

Neutral Citation Number: [2025] ECC B&W 1

In the Consistory Court of the Diocese of Bath and Wells

Re: The Church of Saint Mary the Virgin, Bruton

Petition 2022 – 070597

Judgment

Introduction

1. Saint Mary's church, Bruton is mediaeval in origin described by Pevsner (The Buildings of England. South and West Somerset) as "one of the proudest churches of East Somerset." The "splendid" West tower, with which this judgment is largely concerned, dates from the late 15th century. The aesthetic and historical importance of the church is reflected in its Grade I listing. At present, however, it lacks toilet facilities as well as any satisfactory arrangements for serving refreshments. The petition of October 15th, 2024, in the names of the Rector, the Reverend Jonathan Evans, and the two churchwardens, Mr Harry Mills and Mrs Juliet Bowell, seeks to address this deficiency. The proposal is to locate a kitchen unit in the North aisle and two toilet enclosures within the ground floor of the tower. The Petitioners also wish to take advantage of the space above the toilets by creating a gallery overlooking the nave.

The Procedural Defect

2. A public notice relating to these proposals dated October 15th, 2024 was displayed in accordance with Rule 6.3 of the Faculty Jurisdiction Rules 2015. During the public notice period the Chancellor's directions for a faculty to issue were given on October 19th 2024, on the understanding that such directions would be carried out on the expiry of the period for objections specified in the public notice, providing no objections were received. Thus these directions were purely conditional, and given in the interests of the efficient conduct of Registry business with the resultant benefit to petitioners and others. They did not indicate that any objection made had been pre-judged and dismissed in advance; indeed matters raised by an objector might not have featured in the papers upon which the provisional directions were based.
3. Under Rule 6.3(2)(a) the public notice was to be displayed for a continuous period of 28 days. There was, however, an inconsistency between compliance with the Rule and the notice itself, which was expressed to expire on November 14th, 2024, beyond the 28 day period. At the end of the prescribed 28 days the faculty was sealed; thereafter on November 14th, 2024 Mrs Jane Bennett, a parishioner and member of the Parochial Church Council, lodged an objection at the Registry. In doing so she ostensibly complied with the requirement set out in the public notice as published.

4. Mrs Bennett was entitled, in making her objection, to follow the instructions given in the public notice without reference to the computation of time made in the Registry, of which she was unaware. It matters not that Mrs Bennett would have been wise to object sooner rather than delay until the last available day, being November 14th 2024. The faculty having been issued without the benefit of consideration being given to a lawful objection, it has been set aside under Rule 20.2(2), so that the matter may be properly adjudicated. Mrs Bennett is entitled to such an order as of right (*ex debito justitiae* in the traditional language of the law) without the need to enter into the merits of her objection. To their credit the Petitioners have not argued to the contrary.
5. Among her representations Mrs Bennett contended that for another reason legal process was invalid because the public notice had not been displayed continuously as provided by the Rules. The Rector in his letter of November 29th, 2024 has, however explained that (contrary to Mrs Bennett's recollection) a copy of the public notice appeared on the external notice board from October 15th to November 15th, 2024, and on the notice board inside the church during the whole of the same period. There is no reason to doubt the account given by the Rector, who had personal knowledge of these matters, and this part of Mrs Bennett's case is rejected.

The Proposed Works

6. The design and location of the servery have proved to be uncontroversial. By contrast, the evolution of the scheme affecting the tower has been protracted and somewhat tortuous. It is sufficient to record that, after various modifications, the designs have met with the recommendation of the Diocesan Advisory Committee, and the support of Historic England, the Society for the Protection of Ancient Buildings, and the Church Buildings Council. The Victorian Society expressed reservations concerning the impact upon some 19th century fabric, but has not entered any formal objection. Within the Parochial Church Council, a majority of seven to two voted in favour of the designs at a meeting held on May 22nd, 2024, Mrs Bennett being one of those in the minority.
7. In summary the provision of toilets in the tower involves the construction of two cubicles respectively abutting the North and South walls, one of them giving disabled access. The space between the cubicles is at least the width of the West doorway, thus maintaining a sufficient passage to the nave. It is proposed to move the historic wooden screen dividing the tower from the nave somewhat to the East. The screen is an interesting assemblage of 17th century elements, with Victorian work including two doors. The remaining aspect of the planned changes is the insertion of a floor and glazed balustrade above the level of the cubicles, reached by an existing narrow staircase. The resulting gallery would provide an area for meetings, as well as compensating for the loss of seating space where the servery is to stand.

The Petitioner's Submissions on Need

8. The approach to cases such as the present, where a balance has to be struck between the avoidance of harm to the character of a historic church when set against modern pastoral or other needs, is explained in *re St Alkmund, Duffield* [2013] Fam 158 and in *re St John the Baptist Peshurst* [2015] WLR (D) 115 both judgments of the

provincial Court of Arches. Normally the first step is to determine whether any and if so what degree of harm is involved in the proposals, before evaluating the alleged need for change. In the present context, however, where (apart from Mrs Bennett and the Victorian Society) there has been no assertion that material harm will flow from the desired alteration to the tower area, it is more convenient to consider, initially, the Petitioners' justification for the provision of toilets within the building. Issues of harm are best addressed when considering Mrs Bennett's representations and the concerns of the Victorian Society with which they overlap, as will appear in paragraphs 12 to 17.

9. The Petitioners' Statement of Needs underwent its final revision on October 7th 2024. The Statement points to the limited availability of toilet facilities in the nearby Community Hall, which a majority of the PCC consider to be inadequate for the purposes of the church. Apart from the problem that the toilets in the Hall are unavailable when the premises are hired for functions, the Hall is not within easy reach of the church and involves crossing a busy road; moreover access poses problems for those with limited mobility. The church is said to be at a disadvantage in its lack of toilets given the level of present or expected use by its choirs and by potentially large gatherings of people at weddings, funerals, concerts and other events.
10. The inconvenience highlighted in the Statement of Needs has been experienced in many churches across the Diocese, and is wholly credible. In common with other places of worship St Mary's church cannot expect to attain its full potential within the community which it serves if it fails to address basic human requirements. In this respect the Statement of Needs is compelling.
11. The arguments in favour of the gallery necessarily carry less weight. The Statement of Needs claims an advantage in having a relatively small but flexible space for groups to meet, for musicians to perform or rehearse, or for children's activities to be overseen. There is also said to be a benefit in the availability of extra seating space for well attended services. Despite the drawback (recognised by the Petitioners) of the restricted access afforded by the narrow tower staircase, the Statement of Needs is justified in its identification of the gallery as an asset otherwise lacking in this church building.

Mrs Bennett's Objection

12. With the setting aside of the original faculty Mrs Bennett is in as good a position to pursue her objection as if it had been made earlier. Her notice of objection, dated November the 14th, 2024 and received by the Registry on the same day, is both concise and cogent. It was supplemented by a message sent on Christmas Day, commenting upon the Rector's response (dated November 29th, 2024) on behalf of himself and the majority of the PCC. On January 2nd, 2025 Mrs Bennett forwarded copies of some handwritten architect's reports from the latter part of the 19th century containing information about the Victorian restoration work. This was followed by some supplementary representations on January 22nd, 2025.

The West Window

13. The principal ground of Mrs Bennett's objection concerns the impact of the Eastward relocation of the screen, and the construction of the balcony, upon the appearance of

the West window. Her particular interest in the matter arises from the donation of the window by members of the Bennett family in memory of Thomas Oatley Bennett and his wife, generous benefactors of the church. Mrs Bennett is connected to the family by marriage, and has made her objection on behalf of herself together with other family members who, in her words, are “strongly against” the Petitioners’ proposals.

14. The window was the work of Messrs Clayton & Bell, distinguished manufacturers of Victorian stained glass. Its impressive appearance is evident from a photograph taken from the nave. A useful description is given in the architect’s manuscript:-

“... the figures represented include Our Lord in Majesty with Angels under Him, and below are the Blessed Virgin and St Joseph, St Anne, St Thomas - together with the Proto-Christian Martyr St Stephen - and the Proto-British Martyr St Alban - Below these are figures of persons connected with the history of Bruton - King Ina and Bishop Adhelm and Henry VIII and Bishop Fox together with the Patron Saints.....”

15. The Rector in his response wrote:-

“the view of the window is not totally obstructed, even from the rear of the nave: it is only the view of the lower section that (when viewed from the rear of the nave) would either be partially obstructed by the repositioned screen or be viewed through the glass balustrade; the view of the upper parts of the window remains unimpaired.”

This explanation is consistent with the architect’s drawings in the Registry file, which show that the visibility of the line of images beginning with King Ina would be affected by the proposals. The currently uninterrupted view of the window would nevertheless be compromised, resulting in a degree of harm. In its advice of September 26th, 2024 the Victorian Society, adopting a similar position to that of Mrs Bennett, wrote:-

“visibility of the fine West window, with glass by Clayton & Bell, from within the main body of the church....is an important consideration”. In reaching a decision on the Petitioners’ scheme due weight must be given to the element of harm which has thus been identified.

The Remaining Grounds of Objection

16. Mrs Bennett has sought to reinforce her case by reference to other matters. She is critical of the removal of a section of the 15th century West door planned to accommodate changes to access levels. According to the Petitioners the timber in that part of the door is rotten. Be that as it may, both Historic England and SPAB have accepted the adjustment in level and resultant loss of some historic fabric from the door, Historic England commenting as follows:-

“The proposed scheme would slightly truncate the visual appreciation of the door and involve some modest loss of fabric to its base, however the impact of the works on the overall composition of the tower would be limited.”

In a similar vein Mrs Bennett has alleged that there will be loss of tiles from the tower floor. The Petitioners’ response is that a badly damaged area of tiles has been replaced by concrete and that a new, uniform floor will be an improvement. The amenity bodies were mindful of the creation of improved access (which necessarily included the floor) but were not critical of the loss of floor tiles. In respect of changes to the floor and the doorway no material harm can be expected to occur.

17. For Mrs Bennett as well as the Victorian Society the loss of the 19th century doors from the screen has been a contentious issue. The practical difficulty involving the doors has been explained in the Rector's response letter. In the intended location of the screen (which has the support of Historic England, SPAB, and the DAC) there is insufficient space for the doors because of the proximity of the stone pillars at the base of the tower. The screen cannot be accommodated Westwards of the pillars because the provision of the cubicles would be jeopardised through lack of space. Bringing the screen into the nave, as well as creating somewhat of an obstruction, would further restrict sight lines to the West window and thereby increase the harm which the Victorian Society and Mrs Bennett seek to avoid. Accordingly there appears to be no satisfactory means of retaining the doors in situ; and since the weight of the consultees' advice is in favour of their removal so as to achieve a satisfactory position for the historic elements of the screen, the absence of the doors would involve at most minimal harm.
18. Finally Mrs Bennett has suggested that the insertion of the gallery will restrict views of the decorative Georgian tower ceiling above the level of the West window. There is little if any merit in this aspect of the representations because the ceiling is best seen, without difficulty, from the nave; and from that position it will be unaffected by the gallery or the balustrade. Those wishing a closer inspection could use the gallery itself for that purpose.

An External Location

19. In the supplementary representations dated January the 22nd, 2025 Mrs Bennett contended that sufficient consideration had not been given to alternative sites for the toilets, in particular externally against the North wall of the church. An external solution had been proposed by the Bruton Conservation Trust, a local amenity society which has not become involved directly in the faculty proceedings but which wrote to SPAB and the DAC in June 2024 urging them to reconsider their advice favouring the use of the interior of the tower. That advice, however, was unchanged.

In reply, the SPAB

"... made it clear that we would not support a new building on the North side of the church when the current proposals were well developed and less harmful."

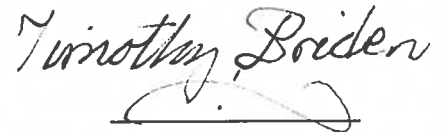
On its part the DAC has consistently supported the construction of the toilets within the base of the tower as the best strategy to minimise harm.

20. Given the weight of expert opinion, shared by Historic England, in support of the proposals now before the Court, it is unrealistic to suppose that the provision of a toilet building adjacent to the North wall or in any other external site would be viable. While it is true (as Mrs Bennett has emphasised) that such structures have been permitted by faculty elsewhere, each proposal has to be judged on its own facts and cannot be relied on as a precedent for other developments. The consensus among the consultees and the DAC that the highly significant exterior of this church must be protected from harm is decisive. Moreover, an application for the planning permission needed for a new structure in the churchyard would be fraught with difficulty and face an uncertain outcome. For completeness it should be added that (contrary to the impression gained by Mrs Bennett) the Petitioners' Statements of Significance and Need, as well as the level of engagement with the DAC, Historic England and SPAB,

demonstrate that all the available options were carefully evaluated before a considered decision was reached.

Conclusion

21. As the preceding paragraphs have explained, the provision of toilet facilities is necessary for the future well-being of St Mary's church, which in order to minimise harm to the character of such an important Grade I listed building must be accommodated in the base of the tower. The result will involve some harm, primarily in affecting proper appreciation of the distinctive West window, and its connection with the Bennett family. Such harm, though regrettable, is outweighed by the practical need for modern facilities within the building. The addition of the gallery and balcony, although not equally essential, nevertheless represents good use of what might otherwise be wasted space, with an insignificant contribution to the harm arising from the insertion of the toilets.
22. Accordingly a faculty will pass the seal in respect of the Petitioners' proposals, including the servery about which there is no dispute. The faculty will be subject to standard conditions concerning archaeology and electrical works, together with a further condition that unused materials from the reconstruction of the screen shall be labelled and carefully preserved within the church for subsequent incorporation in the fabric (if so required).



Chancellor

Dated the 15th day of February 2025.