

**IN RE THE ABBEY CHURCH OF ST PETER AND ST PAUL
DORCHESTER ON THAMES**

JUDGMENT

1. *Introduction:* The Abbey Church of St Peter and St Paul, Dorchester on Thames, is a grade 1 listed building. It is of great historical importance as it marks the site of the first centre of Christianity and the initial see of the Saxon kingdom of Wessex. Over the last 900 years it housed a Norman cathedral and then an Augustinian abbey, the primary building of which is extant and remains largely intact. It is presently undergoing an extensive renovation and restoration.

2. As part of those works attention has been turned to the main entry into the abbey. It is the petitioners' wish, supported by the parochial church council, to improve that entry into the abbey. There is no processional entry into the nave; instead entry is gained into what is called the People's Chapel. It is agreed on all sides that an improved access ought, if at all possible, to be provided especially for those who are disabled.

3. The architect, Martin Ashley, has therefore designed a new south west entrance utilising the present south door. This comprises a raised York stone platform across the west end of the People's Chapel with continuous level-floor access from the south porch; there would be only one step down onto the platform from the west door. It also comprises at its front edge two steps down to the chapel floor area with a ramp for the less ambulatory and those in wheelchairs. In addition it provides for the replacement of the present Victorian draught lobby with a more generous, primarily glass lobby. It is this replacement that has caused great concern to the Victorian Society as the lobby was introduced during the 1857-1874 restorations carried out by the site architect, JM Bignell, under the

supervision of Sir George Gilbert Scott. It therefore emanated from Gilbert Scott's office, if it was not actually designed by that eminent architect.

4. *The Hearing:* In the present case the Victorian Society initially indicated its opposition to the petition. However, when specially cited, it declined the opportunity to become a party to the actual proceedings but, rather, wished me to take its views into consideration when reaching my decision. However, having duly considered the correspondence between the society and the petitioners and bearing in mind the architectural and historical importance of the abbey itself, I considered that the question should be publicly explored in open court. I therefore directed that a hearing should take place in which the whole question could be fully aired. I am grateful to all those who have given of their time in order to give evidence.

5. *The Law The Faculty Jurisdiction:* The relevant law in relation to the faculty jurisdiction and the alteration of listed churches is conveniently summarised by Chancellor Gage in *Re St Gregory, Offchurch* [2000] 4 All ER 378. That case was concerned with the replacing of a Victorian window with a modern millennium window. The proposed alteration was therefore not as far reaching as, for example, the radical reordering of a church interior. Chancellor Gage commenced his consideration of the law at p.382b-e by citing a quotation from the decision of the Dean of Arches in *Re St Luke the Evangelist, Maidstone* [1995] Fam. 1 at p.8:

"... where a church is listed there is a strong presumption against change which would adversely affect its character as a building of special architectural or historic interest. In order to rebut that presumption there must be evidence of sufficient weight to show a necessity for such a change for some compelling reason, which could include the pastoral well-being of the church."

Chancellor Gage then usefully summarised the questions that the consistory court has to consider. He said at p.382f-j:

"... [A]s the church is a listed building the strong presumption against change which would adversely affect its character as a building of architectural or historic interest will be adhered to whether or not this is a petition for a millennium window or some more radical alteration to the church.

... [I]n cases involving a petition for a millennium window the ... question that the court will ask itself is whether the new window adversely affects the character of the building as a building of special architectural or historic interest.

[I]f the answer to the ... question is no, then the court will still need to give effect to the presumption against change to a listed building but that presumption will be more readily rebutted.

... [I]f the answer is yes to the ... question, the petitioners will need to show a necessity for change.

... [W]hen the court is considering whether a necessity for change has been proved, different considerations will apply where a window is involved than in cases involving reordering or more radical alterations. It is impossible to set out the circumstances in which the court will find a necessity proved. Each case will vary. Each should be dealt with on its own individual facts."

The same general approach, of course, applies when a court is concerned with the removal of a Victorian draught lobby.

6. In the case of *In Re St Mary the Virgin, Essendon* (2002) 6 Ecc LJ 415 it was argued before me that the correct test as to necessity is that set out by Chancellor George in *Re St John the Evangelist, Blackheath* (1998) 5 Ecc LJ 217, namely, that "necessity" is:

"... something less than essential, but more than merely desirable or convenient; in other words something that is requisite or reasonably necessary".

However, although I entirely agreed with the first part of the learned chancellor's definition, I did not entirely agree with the second. It seemed to me that the addition of the qualifying word "reasonably" fails sufficiently to reflect the requirement for a compelling reason in order to show the requisite necessity for change. The burden on the petitioners to shift the presumption is a high one.

7. *The Law Disability Discrimination Act 1994*: In fact, in the present case no-one disputes that something must (if possible) be done to provide proper access into the abbey for the disabled in the light of the provisions of the Disability Discrimination Act 1994. Section 21 of that Act states:

"(1) Where a provider of services has a ... procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides ... to other members of the public, it is his duty to take such steps as is reasonable, in all the circumstances of the case, for him to take in order to change that ... procedure so that it no longer has that effect.

(2) Where a physical feature (for example, one arising from the design or construction of the building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as is reasonable, in all the circumstances of the case, for him to have to take in order to:

- (a) remove the feature;
- (b) alter it so that it no longer has that effect...."

In the ecclesiastical context the word "services" is in no way restricted to the provision of liturgical rites (or what are usually called "church services") but, for example, embraces the opening of the church building for visits by tourists or for musical or other exhibitions. In relation to parish churches the obligation under section 21 falls primarily upon the incumbent and the parochial church council.

8. However, although these are binding statutory obligations, they do not oust the faculty jurisdiction of the consistory court. Nothing can be done without first obtaining the authority of a faculty. It is therefore in compliance with the petitioners' duty to comply with the provisions of the 1994 Act that this petition is brought.
9. It is here that there may arise a seeming conflict between the provisions of the 1994 Act and the faculty jurisdiction. This is because there may be cases where the value of a particular architectural item sought to be removed or altered in pursuance of the 1994 Act is so great that it nonetheless ought to remain unaltered for posterity; in such a case the removal or alteration would in itself be unreasonable when seen within the wider context of the national heritage. In those circumstances it would be the duty of the consistory court to rule that the presumption for its retention outweighs the argument for change based on disability discrimination. Each case, of course, will depend on its individual facts but the service provider will fulfil his or her obligation "to take such steps [under section 21] as is reasonable" by pursuing the petition to the court. Fortunately that position does not arise here as there is no suggestion that the lobby is so important architecturally or historically that no intervention should be permitted.
10. *Facts:* In the present case it is agreed that the provision of an adequate disabled access is not possible through the west door because of the various levels and the consequent length of any ramp. What is more, although already the subject of adaptation for wheelchair access, I accept the evidence of Mr Metcalf that the Victorian lobby is not suitable for modern, wide wheeled wheelchairs. Indeed this is not challenged by the Victorian Society.
11. The Victorian lobby surrounds the south door. It is made of five heavy wooden panels of equal width in the top of which there are small square glazed panels. Two of the panels are at right angles to the south wall either side of the door; a further panel is attached to each of these panels at an angle to meet the last,

middle panel which is parallel to the south wall. There is a door in each of the angled panels to gain entry into the chapel.

12. Accepting as the Victorian Society do that something has to be done to improve disabled access, they initially suggested - although there was no obligation upon them to make any proposals - that the front (or middle) panel might be made into a door so that it might swing in conjunction with one of the present doors, so providing wide enough access for a modern wheel chair. However, it then became apparent that such a double door could only swing outwards thus causing exit difficulties especially in the case of fire. The further suggestion was, therefore, made that an additional panel might be inserted in the middle of the present lobby and the two middle panels then be turned into the entrance door. There would, of course, be no door post between them as that in itself would restrict access. This would nonetheless necessitate the insertion of further glass panels at eye height both for the ambulatory and those in wheelchairs; the doors would have to swing both ways and the glass would be necessary to safeguard against injury to those approaching on the other side of the doors. Such further panels would have to be at least six in number in each of the two doors.

13. Clearly any alteration of the present lobby would mean a movement away from their original design. Indeed, if the symmetry of the present design were not to be lost, the actual size of the lobby would necessarily be substantially increased. Nevertheless, I accept that the minimum of alteration that takes place to a listed building the better. To some extent, however, it is a matter of degree. As was pointed out by Ms Padley on behalf of the Victorian Society, the insertion of the further glass panels would not be inimical to their original design in the light of the present glass panels at the top of the Victorian panels. On the other hand these must be seen in addition to the provision of a further panel with the consequent widening of the whole lobby and the alteration of the configuration of the doors.

14. Mrs Saunders, the secretary of the Diocesan Advisory Society, stated in evidence:

"The DAC would be concerned by the amount of alteration and adaptation which would destroy the integrity of the nineteenth century work and be very difficult to reverse - or be less capable of being reversed."

On the other hand Ms Padley on behalf of the Victorian Society gave evidence that in her opinion:

"If six glass panels were inserted, the character would be retained especially with the glass panels in the top. It would be more damaging to the character of the abbey if it were removed and a glass lobby provided. It is the character of the abbey as a whole that the legislation protects. The glass lobby would be out of place in the context of the west end as it exists. The nineteenth century lobby is part of the nineteenth century restoration and is important to Gilbert Scott's restoration and should be retained. I don't believe that to change the geometry would be a fundamental change. The angles would be retained. It wouldn't be such a detrimental change. We disagree with the DAC about that. "

15. I accept that such alterations would be difficult to reverse but I also accept that the general ambience of the Victorian-lobby would thereby be retained. Nonetheless, that is not the only consideration. In addition to those disabled who are restricted to wheel chairs there are also the partially sighted who are of equal importance to consider. In this regard Mrs Saunders stated:

"This lobby gives a very sudden change in light which is difficult for the eye to adapt to. In bright light this can be difficult even for those without an impairment. I don't think that the provision of glass panels solves the difficulty in the contrasts between light and dark adequately."

I note that the Victorian Society by its letter dated the 19th April 2002 sets out its belief that:

"... the visual separation created by the solid timber panels of the draught lobby enhances the experience of emerging into the powerful interior of the abbey and is an important attribute that should be preserved."

The loss of part of that solidity by the insertion of glass panels would in itself partially detract from the present ambience of the lobby but, that apart, Ms Padley did not address the evidence of Mrs Saunders as to the visually impaired. After careful consideration - and having myself inspected the present lobby in situ - I accept Mrs Saunders' contention. In my view the suggested alteration of the present lobby would meet the needs of those in wheel chairs but would add a further hazard (or, at the least, not sufficiently negate a present hazard) for the visually impaired.

16. In all the circumstances I am satisfied that, although the removal or alteration of the lobby would indeed adversely affect the character of the abbey as a building of special architectural or historic interest, the necessity for change based upon the need for disabled access has clearly been proved and outweighs any argument for its retention, whether altered or otherwise. The presumption against change has in this case been overturned. Indeed, although I regret the removal of the Victorian lobby on historical and architectural grounds, I also accept that the proposed scheme will prove a graceful addition to the architecture of the abbey as a whole. Indeed I reject the suggestion that the new glass lobby would be out of place in the context of the west end once the Victorian lobby is removed.
17. *Conclusion:* In these circumstances I therefore grant the petition as amended as to slight details on the day of the hearing. I am, nonetheless, concerned about the possibility that was stressed by Ms Padley that the lobby, once removed, would in effect be abandoned. In this regard. I remind myself that I have no crystal ball and future generations may well wish to reinstate the Victorian lobby. I also accept that the petitioners have every intention (as, indeed, they must) of retaining the lobby once carefully dismantled. Time, however, dims the memory and may lull future generations into a misapprehension of the lobby's worth.

I therefore direct that the dismantled lobby must be stored in the abbey and may not be dismantled until I have been satisfied as to how the dismantled pieces can be marked or labelled to show both their provenance and the fact that they remain the subject of the faculty jurisdiction. I appreciate that this goes only a little way to allay the Victorian Society's concerns but nevertheless it is of real importance.

18. *Costs:* Subject to any representations, the petitioners will pay the court costs and the costs of these proceedings; the Victorian Society, however, will pay its own costs. In all the circumstances I waive my own fees.

Rupert Bursell

Chancellor of the Diocese of Oxford

7 October 2002