At the outset of my inquiries the petitioners gave the appearance, deliberately or not, of being unwilling to assist me. It has led to me taking the unusual steps of ordering signed witness statements to be taken from the relevant individuals. The petitioners cooperated and were wise enough to engage the services of Jaqueline Humphreys of Counsel to assist them and have elected Jane Auld, a retired Barrister with Ecclesiastical Law experience as a new Churchwarden to deal with this.
4. The two unlawful works were; the destruction of an area described either as a 'porch screen', a 'vestibule' and also, presciently, as a 'draught lobby', and the subsequent removal of a pair of wooden doors and the installation of a pair of glass panelled doors between the main entrance porch and the body of the church.

The Church

5. The Church of St Bartholomew was built in 1894 and is unlisted. It is not in a conservation area. The Victorian Society were of the view, when asked by me for their comments on what has happened, that the church, after the clearance of the nave and the destruction of the porch screen is 'no longer listable'.
6. The parish itself has a complex history. It was formed in 1997 when the parishes of St Michael's Bishopston with the Church of the Good Shepherd and St Bartholomew's were combined. St Michael's Church was demolished and the Church halls were used

for services. In October 2015 the boiler broke down at St Bartholomew's and the congregation of St Bartholomew's joined the other congregation that worshipped in St Michael's (former) church halls. By 2017 the boiler had apparently still not been repaired at St Bartholomew's and, with a growing congregation it was decided to petition to re-order St Bartholomew's and move the joint congregation there. I granted a petition to reorder St Bartholomew's on 19 June 2017. It became clear that, at some time during that reordering the porch was unlawfully destroyed and the wooden doors were removed and unlawfully replaced with glass panelled doors. In September 2023 a 'Church-swap' with Horfield Baptists took place. The Baptists have moved into St Michael's and the congregation of St Bartholomew's (now dubbed 'B and A Church') have moved into the former Horfield Baptist church. The congregation are now seeking an order under the Mission and Pastoral Measure 2011 legally to close St Bartholomew's Church for worship.

7. In removing the porch and doors 22 of the original floor tiles were damaged. Attempts by the petitioners to mitigate the damage to the tiles have had the opposite effect and draw attention to the damage. Quotations have been obtained not just to repair the floor tiles and the walls damaged by the removal of the porch and doors but also the removal of a radiator and associated piping and the rehangng of the wooden doors.
8. Having asked for an explanation I received the following note:

The destruction of the porch happened as a result of a misunderstanding. A member of the congregation had agreed to help the contractors with some of the initial work which has been approved under the 2017 [petition]. There was a misunderstanding between them (the member of the congregation and the contractors) and the project manager (a member of staff at B&A) about what was to happen with the porch. By the time clergy and the project manager arrived on site (works were undertaken in August and September), the porch had been dismantled and removed.

9. The new Statement of Needs accompanying the explanation dealt with the unlawful removal of the porch and the doors in this way:

The main entrance area with the original porch screen and solid pitch pine doors was not compatible with the open, welcoming and free flow feeling we were trying to create. The porch screen created a barrier to access and was not even successful in keeping inclement weather from blowing into the church. Removal was not included in the 2017 and in hindsight perhaps it should have been. Due to a misunderstanding with the builders who thought it was to be removed they started taking it down on a day when our project manager was not there at the time. By the time the mistake was realised the screen had been damaged beyond repair and complete removal was the only option. This has had the effect of creating a simple, open and welcoming space for greeting and hospitality and easier access for wheelchairs users and prams. The entrance is

also one of our main fire exits and losing the barrier of the screen has also made emergency evacuation easier and faster. There have not been any negative comments.

The pine doors between the porch and nave were ill fitting, blocked the view of people entering and exiting and impeded a quick mass evacuation. We were blessed when one of our members offered to fund replacing with glass doors. The chosen doors have a dark metallic frame matching the colour of the main door. Because this was in part a Health and Safety concern it was felt to be urgent. The original doors have been kept and could be re-instated if necessary. However, the glass doors have been warmly received with many positive comments and no negative ones.

Our whole approach to our buildings is one of evolution rather than fixing on a grand scheme that ties us down to focusing on fund raising for years. We are a vibrant and growing Christian community developing our buildings to serve us in bringing Jesus into peoples lives.

10. There is no indication about what if any attempt was made to inform the Registry about these unlawful actions nor any sort of apology as to what had happened, indeed at first glance it gives the impression that the removal of the porch and the replacement of the doors was a decision made deliberately without engaging with the Faculty system and indeed regarding the system as a stumbling block to mission.

11. I also asked for a photograph of the porch in place. I was told this;

2. Photos of the porch. Sadly, even after a further hunt, we can't locate any photos other than those included in the original submission (attached again here) on pages 9-12/

Fortunately the Registrar managed to upload a clearer picture of the porch, for which I am very grateful.

12. Also fortunately, the petitioners' architect had a description of the porch and doors:

From the entrance lobby the attractive decorative pine screen with solid panelled doors was the entrance into the nave, and the secondary entrance is into the north aisle, which has a matching solid panelled pine door. The doors prevented any view into the church from the entrance space.

The doors closely match the former pews and the retained remaining church furniture and fittings. The original doors within the context of the church building, were part of the overall suited fitting out of the building. They were constructed in high quality pine, the rich warm colour giving a warm contrast to the cold grey stone of the

structure, a deliberate architectural choice. The screen is made up of attractive quatrefoil panels with chamfered mouldings.

Together with the furnishings this gave a fresh, rich, warm interior ambience. The remaining pine doors, the roof and furnishings, retain the memory of the original character and are a foil to the coldness of the stone structure.

13. As I felt I was not being given adequate assistance by the petitioners I asked for written statements to be taken from the appropriate parties. Tim Martin, who describes himself as the project manager of the church made a statement on 24th July 2023:

‘On the day in question contractors were onsite and completing work to remove a significant amount of woodwork from the building. I had met them in the morning and confirmed plans with them. The contractor had accurate plans for what was to be removed although the project manager was not on site at the time.

During the day they came to the vestibule and enquired of a member of the congregation who was helping with the process as to whether it was to be removed. He indicated that it ought to be taken out and they proceeded with these works. I returned to the building later in the day to find that the vestibule had been removed and was at this point well beyond repair. The doors had been removed and placed to the side whilst the framing and cladding had been removed by being cut and much of it was broken. Most pieces had been cut down during removal. All the pieces were in a pile in the porch. I am sure this was a genuine misunderstanding between a member of the congregation who wasn’t across the full details of the plans and contractors who were seeking to go about their work in a timely manner.’

14. The Revd James Stevenson, the Priest in Charge of Bishopston and St Andrews also wrote a statement dated 24th July 2023. In it he stated that he had spoken to the member of the congregation who had authorised the destruction of the lobby who stated that he now had:

‘no recollection of events at that time’

15. The Revd Wayne Massey, Team Vicar of the Parish of Bishopston and St Andrews wrote a statement dated 7th August 2023. Within it he copied an email from Adam Spence from Hills Construction Ltd, the contractors of the work. The email states:

‘I have looked through my records and can see nothing of the frame/door that was removed during the works at the church. That said it is possible a

communication could have been received and work carried out included removal of the door and frame. However I have no memory of this event.

The Revd Massey's statement also includes 'further information from the Revd James Stevenson which states:

'A former Church Warden was a key instigator in this act. We have sought him out for a statement, as requested by the Chancellor but he couldn't recall the incident. He has distanced himself from Church in general since Covid. A further request for a witness statement, we believed would result in him cutting all contacts with us pastorally... we're not prepared to push for something we might not get and risk severing of pastoral connection.'

16. The collective amnesia from all involved in this behaviour is little short of incredible. I am concerned that the individuals who appear to be directly concerned with the unlawful behaviour have not made statements-that is the former churchwarden and the contractor, despite my request. I also find the explanation that approaching an individual who has 'distanced himself from Church in general' would 'risk severing...pastoral connection' equally incredible on the basis that there appears to be no pastoral connection in existence to fracture. I note also that there is not the slightest hint of contrition or apology from the petitioners. The statements are vague, contradictory and are riddled with hearsay.

17. I find it hard to resolve how a firm of experienced builders with 'accurate plans for what was to be removed' should have felt the need to ask a volunteer about whether a major piece of work should be done or not. In an otherwise helpful statement from Jane Auld, one of the new Churchwardens, she speculates that the builders found the vestibule hindered their removal of the pews. I find that an extremely unlikely explanation for the wholesale destruction of a porch.

18. It appears, from the statement of Jane Auld that the removal of the draught lobby entirely unsurprisingly caused a draught into the Church. Or, as she put it in her statement:

The inadvertent removal of the vestibule caused a problem in the following winter with the cold air blowing into the church because both sets of wooden doors, the main external ones and the inner doors had to remain open. B & A received poor advice with regards to heating, which proved woefully inadequate, so it was vital that the inner doors remained closed. Closed inner doors were...unwelcoming

19. Some might suggest that these events, accompanied by the fact that the petitioners failed to either inform senior staff at the Diocese or at the Registry of events, point towards a deliberate flouting of the faculty jurisdiction system and the deliberate

destruction of the lobby and the removal of the doors to give an attractive Victorian building what the petitioners felt was a more 'contemporary feel'.

20. It is timely to be reminded of the words of Morag Ellis QC (as she then was when Commissary General of the Diocese of Canterbury) in Eastry, St Mary the Virgin that:

The Church of England does not have the faculty jurisdiction in order to benefit from the ecclesiastical exemption; it only has the ecclesiastical exemption because the Government's understanding is that the faculty jurisdiction does, and will continue to provide a system of control that meets the criteria set out in guidance issued by the relevant department of state in relation to the ecclesiastical exemptions. That exemption is of importance to the Church as it permits it to retain control of any alteration that may affect its worship and liturgy.

21. In short the Church of England is in the privileged position of being able, broadly, to police its own planning controls. This is a cherished right but, as with all rights comes great responsibilities. It is not as if the Church of England does not do all it can to assist parishes. This Diocese in particular is blessed with an excellent DAC, well informed and helpful Archdeacons and an extremely able and experienced Registry any of whom could have assisted the petitioners.

22. On 17th December 2023 Jeremy Peters, one of the three new churchwardens made a statement in which he stated that he had made 'great efforts with the Diocese advisory committee (sic), archdeacons, our church architect, and a number of building contractors to address the building works and the errors that have been made with regard to the faculty process, but the details submitted have not been accepted'. I am not sure what that means. He goes on to explain how there now exists a 'building development team' that meets every two weeks that assess whether their plans require a Faculty, List A or List B approval. If they are in any doubt they will now refer directly to their architect or the DAC secretary. He offers an apology that unlawful works were undertaken and assures me that there are 'robust processes' in place now and that they 'understand the regulatory requirements to undertake building works'. He also states 'We cannot be sure that (sic) our plans will be for the long term as can be shown by our recent move to the previous Horfield Baptist building after re-ordering the St Bartholomews(sic) worship space. However we do believe that the Church is being led by God's plan for us and it may take us in directions that we cannot at the time foresee'. I confess I am not reassured by that latter statement. The re-ordering of St Bartholomew's and the unlawful works thereafter, presumably lead by what the petitioners believed was God's plan rendered a building unlistable. The Baptist Church that the congregation has moved to is grade II listed and I have already received correspondence in relation to some re-ordering of it. Whilst I appreciate that they believe they are following God's plan they should remember that they are stewards of the historical assets of the established Church and those assets are to be used by the people of God not only now but for generations to come.

23. On 18th December 2023 Jane Auld, another of the new churchwardens made a statement she also apologised on behalf of the petitioners and accepted that 'if the faculty jurisdiction is not robust, the exemption of the Church of England from the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 become difficult to justify'. She points out that asking the petitioners to rebuild the draught lobby would be impossible as it was destroyed in 2017 and states that the new, incongruous doors be retained and not replaced with the original doors as the original wooden doors are a health and safety hazard. I note in passing that they were not a health and safety hazard when the draught lobby was in place.
24. Both Mr Peters and Ms Auld assure me that there are now staff in place who oversee proper procedures are in place in terms of all further developments.
25. I have been greatly assisted by the written submissions of Jacqueline Humphreys of Counsel dated 13th February 2024. In her submissions she seeks to assure me that there will be no further unlawful behaviour due to;
- a. The process and costs of seeking this retrospective faculty,
 - b. The parish having a larger staff than before,
 - c. The parish having a dedicated team member who spends the majority of their time dealing with processes, including faculty applications,
 - d. A second team member responsible for identifying List A and B applications,
 - e. There is now a dedicated building development team in place,
 - f. The team identify assesses each project against the need for a faculty or List A or B permissions,
 - g. The parishes architect is Chair of the DAC,
 - h. The church offices and worship space are now in the same location, unlike the previous building
26. Ms Humphreys' analysis of the Duffield questions are that the unlawful actions have caused little or no harm to the significance of the building as one of special architectural or historic interest. She submits that the changes have opened up the entrance to give a greater feeling of welcome.
27. She asserts that the works fall within the 'Aston Rowant principle' (Aston Rowant, St Peter & St Paul [2019] ECC Oxf 3) in that '*it would not be possible to obtain substantially the same benefit from other works causing less harm to the character and special significance of the church building. This is because it was necessary to have glass doors for safety and the opening up of the entranceway would not have been achieved if the vestibule remained in place*'.
28. That latter submission relies on me accepting her submissions on the Duffield questions and the fact that the alterations have given the entrance a greater feeling of welcome.

29. In the alternative to those submissions Ms Humphreys submits that, as the draught lobby has been destroyed it would not be possible to make a restoration order. She cites as authority for that bold proposition the cases of *St Philip's, Scholes* [2016] ECC Lee (the destruction of a marble font) and the unlawful exhumation of cremated remains in the Diocese of Winchester.
30. I disagree. Were I to do so a troubling precedent could be created in this Diocese simply to destroy items without the benefit of a faculty.
31. Ms Humphreys goes on to submit that, on the unique facts of this case-that is that the original building is no longer used for worship it would be disproportionate to make an order. The petitioners have offered to accept a condition that they should retain the original doors within the building until the sale or disposal of the building so that the purchaser has the option to replace them.
32. Ms Humphreys final submission is that I could impose a time limited permission for the works until such time as the church is used for public worship of the Church of England. If the Church were to be sold away from the Church of England the building would cease to be subject to Faculty jurisdiction. My concern about that submission is that it might be interpreted as a stumbling block to return the building for use for public worship of the Church of England and might be seen to inhibit the mission of the Church.

Conclusion

33. I disagree with Ms Humphreys analysis of the Duffield questions and incline towards the view of the Victorian Society that the unlawful removal of the lobby has caused this building to be unlistable. I have to bear in mind however, that the building was in fact unlisted when this behaviour took place and am just persuaded that the harm caused was not so serious as to persuade me that a confirmatory faculty should not pass the seal. Accordingly I also accept her submission about the disproportionate nature of refusing the confirmatory faculty in this unique situation.
34. It must be abundantly clear that I take a very dim view of the behaviour in this case. A contemptuous attitude to the Faculty system jeopardises the exemption that the Church of England enjoys. A failure to cooperate with my inquiries properly at first has been rectified by the parish electing new churchwardens and instructing specialist Counsel to address the unlawful behaviour. I accept the apologies that the new petitioners have offered but note my irritation at the lack of concern apparently shown by the clergy in this parish and their contractors as to what has occurred.

35. I will grant a confirmatory faculty for the removal of the draught lobby and the removal of the original doors on the condition that the doors are stored safely so that whoever takes on the original building have the opportunity to restore them.
36. The petitioners will pay the costs of this petition including the correspondence costs of the Registry involving a large number of emails to me.

Ascension Day 2024

(9th May 2024)

Justin Gau
Chancellor