IN THE COMMISSARY COURT OF Petition No 421

THE DIOCESE OF CANTERBURY 14th August 2015

Before the Deputy Commissary General (Steven Gasztowicz QC)

RE: ST MARY MAGDALENE, DAVINGTON

JUDGMENT

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1. The Petition before me seeks permission for proposed works at the Church of St Mary Magdalene, Davington (which I shall refer to as "the Church").

   The Church

2. St Mary Magdalene is an ancient Grade I listed church, originally forming part of Davington Priory, the remaining part of which is now used as a private house, which is physically attached to the southern wall of the Church. The Priory and Church date from around 1153.

3. As recorded in the Statement of Significance submitted with the Petition (and confirmed by the listing particulars), significant alterations were made to the Church around 1845 by Thomas Willement, the then owner. On entering the building, the visitor is struck by the simple Norman architecture, and the fact the building has been completely de-pewed. Seating is provided by simple wooden chairs. The windows at the east end and in the west aisle are of stained glass by Thomas Willement, in a thirteenth century style. There is attractive stained glass, introduced in the last ten years, in the small window at the west end of the northern wall. The windows in the west wall are clear glazed (dating from the 1930s) and give the building a light and spacious appearance. The north aisle has a series of plain, round-headed, arches. The Nave lighting fittings have a

1930s appearance, but do not appear to be in the best condition now. The altar is twentieth century and simple in style. The pulpit is of dark wood (and may be thought to appear somewhat incongruous). It is understood to have been brought into the Church by Willement, and incorporates seventeenth century panels, possibly from the Low Countries. The font is of carved Caen stone, fine, with attractive carved decoration, and also dates from Willement's time. The organ was built by Joseph Walker and is a fine Victorian example. Of modest size, it does not dominate but fits neatly into an arch towards the west end, the organist being seated out of view behind it. There are a variety of different floor tiles. There remains a strong sense of the Norman origins of the Church, though the Willement alterations are themselves of interest.

The Original Petition

4. By the petition as originally submitted on 15th May 2014 the Petitioners sought a re-ordering of the Church to include the provision of a meeting room (with glass front), servery, and toilet facilities at the west end of it, together with a gallery above the proposed meeting room, and an upgrading of the heating and lighting installations. This also provided for moving both the font and war memorials (in the form of tablets) to new locations within the Church to accommodate the works.

5. The Diocesan Advisory Committee ("DAC") recommended approval of the works, subject to fairly standard conditions.

6. There was one formal objection received to these proposals. This was from Mr Andrew Osborne BEM RIBA. His objection was on the basis of a number of things, including damage to the architectural and historic interest of the church. It focused, however, on the position to which the War memorials, in which Mr Osborne had a particular interest, were to be re-located. English Heritage and the Society for the Protection of Ancient Buildings also expressed concerns about aspects of the proposals.

7. The Commissary General visited the Church, and gave narrative directions on the 16th October 2014. These identified a number of initial concerns about the proposals, and indicated that a hearing was likely to be necessary to determine them, or any revised proposals that may be submitted in the light of her initial comments. As a starting point, she

required the Petitioners to set out their position in relation to her comments, and to submit revised proposals if so advised.

The Amended Petition

8. The Petition was subsequently amended with the permission of the Commissary General. The amended petition has been advertised by new public notices and subject to special citation.

9. These amended proposals leave the new meeting room, servery, and toilet facilities at the west end of the Church, with a gallery above the meeting room, as previously proposed. The front of the meeting room is intended for the most part to comprise clear glass, and the gallery would also have a largely clear glass balustrade at the front of it. The war memorials are, however, now proposed to be re-located to a place (on the north wall) which Mr Osborne considers appropriate. In addition, although the font is still proposed to be moved (to make way for the toilet area), it is now intended to go in a different position, which will still be close to the north door, which forms the usual public entrance to the Church. It will now be on the other side of the door to its current location, more into the body of the church.

10. Following these amendments, the original objector, Mr Osborne, has formally withdrawn his objection. In doing so, he has stated that he is now satisfied with the position in relation to the war memorials, which were his main concern. He has indicated that in his opinion other aspects of the proposal still remain inappropriate but as they are in his view reversible, he does not consider them in themselves to be so serious that it is appropriate for him to pursue any objection.

11. Following a meeting on site, English Heritage indicated that its previous concerns had been adequately addressed by what are now the revised proposals.

12. The Society for the Protection of Ancient Buildings remained concerned about the proposals, however, for reasons set out in a letter dated 21st April 2015.

13. Having given preliminary views on various aspects of the matter previously, the Commissary General on 1st May 2015 passed the amended Petition to me to determine.

14. I obviously needed to view the Church as a minimum, and in the circumstances I have set out, I decided to hold a hearing, at which I could both view it and receive evidence and submissions, including clarification of relevant matters, and undertake further exploration of them, at the same time. I gave directions in writing on 9th June 2015, and held the hearing at the Church on 20th July 2015.

Applicable Principles

15. What I have, in summary, to decide, as set out by the Court of Arches in Re St Alkmund, Duffield (at paragraph 87), and in the context of this case, is as follows:

(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 not, then the ordinary presumption "in favour of things as they stand" is applicable, but, generally speaking, that can readily be rebutted by reference to need for change;

(3) If, however, the proposals would cause the harm I have referred to, how serious would that harm be?

(4) How clear and convincing is the justification for carrying out the proposals?

(5) Bearing in mind there is a strong presumption against proposals which will adversely affect the special character of a listed building, would any resulting public benefit (including matters such as pastoral well-being, opportunities for mission, and putting the church to viable uses 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 in order for the proposals to be permitted. In the case of a Grade I listed building *serious* harm should only exceptionally be allowed.

16. If the final stage of weighing the balance is reached, I need also to consider whether the works would be readily reversable in the future and to what extent that helps in justifying any harm in the context of this case.

The Evidence

17. At the hearing, I looked round the Church accompanied by, amongst others, the Revd Tracey Bateson (Assistant Curate), Mr Paul Greenfield (the architect involved), Dr Richard Morrice (Chairman of the DAC), and Miss Catherine Cullis (Churches & Cathedrals Officer of the Society for the Protection of Ancient Buildings), and had relevant places and features pointed out to me. I then heard evidence on oath from Mrs Bateson, Dr Morrice, and Miss Cullis.

18. I will refer to the evidence of the Mrs Bateson, which related mainly to the needs of the Church, below.

19. Dr Morrice gave evidence as to why in the DAC's view, and in his view, the proposals were acceptable. Again, I will refer to this below.

20. In her evidence, Miss Cullis accepted the need for a toilet, kitchenette, and acoustically separate meeting room to be provided at the Church, that an extension would not be appropriate to provide them, and that the west end of the Church was the most appropriate location for these facilities. She made plain that the concern was in relation to the gallery and, in particular, felt that it would draw attention to itself and dominate the west aspect when seen from the nave, which would be made worse if it was to be used for storage. If the gallery was not provided, space where the staircase is proposed to be would not be taken up, and a simple ceiling, rather than a load bearing floor, on top of the meeting room could be provided, giving a lighter touch. It was also pointed out that the west door would be obscured, and its impact when used for processions reduced.

21. Mrs Ashley Saywell, who had been Treasurer of the PCC at the relevant time, also told me informally why the Lodge previously connected with the Church had been sold off some years ago. In addition, Mr Ken Judges pointed out there was a picture in the vestry of a screen or gallery in the west end of the Church in Victorian times. I looked at this picture in the

presence of those who had given evidence, which seemed to confirm the existence of a screen in the Church at some point in the past.

22. Following the hearing, Mrs Bateson forwarded by e-mail to the Registrar a quotation from an 1862 book by Thomas Willement entitled 'Historical Sketch of the Parish of Davington' which referred on page 41 to "the removal of a large and useless gallery at the west end of the nave". In response, Miss Cullis accepted there had once been a gallery at the west end, but pointed out that this did not change the effects of providing one there now or alter the effect on the west wall. She did, however, acknowledge in her e-mail, realistically to my mind, that although the Society, when making its representations, had not considered there was a need for additional space beyond a ground floor meeting room, Mrs Bateson's oral evidence - in which she referred to the need for additional space beyond that which would be provided by that alone - was very compelling.

23. I should also record that during the course of the hearing one minor amendment to the amended plans was put forward, which I have permitted to be made, in the form of moving the proposed cooker hood (and therefore hob) from the south wall to the west wall of the proposed servery area. This is now shown on the amended plan marked 553.05D, which replaces the earlier plan of this area. There having been no adverse comment by anyone in relation to the hood even in its original location, the fact the new location is in the same area but away from the memorials, and the DAC having formally confirmed this is in its view entirely appropriate, I have seen no need for re-publication of the Petition on account of this very minor change in detail.

Discussion and Decision

24. I shall deal first with the works which are proposed aside from the meeting room, servery, toilet area, and gallery themselves.

25. So far as the heating system is concerned, the Church relies on an old form of electric heating by pipes above surface level, mainly on the floor along lines previously formed by pews. Though the pews have long since been removed, the pipes remain, and provide the only permanent source of heating. They are unsightly, as well as a serious trip hazard when the

chairs are removed, restricting the flexibility of use the chairs would otherwise give. This method of heating is also inefficient and expensive. What is proposed is to heat the Church instead with energy efficient lamps hanging from replacement chandeliers. The replacement of the heating system with this proposed form of heating is plainly appropriate.

26. The lighting is also intended to be from the chandeliers, separately controlled to the heat mechanism. That is equally acceptable.

27. The proposed relocation of the war memorials and the font are the consequence of the proposed creation of the ground floor toilet at the back of the Church.

28. The font is now proposed to be moved a few feet to the east of its present location. This would mean it is on the left hand side as visitors enter through the public, north door, rather than on the right. It would still be at the entrance to the Church. Indeed, it would convey more of the visual significance of entry into the Church by baptism in being in a location which leads into the body of the Church, rather than in its present position, tucked away in a dark corner on the other side of the door. It would also be more apparent to visitors. This is entirely acceptable.

29. Similarly, the plaque to those killed in the Great War would need to be moved. The new location has now been agreed with Mr Osborne. It would be placed on the north wall together with a tablet honouring those who lost their lives in the Second World War. This will be a more prominent location for the Great War plaque than where it presently is. So far as the tablet to those killed in the Second World War is concerned, this for some time stood on a window ledge in the Church until it was recently affixed to the wall, a short distance away from the proposed location. I am satisfied the new location for the two memorials would be entirely appropriate.

30. I turn now to the meeting room, servery, and toilet area proposed to be formed at the back of the Church, together with the gallery above. The meeting room would be in the central part of the west wall between the outer edge of the base of the bell area on the left as looked at from the east end of the Church, and the last of the dividing arches on the right, with the staircase to the gallery just before that arch (with cupboards for

storage behind). The front of the meeting room (as viewed from the east) would come out to just beyond the front line of that arch. It would be almost entirely glazed with clear glass. The servery would be to the left, in the base of the bell area, looking at it from the east, and the toilet area to the right (in the corner of the Church to the right also of the north door). The toilet area would be enclosed by wood. A small very recent stained glass window would be within this area. The gallery would have a small balustrade, largely of clear glass. Some modern tiles representing Stations of the Cross would be moved to new positions outside the area of the works.

31. The exterior of the Church would not be affected by any of the proposed works, save for the introduction of two small vents on the west wall (serving the servery and toilet areas respectively). The west wall is not publicly visible, and there is currently foilage in the wall areas where these vents would be. The Church would otherwise look exactly the same externally as it does now, but internally there would be the changes I have described.

32. In my judgment, these works would not harm the significance of the church as a building of special historic interest as such.

33. It would continue to be of historical interest to the same degree as at present, with none of its important historical features, whether from ancient times or from Willement's day, being lost.

34. That said, the large west door (comprising in fact two separate wooden doors) would be lost to the general view of some visitors. The door would still be there if the proposed works are permitted, although it would be within the meeting room, inside a small lobby created to accommodate it, the door being higher than that of the proposed meeting room outside the lobby. It would be covered, when they are closed, by doors similar in appearance to the rest of the plastered west wall. Only when these were open would this west door be visible from within the Church.

35. Although not referred to by anyone as being of importance, I have taken into account that to the informed observer such as myself, this door tends to confirm to an extent the link with the Priory, of which it once formed

part, in that it leads out to what is now the land of the adjoining house which also formed part of the priory.

36. However, the casual visitor would not be likely to attach any particular significance to this door, and the informed observer would necessarily be aware of the link between the Church and the Priory in any event. Indeed, literature showing the history seems likely in the future to be available there, as now. The land beyond it (save possibly for a very few feet) belongs to the owner of the adjoining house, and the door is cut off from external public view, and has rarely been used for many years (almost entirely just for services connected with the family of the current adjoining owner, Sir Bob Geldof, for reasons of privacy). The land to the west has not been identified as of any significance to the Church and the former Priory was to the east and south of it. The wooden door in itself is from the nineteenth century, plain, and of no particular interest. The arrangement proposed does not seem to be a matter of serious concern. Such concern as there is could be reduced, however, by the covering doors being left open when the meeting room is not in use, which Mrs Bateson herself suggested during my inspection.

37. Turning to the question of whether the proposed works would affect the Church as a building of special architectural interest, they would do so to the extent that when viewed inside the Church from the east, the west wall of it, which is currently large, bare, and simple in form, would be less simple and would have an enclosed area and gallery leading out from it to the height shown on the plans.

38. The last of the series of arches along the north side of the nave would also be within the enclosed area (and its aperture would need to be covered in order to give privacy for the toilet area), although the arch itself would remain visible to an extent from the staircase area. The arch at the base of the bell area would also be lost to view from the nave.

39. It is clear to me that, as Dr Morrice conceded in his evidence, the enclosure of the areas at the western end of the Church by the works I have mentioned would affect the architectural character of the Church. The works would affect the Church as a building of special architectural interest for the reasons I have set out in paragraph 37 and 38 above.

40. However, the essential plainness overall of the Church in the Norman style would remain. It would be clear from its glazed front that the meeting room was a modern introduction, and the style of it, though modern, would in my judgment be consistent with the historically plain style of the Church, or, as Dr Morrice put it in his evidence, the architectural language of the Church.

41. Notwithstanding the simplicity at present of the west wall, and its scale, the Society for the Protection of Ancient Buildings does not consider the creation of an enclosed meeting room as such to be inappropriate to the extent that permission for the works should be refused on that account. Its concern, as Miss Cullis made clear, is essentially about the creation of the gallery above it. The Society has also expressly pointed out (in an e-mail dated 17th June 2015) that even in relation to that, it is not raising a formal objection as such, but its concerns as they now stand are as I have set them out above, which I have carefully considered.

42. In my judgment the provision of the gallery would not mean the structure at the west end of the Church would have any significantly greater adverse effect on the character or appearance of the Church, or its significance as a building of special architectural (or historic) interest than otherwise.

43. It is true there would need to be a staircase, a balustrade, and a robust load bearing floor to the gallery rather than just an acoustic ceiling.

44. However, the balustrade and staircase would be relatively small, a ceiling would be necessary anyway if there were no floor, and all the features which would be visible without the gallery would be visible with it. I do not consider, as Dr Morrice did not in his evidence, that the addition of the gallery would in itself represent a significant additional adverse effect on the architectural interest of the Church.

45. It would, however, have the added advantage that a new spatial view into the Church to the east (and enhanced views of part of of its Norman architecture) would be opened up at first floor level, as Dr Morrice pointed out. If there is to be a ground floor meeting room, as the Society for the Protection of Ancient Buildings considers acceptable, the addition of the gallery above it would in this respect provide a benefit to those

interested in the architecture of the Church, and indeed an attractive additional view-point generally, combined with the use being made of it as part of the working Church.

46. It also seems to me that the meeting room at the west end of the Church with accompanying, largely glass fronted balcony, would appear less like a box plonked (for want of a better word) at the west end out of necessity at ground floor level, and more like something of a new architectural feature in itself, obviously modern, but with the feel more of a new feature designed to enhance the Church and its modern day use.

47. Nonetheless, as I have said above, the proposed works would cause harm to the significance of the Church as a building of special architectural interest, though in my judgment to a limited extent, as I have identified. That being so, it is necessary to turn to the fourth and fifth of the questions set out in paragraph 87 of the Duffield decision.

48. These are as follows. How clear and convincing is the justification for the proposed works? Bearing in mind there is a strong presumption against proposals which will adversely affect the special character of a listed building, would any resulting public benefit (including matters such as pastoral well-being, opportunities for mission, and putting the church to viable uses consistent with its role as a place of worship and mission) outweigh the harm? In the case of a Grade I listed building *serious* harm should only exceptionally be allowed.

49. I do not consider the works proposed fall within the category of being likely to cause serious harm, for the reasons I have set out.

50. There are two elements of resulting public benefit in this case. The first is that a view of the Church looking to the east, from a new, and higher, level would, by reason of the gallery, be opened up. This in itself would not in my view be sufficient to offset the harm, though it is an offsetting advantage to an extent.

51. The second is much more substantial. It relates to the needs of the working Church.

52. Mrs Bateson's evidence confirmed the accuracy of her witness statement (which in turn referred in part to the updated Statement of Need dated June 2015).

53. Mrs Bateson then elaborated on the needs of this particular Church in the current century, how they are unmet in relation to kitchen and toilet facilities and meeting space, and what the effects of this are, in evidence which I entirely accept.

54. She spoke convincingly about the reasons why the proposed works are necessary to revitalise the use of the Church, and what they would mean in terms of attracting and accommodating greater numbers of people, in relation to services, meetings, retreats, and other events, and also attracting and accommodating different types and ages of people to those currently attending, including children and older people, who particularly need toilet facilities, and young mothers, who also need baby changing facilities and an acoustically separate area.

55. Mrs Bateson also gave evidence, amongst other things, about school visits which had been proposed but did not occur once the absence of facilities became known, how meeting rooms were being hired some distance away, at cost, to hold meetings of various types to try to minimise the effects of not being able to hold such things at the Church, of how Easter services for some groups had to be truncated because of the absence of toilet facilities, and of how the mission of the Church was suffering in consequence of the absence of the facilities the proposed works would provide.

56. She went on to describe the need for the space the gallery would give as an area separate to the proposed meeting room, allowing for concurrent uses, including for meetings, retreats, and simply as additional space during services. Amongst other things, weddings have on occasion been lost to the Church due to lack of space for those wanting to attend, funerals have attracted numbers beyond capacity, and she described how because of lack of space more than one carol service has had to be held at Christmas for those wanting to attend (who could no doubt be expected to be even greater in number with the benefit of toilet and kitchen facilities, and better heating), and how not just the meeting room (the doors of

which could be opened as necessary) but further space which the gallery would provide is necessary.

57. All this provides a clear and convincing justification for the works now sought following amendment. In my judgment, the public benefit that would result from the alterations, including pastoral well-being, opportunities for mission, and putting the church to viable use consistent with its role as a place of worship and mission would strongly outweigh the harm I have identified.

58. It is also right to mention for completeness that the works will be reversable in the future, should that be seen as appropriate for any reason, with fairly small damage to the fabric of the building. This simply strengthens, to a small degree, the decision I have come to, though it is in no way dependent on that.

59. Accordingly, it is appropriate in my judgment for the proposals as amended to be allowed.

60. The faculty will therefore be issued. Conditions will be attached as set out in the Appendix. I consider these necessary for reasons which I hope will be self-apparent.

61. I would like to thank all those involved in helping me properly to explore this matter, and thereby come to a proper determination. In particular. I am grateful to Mrs Bateson, Dr Morrice, and Miss Cullis for their evidence, which was necessary for this to achieved.

62. As to costs, there are no formal parties to these proceedings other than the petitioners. This means there are no inter parties costs to consider and I can only direct that the Court costs be paid by the Petitioners. These must be regarded as a necessary addition to the budget for the works. I have, however, endeavoured to keep these to a minimum by avoiding anything other than paper directions and a half day hearing and view.

STEVEN GASZTOWICZ QC

14th August 2015

Deputy Commissary General

APPENDIX

The faculty granted is subject to the following conditions:

(1) The gallery is not to be used for storage purposes (although table(s) and chairs and other items for use in the gallery itself may remain there so long as they be moved to the back of it when not in use, and not stacked up);

(2) The west door of the Church shall be left uncovered within the meeting room area, and open to view, when the meeting room is not in use or about to be used;

(3) The extractor vents on the west wall must be flush with the wall so far as possible, of the minimum dimensions necessary to cover the extraction aperture required by building regulations, grey in colour, and be located in the positions shown on the photograph submitted to the Registrar by e-mail on 6th August 2015;

(4) A person approved in advance by the archaeological adviser to the DAC shall maintain an archaeological watching brief as appropriate during this project;

(5) No items of archaeological or historical interest may be removed from the church site without prior consultation with the DAC;

(6) Any human remains disturbed during the works shall be immediately covered from public view and must be decently treated and with reverence at all times Their discovery shall be notified immediately to the incumbent. They shall be labelled and preserved as an entity in locked premises until they are re-buried in the churchyard at the direction of the incumbent, in a place as close as practicable to the location in which they were uncovered;

(7) The electrical installation must comply with BS7671 - 2008 Requirements for Electrical Installations (IEE Wiring Regulations 17th edition) and the best practice set out in the Council for the Care of Churches booklet 'Wiring of Churches' ISBN 0-7151-7571-8 (1997);

(8) Photographs are to be taken internally of the west end of the Church before any works are carried out, and, following completion of the works, kept in the Church together with photographs taken from the same positions following completion.