



Neutral Citation No. [2017] ECC Oxf 1

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

Date: 16th March 2017

Before :

**THE REVEREND AND WORSHIPFUL ALEXANDER MCGREGOR
CHANCELLOR**

In the matter of :

St Luke, Maidenhead

Catherine Shelley, solicitor, for the Petitioners
The Parties Opponent in person

Heard on 6 February 2017

JUDGMENT

The Chancellor:

1. By an amended petition re-dated 29 June 2016 the Vicar and Churchwardens seek a faculty to authorise a re-ordering of the church that involves the following –
 - a. removal of a temporary office from the north aisle and its relocation to the Parish Centre
 - b. removal of a temporary choir vestry from the west end of the north aisle and relocation of storage for choir robes to the Memorial Chapel to be used for robing
 - c. creation of a new vicar's vestry in the Parish Centre (adjacent to the relocated office)
 - d. rearrangement of the west end of the church – including the removal of 6 pews – to provide additional storage, the serving of refreshments after services, and a larger meeting space than is currently provided by the parish centre
 - e. improvement of lavatory facilities to ensure proper disabled provision
 - f. improvement to lighting, heating and sound systems in the church
 - g. removal of screen panels that currently divide the Memorial Chapel and form the existing vicar's vestry.

The proceedings

2. An earlier version of the proposals was recommended by the Diocesan Advisory Committee in its notification of advice dated 20th July 2015 and those proposals were originally the subject of a petition in September 2015. The public notice relating to the original petition resulted in 26 letters of objection being received by the Registry. In the light of those objections and the fact that they appeared to indicate a strong division of views about the proposals within the parish, and having regard to FJR rule 1.4(2)(a), I adjourned the petition so that the Archdeacon of Berkshire would have an opportunity to assist the parishioners resolving their differences, so far as that might be possible.
3. Unfortunately, despite the assistance of the Archdeacon and others, for which I am grateful, it did not prove possible for the Petitioners and the objectors to resolve the matters that were the subject of disagreement between them. Following a meeting in the parish, the Petitioners proposed some minor alterations to the original plans and were given permission to submit an amended petition with revised plans to the court. This they did in the amended petition dated 29 June 2016. The amendments are not very substantial – they relate chiefly to lighting and heating arrangements – and do not go to the matters that are now in dispute. The DAC issued an updated notification of advice in June 2016 which again recommended the proposals.
4. In giving permission for the amendment of the petition I gave directions for the display of fresh public notices. I also directed that all of those who had previously sent letters of objection were to be written to and asked whether they wished to sustain their objections. In the result, there were 27 objectors. Of these, 3 opted to become parties opponent. Four letters in support of the proposals were submitted to the court.
5. It was apparent from the letters of objection, and from the particulars of objection submitted by the Parties Opponent, that there were essentially two issues in the case. First, whether the proposals were necessary or desirable; and secondly, whether they were being brought forward contrary to the wishes of a large number of parishioners as a result of inadequate consultation. I did not consider that those were matters which it would be expedient to determine on consideration of written representations instead of at a hearing. Accordingly, I gave directions for a hearing.

The hearing

6. At the hearing, which took place at the church on 6 February 2017, the Petitioners were represented by their solicitor, the Reverend Dr Catherine Shelley; Mr Richard Burdett represented himself and the other two parties opponent, Mrs Eileen Gofford and Mrs Jean Tyrwhitt-Drake. I am grateful to both Dr Shelley and Mr Burdett for putting their respective cases in a helpful way.
7. Evidence was given on behalf of the Petitioners by the Vicar, the Reverend Sally Lynch, Clare Price (a senior conservation officer for one of the national amenity societies but giving evidence in her private capacity as a regular worshipper), and Mr John Salter (also a regular worshipper at the church). The Parties Opponent each gave evidence. Evidence was also given – at my invitation – by the Archdeacon of Berkshire. In accordance with the directions given for the hearing, the witnesses' evidence in chief was set out in their witness statements. Each was given an opportunity to elaborate on what was said in their statements and was tendered for cross examination.
8. Save in respect of one matter which I mention below, there was very little dispute between the parties and their respective witnesses as to the material facts. For that reason it is unnecessary for me to set out here detailed consideration of each witness's evidence.

The facts

9. The material facts are these. The area referred to as the Parish Centre is situated at the south east corner of the church. It comprises a medium sized room and a kitchen area. There are two lavatories. This part of the church was originally vestries. Following a fire in 1991, the parish carried out a project which transformed the fire-damaged vestries into a parish centre which could be used for both the church's and for community purposes. The Parish Centre is able to accommodate groups of up to 30 people and is currently used by both church groups and non-church community groups. Larger groups are accommodated in the nave of the church.
10. The existing church office, where the church's administrative staff are based, is situated in the north aisle of the church. It is a temporary arrangement – having been authorised by an archdeacon's licence for temporary minor reordering – and it is partially screened from the rest of the church by free-standing boards. West of the church office is the area of the north aisle that is currently used a choir vestry. This is not formally separated from the rest of the church.
11. The existing vicar's vestry has been formed by partitioning off the western part of a chapel – known as the Memorial Chapel – which lies immediately to the north of the chancel. The vicar's vestry, while it has some permanent physical separation from the chapel and from the rest of the church in the form of timber screens, is open to view from the chancel and anyone in the church can easily enter it, there being openings with no doors between the vestry and the rest of the church.
12. The parish has a group known as the Reordering Group. It is not a committee of the parochial church council and was not established by the council. Membership is by invitation. The Reordering Group was established by Ms Lynch's predecessor (Ms Lynch became vicar in 2011). At that time it was chaired by a layman; it is now chaired by Ms Lynch. The Reordering Group had already been exploring possibilities for reordering the church to make the space available more flexible, and to enhance and extend the mission of the church, before Ms Lynch arrived in the parish. Ms Lynch inherited the Reordering Group and the work it had already carried out. In 2012, the Reordering Group

commissioned Acanthus Clews Architects to carry out a feasibility study which would explore options for providing vestries and permanent office space.

13. The feasibility study initially presented the Reordering Group with 3 options. Following discussion between the Group and the architects, these were revised and reduced to 2 options which were presented to the Group in April 2013. Option 1 involved placing the office in the western end of the south aisle and the choir and clergy vestries in the west end of the north aisle. Option 2 involved relocating the office and vestries to the Parish Centre and the building of a new parish centre as an extension to the north of the western end of the north aisle.
14. The two options were presented to the PCC for the first time on 2 July 2013. The PCC held a further meeting on 23 July 2013 at which a majority of its members voted to indicate a preference for Option 2. At a meeting of the PCC held on 22 October 2013, a series of 6 proposals were put to the PCC. It is not necessary to set them out here. For present purposes it is relevant to note that the PCC voted unanimously in favour of a proposal that the first phase of the reordering project should “be to provide an appropriate parish office in order to fulfil the requirement of the current Archdeacon’s licence [i.e. the licence for the temporary office in the north aisle which was soon due to expire]”. It also voted by a majority of 12 to 5 (with 1 abstention) for a proposal that “the parish office and vestries be located in the current Parish Centre, and that, with time, a new space be built external to the church, but linked to it, to provide for full church and community use”.
15. At a meeting held on 14 July 2014, the PCC agreed that Option 2 should be carried out in 3 phases. Phase 1 included the proposals for relocating the vestries and office. Phase 2 involved proposals for improved disabled access. Phase 3 included the construction of a new Parish Centre. The architect was instructed to prepare plans and these were displayed in the church during the summer of 2014 and comments were invited from worshippers. Tender documents were sent out in November 2014.
16. At a meeting held on 13 January 2015 the PCC learned that the tender returns were 60% more than the indicative costings provided by the architect. The minutes of the next PCC meeting – held on 24 February 2015 – indicate that there had been a meeting of the Reordering Group since the last meeting of the PCC and that a decision had been taken “to discontinue with [sic] the external projects and to revise plans and costings using the building’s current footprint”. Although it is not entirely clear, the relevant minute appears to say that it was the Reordering Group which took the decision to abandon the external aspects of the plans – i.e. the construction a new parish centre. In any event, it is clear that by 24 February plans for a new parish centre had been abandoned but the plan to relocate the office and vestries would be proceeded with.
17. The Annual Parochial Church Meeting was held on 12 April 2015. At that meeting – as a result of a question being put by a member of the electoral roll – the meeting was informed that the proposed re-ordering would involve the loss of the Parish Centre. A motion that the meeting require that the Parish Centre “continues to occupy the whole of its current location during the re-ordering of the church” was put to the meeting but was not carried.
18. An open meeting for parishioners and worshippers was held on Saturday 30 May 2015. Revised plans prepared by the architect were made available on the day of this meeting. These plans indicated that instead of a new Parish Centre, the area at the west end of the church would be used to accommodate activities that currently took place in the Parish Centre.

19. The following day, the PCC resolved (by a majority of 15 to 1) to approve the revised plans and to submit them to the DAC. Those were the plans in respect of which the DAC issued its notification of advice dated 20 July 2015. The PCC resolved to petition for a faculty at its meeting on 29 September 2015. The requisite public notice was displayed and the petition submitted. As mentioned above, that public notice elicited 26 letters of objection.
20. Following my direction adjourning the petition, the Petitioners held a meeting with 5 of the objectors on 6 January 2016 in an attempt to revise the plans in a way that would meet the concerns of those with objections.
21. A public meeting was subsequently held on the afternoon of 5 April 2016 at which the architect and the DAC Secretary showed the 50 people present the plans and explained them. The PCC met that evening and resolved by a majority of 15 to 3 to proceed with the faculty petition, subject to some minor changes of detail. Having been informed of that outcome, I gave further directions. The revised plans were submitted to the DAC which issued its further notification of advice and the amended petition was resubmitted on 1 July 2016.

The Petitioners' case

22. The case for the Petitioners is set out succinctly in paragraph 14 of Dr Shelley's skeleton argument. The Petitioners say that the proposals would provide significantly improved office accommodation which would be safer and more secure and which could be used at the same time as activities were taking place in the church. They would provide a vicar's vestry that benefited from privacy for seeing people at the church for confidential conversations, and to prepare for services in privacy. The tidying up of the west end of the church would provide increased space for community use as compared with the Parish Centre and enable the church building to be used for a wider range of purposes than at present. The proposals would also result in due course in the restoration of the whole of the Memorial Chapel to its original use.

The Parties Opponents' case

23. The Parties Opponent have set out their case in a helpful way in their skeleton argument. They say that the proposals would reduce the existing usable spaces in the church – the Parish Centre and the nave – from two to one and reduce the current flexibility of use. The Parish Centre is more suitable for some of the smaller groups and some would no longer use the church facilities if the only option available was to use the nave for their activities. They are of the view that it is better for the parish office to be in the church itself as it means the church can be left unlocked. The kitchen would remain where it currently is (i.e. in the Parish Centre) but food would no longer be consumed there but in the church instead – something they consider to be bad design. The Parties Opponent do not accept that the improvement which relocating the office and vestry will have for those who use them outweighs the loss of the Parish Centre facility to the wider congregation and community. They are concerned about a reduction in the overall provision of storage space. They point out that there are currently no proposals as to what furniture would be used in the area of the church which is to be available for community use. And they make a number of other points of detail.
24. The other area of contention is concerned with the process by which the proposals were formulated and the petition came before the court. The Parties Opponent say that the existence of the Reordering Group and the way it operates has made it difficult for the PCC to exercise its role in taking decisions effectively. They are concerned about the way in which proposals were put to the PCC. They object to the fact that no active consideration was given to alternative proposals, once it became apparent that the costs of the reordering

would be significantly higher than expected and that the construction of a new Parish Centre would not be affordable. In particular, they object to the fact that no plans for the accommodation of the office and vestries within the body of the church – by dividing the western ends of the north and south aisles from the rest of the church – have been prepared for consideration alongside the proposals which are being pursued.

25. The Parties Opponent object to the way in which proposals have been communicated to the congregation at large, in particular that the abandonment of the aspect of the proposals for a new Parish Centre was not communicated to the congregation until the annual parochial church meeting on 12 April 2015. They are concerned that inadequate time was provided for such consultation as did take place and that the PCC was hurried into taking decisions before its members could give adequate consideration to the views expressed by the wider congregation. They object that communication with the congregation often took place only after relevant decisions had been taken. They also raise concerns that there are inaccuracies in the information provided in the petition.
26. In response, the Petitioners say that the plans for re-ordering were considered at 24 PCC meetings between 2 July 2013 and 24 May 2016 and at an open meeting on 30 May 2015. They point out that a questionnaire was distributed in the parish in May 2013, that the proposals were aired in sermons and notices to the parish both at services and in the weekly pew sheets. The plans were displayed in the church. Meetings were held with the objectors and open meetings were held.

The legal approach

27. The church is a grade II listed building. Neither the statutory bodies – the DAC and Historic England – nor the relevant national amenity societies – the Victorian Society and the Twentieth Century – have raised objections to the proposals. The DAC's advice is that the works are not likely to affect the church as a building of special architectural or historic interest. The Parties Opponent do not seek to argue otherwise.
28. I accept the view of the DAC. That being so, I find that the proposals would not result in harm to the significance of the church and the balancing exercise provided for in *Re St Alkmund, Duffield* [2013] Fam 158 is not applicable. The principal question is therefore whether the Petitioners have discharged the burden on them to show that the proposed changes will make things better than they are (*Peek v Trower* (1881) 7 PD 21).

Would the proposed changes make things better than they are?

29. The present arrangements in the church are unsatisfactory and unsustainable. To some extent that is self evident. The office facility was introduced under an archdeacon's licence for temporary minor reordering. That licence has expired. The makeshift nature of the office arrangement is such that it is unlikely that a faculty would be granted to authorise it to continue.
30. I also consider that the arrangements for the vicar's vestry are unsatisfactory. The vicar's vestry lacks the degree of privacy that the vicar can reasonably expect for such a facility – both in terms of her personal use of the vestry and as a place where she can hold confidential conversations of a pastoral nature. It is also insecure.
31. The existing arrangements for the choir vestry are less problematic than the arrangements for the office and the vicar's vestry but they are not ideal as the area used for this purpose is not formally separated from the rest of the church.

32. The proposals would provide a permanent office for the church's administrative staff. In that regard I was impressed by the evidence of the Archdeacon of Berkshire. I agree with her assessment that the church administrators have been provided with sub-standard conditions in which to work. I was also impressed by the Archdeacon's explanation as to how the provision of proper office facilities would assist in furthering the mission of the church. She said that it was a mistake to regard the church office in purely functional terms. She pointed out that the church building enabled the building of relationships with people. It was vital to provide a warm, welcoming environment which was not itself seen as part of the sacred space: she described what was needed as 'liminal space'.
33. The proposals would also provide a private vicar's vestry. The Archdeacon said that provision of a separate vicar's vestry should not be thought of as simply being for the convenience of the vicar. The clergy spend a great deal of time building relationships with individuals, whether in planning and preparation for the occasional offices, or simply being someone for people to talk to, especially the bereaved and the hopeless. The clergy were discouraged from holding meetings of this nature in the parsonage house. They needed to take place in space that was more public, where other people were likely to be around. The space provided needed to offer comfort, warmth and security to enable the clergy to exercise what the Archdeacon described as "this vital ministry".
34. The arrangements for the choir would be improved to a certain extent by facilities for the choir to robe being moved into the Memorial Chapel.
35. The Parties Opponent did not challenge the need for these new facilities. But it was their case that the facilities could be provided by dividing off the western ends of the north and south aisles to provide separate areas. (These were referred to as 'pods' by some of the witnesses.) That would mean – as the Parties Opponent point out – that new facilities would be available, while the Parish Centre could continue to be used as at present, thereby avoiding a loss of flexibility in terms of the uses to which the building as a whole can be put.
36. It was on that basis that the Parties Opponent argued that the Petitioners had not discharged the burden of proving that the proposals would make things better than they are.
37. There was a certain amount of disagreement as to whether the DAC had or had not advised against the creation of the pods. The Petitioners' evidence was that the pods were not a viable option; they would be opposed by the amenity societies and did not have the support of the DAC. The Parties Opponent took the point that alternative proposals for the creation of the pods had not been worked up and that it was therefore impossible to say that they were not likely to be acceptable on heritage grounds.
38. I do not need to resolve this particular issue. The proposals I have to consider – and in respect of which I have to apply the test in *Peek v Trower* – are the proposals which form the subject matter of the petition. There is no general obligation on petitioners in the consistory court to demonstrate that they have examined alternative means of meeting their requirements. It may be the case where the balancing exercise set out in *Duffield* falls to be applied, and where proposals would result in harm to a church as a building of architectural or historic significance, that the existence of an alternative, less harmful, means of achieving the desired result will be material to the questions that the court has to decide. But that is not the case here, there being no argument that the proposals would result in such harm to the church.
39. The question here is whether the proposals will make things better than they are. I accept that in answering that question the court does not simply look at the positive benefits that

would arise from implementing the proposals; any disadvantages that would arise also need to be taken into account. But that does not mean that petitioners have to demonstrate that they have given detailed consideration to a (potentially unlimited) range of alternatives before deciding which proposals to adopt. Nor does it mean that the petitioners need to adopt proposals that would result in the “best possible” outcome. Quite how a best possible outcome could be objectively judged is not clear. But in any event the relevant legal test in a case such as this is simply whether the proposals would make things better than they are.

40. The Parties Opponent have very fairly pointed out that these proposals would result in a disadvantage. The church currently has two areas that are available for meetings and community events: the Parish Centre and the church itself. If the proposals are implemented it will have just one such area; the Parish Centre will be put to different uses which would mean that it was no longer available. The Parties Opponent argue that this loss of the Parish Centre would deprive the church of something which facilitates its mission.
41. I accept that a certain amount of disadvantage would result from the loss of the Parish Centre facility. There are likely to be at least some groups who currently use it who would not be happy using the church itself. It would also cease to be possible for two different meetings or activities to take place on site simultaneously.
42. The way in which a parish chooses to allocate its resources in the furtherance of its mission, and what priority it gives to one way of doing so as against another, are primarily decisions for the minister and the parochial church council. The incumbent and the PCC, by a clear majority, support the allocation and priorities which find their expression in the proposals that are the subject of the petition. They have explained why they take that view and that view is independently supported by the Archdeacon. The view they have taken cannot be said to be unreasonable. It is not for the court to substitute its own view as to what the parish’s mission priorities should be and how, therefore, it should seek to allocate its resources.
43. It seems clear to me that the advantages of the proposals clearly outweigh the disadvantages. For the reasons given by the Archdeacon, the church needs a proper office facility and a vicar’s vestry from which the vicar can carry out vital aspects of her ministry. Although flexibility would be lost, a wide range of meetings and other activities will be able to take place in the church.
44. So far as other aspects of the proposals are concerned, they were not seriously in issue and there is no real dispute that they would make things better than they are.
45. In the result, I find that the proposals taken as a whole would make things better than they are and that the Petitioners have therefore discharged the burden that lies on them.

Consultation

46. A further substantial aspect of the case for the Parties Opponent is concerned with the consultation process which led to the proposals being adopted.
47. The relevance to faculty proceedings of consultation and its adequacy was considered in this court by Chancellor Bursell in *Re St Mary’s, White Waltham (No. 2)* [2010] Fam 146. The relevant paragraphs of the judgment are as follows:

8 I entirely accept that consultation is not a tick box exercise and that it ought to be undertaken in a spirit of openness and in an attempt to reach the right and fair result. It is also important in my view as a vehicle by which the proposals are brought before the widest possible audience. However, a court must be careful not to elevate a recommendation, such as that put forward in the

1993 Code, into a strict requirement of law, such as is required by rule 3 of and Appendix B to the Faculty Jurisdiction Rules 2000 (SI 2000/2047). Having said that, I also accept that the question of consultation is one that I can properly take into account when exercising my discretion: see *In re St Mary Magdalene, Clitheroe* (1990) 2 Ecc LJ 64; *In re St Margaret's, Prestwich* (1990) 9 Consistory and Commissary Court Cases, case 4; *In re St Anselm, Belmont* (1990) 2 Ecc LJ 65; *In re St Mary the Virgin, Bathwick* (2005) 24 Consistory and Commissary Court Cases, case 26. Moreover, in *In re St Mary the Virgin, Hayes* (2003) 22 Consistory and Commissary Court Cases, case 30 Goodman Ch was faced with a situation where such consultation by the petitioners as had taken place fell short of that recommended in *Making Changes to a Listed Building—Guidelines for Clergy, Churchwardens and Parochial Church Councils* (January 1999). The chancellor said, at paras 66-67:

“66. I agree with the view expressed by Cameron QC Ch in *In re Emmanuel, Northwood* (1985) 5 Ecc LJ 213 when she said that the congregation should be kept informed through the parish magazine or an informatory leaflet as each question is examined, and that there should be an opportunity for the congregation to consider the results of each examination before any final decision is made by the PCC [parochial church council]. She concluded: 'A petition should not be presented until full consultation has taken place. This does not mean that the PCC has to secure unanimous support before a petition is presented, nor that it has to jeopardise parts of the scheme to try to meet objections if those parts are regarded by the minister and the PCC as important in promoting in the parish the whole mission of the church. The matter has then to be put to the test in the consistory court.'

“67. That said, the circumstances in this case are unusual to say the least, in that the proposals have been under active prosecution for the past five years, during which [time] there was a planning appeal, many parishioners writing to the inspector in support of the PCC and some in support of the objectors. The details of the proposals have been the subject of constant discussion in the parish and the PCC led by the rector and the churchwardens have been fully aware of the objectors concerns. As a result I am satisfied that I now have a clear picture of the needs the PCC wish to meet, the extent to which that can be achieved at the church itself and the effects the extension will have on the building and the churchyard. I therefore consider that I am in as good a position to give judgment in this matter as I would have been if the PCC had originally followed the guidance offered by the Rule Committee and *The Churchyards Handbook*. I am also satisfied that in these unusual circumstances, there has been more than adequate advertisement of what is proposed.”

9 I consider later the evidence on the question of consultation but in my view in the particular circumstances of this case all parishioners must have been aware of the petition brought by the petitioners quite apart from the publication of the public notices. That awareness and the public notices have, of course, prompted opposition by three parties opponent and also by a large number of objectors whose views I must also take into account. This in itself demonstrates the strength of opposition to the petition within the parish. However, for the reasons set out in the appendix I have not taken into account the letters and e-mails from those who have written in support of the petition nor the views expressed in support during the first interlocutory hearing.

10 At first blush this may seem unfair; however, in the circumstances I do not think that is actually so. This is because these proposals have had the support of the parochial church council virtually unanimously since 2005. The parochial church council represents the body of the parishioners and, if any parishioner objects to the decisions it has taken, it is open to that parishioner to seek election to that body and to endeavour to overturn the support for the petition. It follows in the circumstances of this case that I am entitled to accept the views of the parochial church council as representing the views of the silent majority of the parishioners. Bearing in mind the votes cast by

the parochial church council since 2005 I have come to the conclusion that the objectors represent a vociferous minority within the parish.

48. As a decision of this court, Chancellor Bursell's decision so far as it establishes the applicable law is binding on me. I would not, in any event, take a different view even if it were open to me to do so.
49. Consultation is not a strict requirement of law: a failure to consult will not automatically result in a petition being dismissed. But the question of consultation is one which the court should take into account in the exercise of its discretion. This is of some potential significance because, provided a proposal is lawful, the consistory court always retains a judicial discretion whether to authorise the proposal. It does not therefore automatically follow from the fact that the applicable legal tests are met by the petitioners – in this case the test in *Peek v Trower* – that a faculty will issue. It is in principle open to the court to find that proposals would make things better than they are but nevertheless to decline, in its discretion, to grant a faculty on the basis that consultation has not been carried out; or that such consultation as has been carried out was inadequate.
50. Consultation – whether in the context of faculty proceedings or in other contexts – is not simply about informing people what it is proposed to do. The provision of relevant information is necessary but it is not sufficient. The usual requirements as to consultation – whether the duty to consult is imposed by statute or arises from a legitimate expectation of being consulted – are as follows:

First, that the consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third, that adequate time must be given for consideration and response, and finally, fourth that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.

These requirements were formulated and advanced in argument by Stephen Sedley QC (as he then was) in *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168 at 189, and were adopted by Hodgson J in his judgment in that case. They have recently been endorsed by the Supreme Court in *R(Moseley) v Haringey London Borough Council* [2014] 1 WLR 3947.

51. I accept that incumbents and parochial church councils are not in the position of government departments or local authorities; they do not have anything like the resources of those bodies and their functions are very different. Nevertheless, the substance of the requirements for consultation set out above should form the basis for the way in which PCCs go about consultation where significant proposals are being formulated. As the Court of Appeal said in *R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts* [2012] EWCA Civ 472, paragraph 9, these requirements are “a prescription for fairness”. If a consultation does not in substance meet these requirements it cannot, as a matter of principle, be said to amount to a fair or effective consultation.
52. So far as the present case is concerned, I accept that there have been serious efforts to inform the worshipping congregation of the proposals and to obtain their support for them. There were two open meetings, plans were displayed in the church and comments invited. Sermons were preached about the proposals.
53. Nevertheless, there were significant shortcomings in the process. It was on 14 July 2014 that the PCC decided to proceed with ‘Option 2’ in three phases. That decision included a

decision that as the office and vicar's vestry were to be relocated to the Parish Centre, a new parish centre would be built on the north side of the church. The decision was vague as to the timescale within which that aspect of the proposals would be implemented but that there would be a new parish centre was a significant element of the proposals which were to be proceeded with. It was on those proposals that the worshipping congregation were consulted, with plans being displayed in the church and comments sought. It was on those plans which the PCC went out to tender in November 2014.

54. It was only in January 2015 that the PCC became aware that there was a serious problem with the cost of the proposals as they had been formulated. By February the aspects of the plans which involved the construction of the new parish centre had been abandoned and the decision had been taken to proceed with the relocation of the office and vestries without any facility for a parish centre, i.e. the proposals which (subject to minor revisions) are now before the court.
55. That meant that the proposals that were adopted were not proposals which had been consulted on. In omitting any provision for a new parish centre they were substantially different from what had been consulted on.
56. There was subsequent interaction with the worshipping congregation at the Annual Meeting in April 2015. This was initiated by a member of the congregation rather than by the PCC. Nothing resembling consultation with the congregation was undertaken until the open meeting in May 2015. But the relevant decision had been taken 3 months earlier. Ms Lynch accepted in evidence, there was probably no opportunity for the wider congregation to express views on the proposals which omitted the provision of a new parish centre before those proposals were adopted.
57. The consultation which took place on the present proposals failed to meet the requirements for consultation established in the *Gunning* case set out above.
58. The proposals were no longer at a formative stage when consultation took place in May 2015 or subsequently. The relevant decision had been taken by February 2015.
59. The consultation that was carried out also failed to meet the requirement that adequate time must be given for consideration and response. The PCC reaffirmed its decision in respect of the proposals only the day after the open meeting in May 2015. The time provided for consideration and response was even less than that in April 2016 when the PCC met on the evening of the day on which the public meeting had taken place, and decided to proceed. In neither case was the time for consideration and response by those who were being consulted anything like adequate. Nor was there adequate time for any responses to receive proper consideration.
60. For all of those reasons, I am compelled to the conclusion that the process by which the PCC decided to adopt the current proposals did not amount to adequate consultation.
61. The inadequacy of the consultation seems to be connected with a further feature of the process which I consider to be unsatisfactory. Although decisions were taken by the PCC, the exercise by the PCC of its proper role was hampered by the separate existence of the Reordering Group.
62. The principal function of a parochial church council is "co-operation with the minister in promoting in the parish the whole mission of the Church, pastoral, evangelistic, social and ecumenical" (section 2(2)(a) of the Parochial Church Councils (Powers) Measure 1956).

The members of parochial church councils are the charity trustees of the PCC's assets and the conduct of the charity is their collective responsibility. Not every parish group needs to be constituted by, or be a committee of, the PCC. An incumbent can call on whomsoever he or she wishes to assist in, or to provide advice on, the exercise of the cure of souls. The churchwardens can call on other members of the laity to assist them in carrying out their duties. But it is vital that the PCC itself should be involved in the development of proposals which significantly affect the life and mission of a parish, and in proposals which will involve the PCC in considerable expenditure. The PCC should not be left to decide whether or not to adopt proposals that emanate from elsewhere and in the formulation of which it has had only a marginal role. For a PCC to be in that position means that it is unable properly to exercise its statutory duties. It also means that its members are not properly able to exercise their responsibilities as charity trustees.

63. Regrettably, that appears to have been the case here. The Reordering Group did not fit into the governance structure of the parish. It was not a committee of the PCC. To whom it was accountable, if anyone, was unclear. It appears that it was the Reordering Group rather than the PCC which took the real decision in early 2014 to abandon the element of the proposals that involved the construction of a new parish centre and to proceed with the remainder of Option 2. The PCC was brought into the process but the minute of its meeting held on 24 February gives the clear impression that the crucial decisions were being taken elsewhere.
64. The fact that the Reordering Group was not integrated into the governance structure of the parish, and the absence of accountability by it, can only have exacerbated the deficiencies of the process which led to the formulation of the proposals. It would also appear to have contributed to the lack of confidence in that process which is clearly shared by a significant proportion of the worshipping congregation.
65. The question for the court is what effect those matters should have on the exercise of the court's discretion.
66. The consultation, for the reasons given above, was substantially deficient. I do not believe that this was deliberate. I do not believe that it was part of an attempt to prevent people expressing a view or from knowing about what was going on. One of the Parties Opponent was a member of the Reordering Group. People were doing their best to do the right thing as they saw it for the church's mission in the parish. Ms Lynch inherited the arrangements involving the Reordering Group; she did not create the situation. But the lack of adequate consultation was nevertheless serious.
67. Against that, I have found that the proposals would have very clear advantages for the parish. I have also found that those advantages clearly outweigh the disadvantages which would arise from the proposals. I note that the current situation, at least as regards the office, cannot continue.
68. I attach particular weight to the evidence of the Archdeacon who has been able to bring an objective view to the matters involved.
69. I also note that notwithstanding the lack of adequate consultation, the proposals have the support of a very clear majority of the PCC. In that regard I apply what Chancellor Bursell said in the *White Waltham* case about the parochial church council representing the body of the parishioners and that if any parishioner objects to the decisions it has taken, it is open to that parishioner to seek election to that body and to endeavour to overturn the support for the petition. In the light of that, I am entitled to – and do – accept the views of the parochial church council as representing the views of the silent majority of the parishioners

70. Nevertheless, this case comes very close to being one where I might decline to exercise the discretion to grant a faculty because of the lack of adequate consultation.
71. I am in the end persuaded that a faculty should issue. Better provision for an office and vestries needs to be made. I cannot see any advantage to the parish as a whole in requiring the PCC to begin the process of formulating proposals from scratch.
72. I should though make it clear that I expect the consultation carried out in relation to any subsequent phases of the reordering to meet the requirements as to consultation set out above. I also expect all significant stages in the development of the proposals to be undertaken by, or under the auspices of, the PCC rather than by a group existing separately from the PCC.

Decision

73. A faculty is to issue, subject to minor conditions which will be specified in the schedule to the faculty. Unless representations are submitted by a party within 14 days of receipt of this judgment, the order for costs will be that the Petitioners pay the court fees and that there be no order as to costs between the parties.