



Neutral Citation No. [2016] ECC Oxf 4

**IN THE CONSISTORY COURT OF
THE DIOCESE OF OXFORD**

Date: 20th September 2016

Before :

**THE REVEREND AND WORSHIPFUL ALEXANDER MCGREGOR
CHANCELLOR**

In the matter of :
St Michael, Cumnor

JUDGMENT

The Chancellor:

1. The Vicar and churchwardens of Cumnor have submitted a petition seeking a faculty to authorise the works that are described as follows in the schedule to the petition:
 - Extend existing porch to house disable toilet and create a new entrance lobby
 - Install new cabinetry to house a new coffee/tea making station
 - Repositioning a statute of Queen Elizabeth I in order to make space to create much needed vestry within the church
 - Provide new cupboards in St Thomas's (chapel to the SE of the church) to store chairs and vestments. Existing cupboard will be removed to improve 'line of sight' at the front of the church
 - External works to pathways to improve access to the church.
2. The petition states that the parochial church council at its meeting on 23 February 2016 passed without dissent among those present and voting a resolution relating to the works or proposals.
3. The diocesan advisory committee issued a notification of advice in respect of the proposals on 14 March 2016. The DAC recommends the proposals for approval by the court subject to a proviso that a photographic record and measured drawings are made of the parts of the church affected by the work before the work begins and copies deposited with the DAC and the county archives.
4. The notification of advice goes on to state that in the opinion of the DAC, the work (or part of the work) proposed is likely to affect the character of the church as a building of special architectural or historic interest. The DAC accordingly advised the petitioners to consult Historic England and the Victorian Society.
5. I visited and inspected the church over a period of about an hour earlier in the summer. Doing so has assisted me in reaching my decision on the petition.
6. The usual public notices were displayed and elicited one letter of objection from Ms Jane Vlitos, a resident parishioner and also on the church electoral roll. Ms Vlitos has elected not to become a party but to leave me to take her letter into account in considering the petition.
7. Ms Vlitos is a member of the St Michael's Improvement Group – a group set up by the PCC – and as such has been actively involved in the development of the proposals which she supports subject to one exception. That exception relates to the proposals for St Thomas's chapel which occupies the large south transept (roughly the same size as the chancel). She points out that at a public meeting held in July 2015 the proposals relating to the chapel – which include the introduction of new cupboards and panelling – despite being generally supported were considered undesirable or unacceptable by one third of respondents. These concerns related to the proposed position of the cupboards: those with concerns believed that they would be visually intrusive and would expose members of the choir to the view of the congregation as they changed for services.
8. Other concerns mentioned by Ms Vlitos relate to the proposed repositioning of the altar in the chapel towards the south wall. She says that this visually separate the altar from a

large stained glass window in the east wall of the transept and that it would result in the people having their backs to the altar when the transept was being used for additional seating for the congregation for services taking place in the main body of the church.

9. Finally, she is concerned that the proposed new position of the altar would obscure the historic abbots' tombs. (The south transept was a chantry chapel of Abingdon Abbey. There are two 2 Decorated tomb recesses set into the south wall.)
10. It is almost inevitable that when changes are proposed to a historic church – especially one which is held in particular affection by its parishioners – that there will be differences of opinion as to how, precisely those changes should be made. Ms Vlitos has made it clear that she supports the proposals save only for some of them that affect the south transept. So far as those aspects of the proposals to which she objects are concerned, I do not consider that any of them are inherently objectionable.
11. So far as the cupboards and panelling are concerned, having considered the plans and having inspected the church itself, while their introduction will change the internal appearance of the south transept to some extent, I do not consider that they would be visually intrusive. They have clearly been designed sensitively with regard to the church as a whole and to the transept in particular. I do not think the fact that the choir's robes will be in cupboards on the east wall, rather than as now on the west wall, of the south transept is a matter of any great consequence so far as privacy is concerned. The members of the choir will be putting on their robes over their ordinary clothes in any event.
12. Although it is an ancient tradition of the Church for altars to be oriented – that is facing towards the east – and for the Holy Communion to be celebrated facing in that direction, there is no rule of law to that effect. Canon F 2 (Of the holy table) is concerned with the main altar rather than the altar of a chapel. Nevertheless its provisions are instructive: the holy table may stand in the main body of the church or in the chancel. Any dispute as to its position is to be determined by the Ordinary (i.e. the Chancellor). The rubrics in the Book of Common Prayer at the beginning of the Order for Holy Communion are to the same effect. There is no canonical or rubrical requirement that the Holy Communion be celebrated facing towards the east. (The rubric in the Prayer Book has the priest standing 'at the North side of the Table').
13. It would, therefore, be lawful for the altar to be positioned where proposed, towards the south wall of the transept with its long sides facing north-south. The altar would, in that position, continue to be associated – albeit less closely – with the stained glass window in the east wall of the transept. There is no reason why people should not be seated with their backs to that altar while it is not being used for the celebration of Holy Communion (which it would, presumably, not be while a service was taking place in the body of the church).
14. I accept that the proposed position of the altar would slightly obscure the recessed tombs in the south wall of the transept. But they would nevertheless remain both visible and accessible.
15. I note that while Ms Vlitos is not alone in having concerns about the proposals relating to the south transept and that a third of respondents at the public meeting had concerns, that suggest that two-thirds – a very clear majority – were content. I also note that the PCC's resolution to petition was passed without dissent among the 25 members of the council.

Ms Vlitos and others who have concerns are entitled to hold their views and to express them but the PCC consists largely of elected members of the laity of the parish. I consider the view which it has reached in relation to the ordering of the south transept to be entirely reasonable; it would not therefore be right for me to substitute my own view on the matter even if it did differ from that of the PCC.

16. No one has suggested that what is proposed in relation to the south transept would harm the significance of the church as a building of special architectural or historic interest.
17. I consider that the petitioners have, in their response to Ms Vlitos' letter – where they explain that the position for the cupboards was chosen in order to improve the sightlines for the congregation seated in the transept – discharged the burden on them to show that the proposals would make things better than they currently are. I therefore allow the petition so far as the south transept is concerned. In doing so I note the petitioners' concession that they take seriously Ms Vlitos's point about the position of the altar. The altar is not fixed and they are prepared to keep its position within the transept under review. The faculty will therefore issue on the basis that the altar in the south transept may be used either in the position shown on the plans, or in an eastward-facing position, at the discretion of the incumbent.
18. The Victorian Society have also raised objections to the petition but to a different aspect of the proposals. Their objections relate to the proposal to extend the existing porch to accommodate a disabled lavatory. The porch was added to the church in 1857-8, hence the Society's particular interest in its alteration.
19. The Society's objection was initially set out in a letter dated 10 May 2016 to the petitioners' architects as follows:

The existing porch, while fairly simple in design, is a handsome addition to the main facade of the building and elegantly marks out the entrance to the building. While the desire for a toilet is entirely reasonable, the architectural response is unsatisfactory. The porch would be replaced with a flat roofed structure which bears little resemblance to the original porch and lacks the prominence and quality of the current porch. The current porch structure should be retained in the proposals and a toilet facility added to it instead of removing the entire structure. The porch may have to undergo some alterations to make this possible, but the structure is handsome and contributes positively to the church and should be retained.

The proposed structure would be a detriment to the main façade of the building, rather than an improvement. We would object to the proposals in their current design and we would like to see revised drawings which incorporate the porch into the design for a new toilet.

20. Upon being given special notice of the petition, the Society stated that it did not wish to become a party to the petition but maintained the objections set out in its earlier correspondence (which, in addition to the letter referred to above, includes subsequent correspondence with the petitioners).
21. The petitioners have set out their responses to the Victorian Society's objections in the form of a letter to the registry dated 18 May 2016.

22. St Michael's church is a listed building. In considering the proposals, I have therefore had regard to the framework of guidance provided by the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158 at paragraph 87:

- (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 easily, depending on the particular nature of the proposals ...
- (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 special 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? In answering question (5), 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 is to a building which is listed grade I or II*, where serious harm should only exceptionally be allowed.

I have also had regard to the observations about these questions which were subsequently made by the Court of Arches in *Re St John the Baptist, Peshurst* [2015] PTSR D40 (judgment 9 March 2015).

23. The starting point for consideration of the proposals is that St Michael's church is a grade I listed building. Only 2.5% of listed buildings are listed at grade I and they are of exceptional interest. The church was first listed in 1966 and the list entry has not subsequently been amended. The list entry details are as follows—

CUMNOR HIGH STREET SP4605 (South side) 13/33 Church of St. Michael
09/02/66 GV I Church. Late Saxon origins: mainly late C12 tower, nave and chancel: c.1300 south transept and early C14 north aisle. Uncoursed limestone rubble with ashlar dressings: squared masonry blocks to C12 tower and C15 clerestory. Gabled stone slate roofs. Chancel, nave with north aisle, south transept and west tower. Three-light reticulated east window. 2-bay chancel has 2-light windows of c.1300 to south, pointed chamfered priest's door and adjoining Transitional lancet to north. South transept of c.1300 has reticulated 3-light south window, 2-light curvilinear east window and unusual west window with triangular head and lozenge tracery (see Church of St. Lawrence, North Hinksey (q.v.)). South wall of nave: tall late C13 transomed 2-light window lies west of recessed section of wall which has late C12 corbel table with anthropomorphic heads and stone lintel over late Saxon doorway: clerestory has one C15 two-light cinquefoil-headed window and late C14 two-light trefoil-headed window: parapet has corbel table with fleuron frieze, and is swept round east gable of nave to north clerestory, which has three C15 two-light ogee-headed windows and one early C16 two-light round-headed window. Early C14 north aisle has two 2-light reticulated windows flanking late C19 stone porch: pointed and hollow-chamfered doorway frames C14 door: door made of lapped planks to front and crossed battens dovetailed into outer edge to rear, with scrolled hinges and iron-twist knocker. Late C12 tower of 3 stages marked by string courses: pointed lancet over

Transitional doorway with roll-moulded arch set on one order of shafts with plain abaci: Transitional belfry windows with stone-slate louvres and continuous linking hood moulds: late C12 corbel table with gargoyles and parapet. Interior: chancel windows have roll-moulded Transitional rere-arches. Early C18 communion rail with barley-sugar and fluted balusters. C15 bench ends have poppyheads carved with monsters, chameleons and the Emblems of Christ's Passion. Early C17 chancel rail with turned balusters. C15 two-bay waggon roof has moulded cornice and tie beams with angel corbels. Transitional (probably early C13) chancel arch with ballflower-carved and scalloped corbels. Nave: fine Jacobean 2-decker pulpit and Clerk's Stall-cum-Lectern with relief carving. Flamboyant style late C19 font at west end. C15 five-bay cambered tie-beam roof supported by arch braces with quatrefoil spandrels springing from reset late C12 head corbels. Late C13 four-bay north arcade: hood moulds with face-mask and leaf-paterae stops over chamfered pointed arches set on circular and octagonal piers with octagonal abaci. North aisle has C15 lean-to roof with moulded and quartered beams supported by thin arch braces springing from reset late C12 head corbels: some C18 panelling, late C17 communion table and early C14 piscina. Pointed moulded arch to south transept which has blocked door to former rood loft, 2 face corbels for statues and ogee-headed piscina; C17 parish chest and 2-bay queen-post roof. South transept was chantry chapel of Abingdon Abbey: 2 Decorated tomb recesses have cinquefoiled arches with ballflower carving, and 2 coffin lids carved with floreated crosses. Late C12 Transitional arch to west tower: triple roll-moulded pointed arch set on shafts of 3 orders with scalloped capitals. West tower has very fine spiral staircase inscribed TB/GN/1685 which rises to belfry: winders are tenoned into octagonal newel post and into closed string with turned balusters: an excellent example of traditional joinery. Monuments: Anthony Forster, d.1572 and wife Anne d.1599, of Purbeck marble: Gothic-style tomb chest and Gothic carved canopy with Tudor-flower cresting supported by unfluted Ionic columns: carved back-plate has brasses of Forster and his wife set out over long Latin elegy to Forster, who was involved with the death of Amy Robsart at Cumnor Place. C17 ledger stones set in nave floor. Wall brass in nave to James Welsh, d.1612, and wife Margery, d.1615, has long epitaph. Wall monument to Norris Hodson, d.1740 on Commodore Anson's circumnavigation of the globe and "buried in the great South Sea": coloured heraldic achievement with angels' heads and doggerel verse inscribed on the tablet. Wall tablet to antiquary Dr. Benjamin Buckler, d.1780, and coloured marble tomb chest to Sir William Hunter, historian and surveyor of British India who died 1900. North aisle: memorial in floor to infant Frances Peacock, d.1685: two C18 wall monuments to Peacock family; wall monument set in architectural frame with palm sprays to Dudson Baker, d.1715, and wife. Fine late C16 statue of Queen Elizabeth at west end of north aisle: was removed from Dean Court, and has C19 head, dexter hand and sceptre. Stained glass: east window by Kempe, 1901, in memory of Sir William Hunter. West window of St. George also by Kempe 1889. South transept window of 1858. West window of south transept has 3 roundels of armorial glass. North aisle window has part of C15 Flemish glass reset at head. This church shared its ancient hill-top site with Cumnor Place which was built for the abbots of Abingdon Abbey, achieved notoriety for the supposed murder of Amy Robsart by the Earl of Leicester and Anthony Forster, and was demolished in 1811: features from it were reused at and around the Church of All Saints, Wytham (q.v.). (Buildings of England: Berkshire, pp. 124-5; V.C.H.: Berkshire, Vol.IV, pp.402-3).

24. The porch is clearly mentioned in the list description. But that of itself does not indicate very much about the contribution which it makes to the architectural or historical

significance of the building as a whole. I note that the porch is mentioned in the context of the windows of the 14th century north aisle and the 14th century door, rather than as a point of particular interest in its own right.

25. It is evident from the list description, and from *The Buildings of England* (to which I have referred) that the fabric of the building is almost entirely mediaeval. There are various phases of work to the current structure beginning in the 12th century and ending in the 15th century.
26. The fittings are largely early Georgian but the two decker pulpit and the chancel screen are Jacobean.
27. Other than the porch, there were no material alterations to the church in the Victorian period. (A font was introduced in the 19th century but it is unaffected by the proposals.)
28. In the light of the list description, the description in *The Buildings of England* and in the statement of significance, and in the light of my own inspection of the church, I consider that the architectural and historic significance of the church essentially lies in its being a fine and well-preserved example of a mid to late mediaeval church fabric with numerous fine mediaeval decorative features, and in its historic association with Abingdon Abbey and later with Cumnor Place and Robert Dudley. Its fine fittings also contribute significantly to its architectural and historic character.
29. Turning to the Victorian porch, the points advanced by the Victorian Society are almost entirely subjective. The statement that it is “a handsome addition to the main façade” which “elegantly marks out the entrance to the building” is really no more than an assertion, and one that is readily contestable. There is no evidence that the porch is the work of a Victorian architect of any note; nor is there anything else about its provenance which contributes to the church’s historic significance. And it is not suggested that the porch is of particular interest from an architectural point of view: it is not said, for example to be unusual, of special quality, or to carry significance in relation to the development of the architecture of the church or of architecture generally. (This is in contrast to the earlier features of this church, some of which are of specially fine quality and/or of relative rarity and which together produce an exceptionally fine ensemble.)
30. In seeking to arrive at an objective assessment of the porch’s contribution to the significance of the building I find myself in agreement with the view expressed by Mr Richard Peats of Historic England. In his letter of 27 May he says, “Given the porch, while handsome enough, is of limited significance in its own right we are content with the principle of its replacement ... and with the design proposed.”
31. I also note that the local planning authority has granted planning permission for this aspect of the works. They will not, of course, have been considering an application for listed building consent (owing to the application of the ecclesiastical exemption) but in deciding whether to grant planning permission for works which would materially affect the exterior appearance of the church they will, in accordance with chapter 12 of the National Planning Policy Framework, have had to take account of the value contributed by the porch to the church as a heritage asset. The LPA’s reasons for granting planning permission state that (following the inclusion of certain conditions in the permission) “the proposals [i.e. the works to alter the porch] are not considered to significantly impact upon the special interest of the listed building ...”.

32. I accept that the Victorian Society has particular expertise which it can helpfully bring to bear in assessing the impact of proposals on listed buildings which are Victorian or which have significant Victorian features. But in the present case I do not find the views expressed by the Society carry much weight. The preponderance of opinion from the bodies which are charged with the preservation of built heritage is contrary to that of the Society. While a preponderance of opinion can be wrong, there is nothing in the Society's representations in this particular case – which as I have said, I find amount only to a subjective view of the value of the porch – to call that preponderance of opinion into question.
33. The Victorian porch is not unattractive. It is a small, neat addition to the mediaeval fabric (replacing an earlier Georgian porch) but it is of no particular distinction architecturally (and the Victorian Society, to be fair to them do not suggest that it is) nor is it noteworthy historically. It is a very minor feature which does not contribute materially to the architectural and historic significance of the building as a whole.
34. In the light of that finding, I do not consider that the proposals relating to the porch – which I accept would see it substantially altered – would result in harm to the significance of the church as a building of special architectural or historic interest. That being so, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less easily, depending on the particular nature of the proposals.
35. There are currently no lavatory facilities at the church. As the statement of need explains, this is a serious limitation that affects the ways in which the church can be used, both for worship and for other purposes involving the local community. The provision of a lavatory in the redesigned porch will remove that difficulty and significantly improve matters for all who use the church.
36. The petitioners have clearly discharged the burden that lies on them.
37. The remaining aspects of the proposals are entirely uncontentious. I find, in the light of the statement of need, that the petitioners have also discharged the burden in relation to them.
38. The petition is accordingly allowed. A faculty will issue subject to conditions. The court fees are payable by the petitioners.