

IN THE CONSISTORY COURT OF THE DIOCESE OF WAKEFIELD

GEORGE PAUL ALFRED GUIVER AND PETER GEORGE ALLAN

Petitioners

On behalf of the Community of the Resurrection

And

HARRIET GORE Respondent

JUDGMENT

1. The hearing of this petition took place on 30th October 2010 in the church of the Community. The hearing lasted from 10.30am until 4.30pm, and the court heard from the Senior Fr. George Guiver and the Respondent (Party Opponent) Harriet Gore, as the only live witnesses as to fact. The petition was supported by the Archdeacon of Pontefract in live evidence, and the court saw a statement of support from the Visitor, Bishop Graham James of Norwich. The Court had also read the very detailed Skeleton Arguments and Statements of all the parties, together with the informal respondents' letters, and the comments from interested parties who wished to make representations, but who did not become Parties Opponent. The Court also had the benefit of the statements and matters exhibited by the architect and the heating engineers Arup.
2. The Court sat in cold conditions because of the lack of any heating in this Grade 11 listed building, and those observing the hearing from the choir stalls showed obvious signs of discomfort.
3. The initial preliminary argument was raised by the Petitioner in reply to an application by the Respondent, which raised the question of the "interest" (if any) of Fr Guiver and his colleague to bring the petition at all, in view of the existence of the company status of the Community. The Petitioners had always questioned the interest of the respondent, but had earlier conceded an interest on "the fringe of acceptability". The point was made however, by the Court itself, that the question of interest was capable of decision by the court, regardless of ownership by a company or anyone else, as a matter of discretion. The argument was not then pursued by the Respondent, whereupon the petitioner accepted that the court could and did rule that both parties had adequate interest to proceed.
4. The respondent made lengthy and rather unfocussed points in cross examination, and in the course of her own evidence, and was allowed the liberty of twice the amount of time allowed by the timetable for the hearing, in order to allow her to make whatever points she wished to make.

5. The respondent's interest was limited in the early stages of the Petition process, to the question of the removal and re-siting of two tombs, one of which contained (possibly) the remains of Bishop Gore, to whom she was distantly related, but only by marriage. The other tomb contained the remains (possibly) of Bishop Frere an early founder with Bishop Gore of the Community. The Respondent had no other connection with the church, nor had she previously visited, except on one occasion in May 2010 and after notification of the hearing. The Respondent indicated in evidence that other members of the Gore family might be unhappy with the removal of the tombs, in spite of the fact that emails produced in evidence from a senior member of the family, and inferentially in other emails by other family members indicated that they did not oppose the proposals for the tombs. The Court was satisfied to the required standard that anyone who might have an interest in the tombs as owners had made no claims of any sort, and that the balance of the evidence showed lack of opposition.
6. The Respondent's initial concern seemed to be the question of the removal of the tombs, but as the case developed on paper, she clearly decided to extend her interest to other parts of the proposals. Her final position was that she objected to the proposals to move the tombs, to level the floor, to provide heating and lighting, and to remove the choir stalls and screen.
7. The Respondent cross examined Fr Guiver in some detail and gave extensive evidence. The thrust of her objections was that heating was unnecessary as comfort was an improper consideration for monastic brothers, and that the York stone flooring should be retained, in spite of the fact that the heating system could not work properly with the York stone in position. The choir stalls and screens, she said had an African connection and should be retained, in view of the Order's African work. The floors should not be levelled as the brothers had endured the variations of level for many years and that no real hardship was occasioned.
8. The case for the Petitioners in brief was that the church had become abandoned for want of proper lighting and heating and sound equipment, that the floors were dangerous and had resulted in accidents, some serious, to visitors and brethren alike. They contended also that the condition of the floors required disabled brothers to have separate sacramental services, and that they were unable to participate in the life of the Community in an appropriate manner e.g. processions and liturgical movement. The evidence of the architect incorporating the work of the heating engineers, which was read unchallenged, was that the under-floor heating suggested was the most appropriate for the building, and that its installation required levelling and removal of the stone floor.
9. This judgment will now deal separately with the matters which were contested:

The two tombs

The two Bishops' tombs are situated at either side of the High Altar. They are chest tombs, and they either contain the cremated remains of the Bishops (who were the founding members of the Order), or they cover the area of floor in which the ashes have been interred. There is a considerable lack of clarity as to exactly what the position is. If the ashes are in the chest, then, if removed, will need to be interred in the ground, and it is proposed that the chest tops, bearing the inscriptions will be laid on the ground, slightly raised to allow them to be seen. The remains of one of the Bishops had already previously been moved from the Resurrection Chapel.

The tombs are clearly of importance in that they are significant monuments, whether empty or not, of two important figures in the heritage and history of the Order and the Church. Their removal would allow the church to accommodate more worshippers (probably about two rows of seats on each side,) over a relatively small area. It was argued by the Petitioner that their removal would obviate the "block" on the view of the High Altar from those in a seated position (although the tombs themselves are not very high), and further, that it would allow the full beauty of the arch under which they sit and the general architecture, to be seen more clearly. It was far from clear to the Court how the beauty of the architecture was diminished by their presence. The Respondent in one of her written arguments, quoted Lord Coke describing in early cases the importance of monuments made to significant personages, and the powerful justification required to remove them. He described the erection of memorials as "a last act of charity" to the significant personage. In re St Margaret's Earham, the court described the erection of personal monuments as "a privilege sparingly conceded and only in exceptional circumstances." In the course of final argument the court itself raised the question of whether the removal of the monuments amounted to simply a convenience, rather than the "necessity" required by the principal case of St Helen Bishopgate (which created the questions setting the precedent for changes to listed buildings), but no further persuasive arguments were forthcoming from the Petitioner which caused the court to conclude differently. In the Court's view, the case for the removal of the tombs has not been proved by the Petitioner to be any more than a convenient extension to congregational seating (and a small one at that) and not a sufficient reason to justify the removal of such important monuments, particularly given the law on the question as outlined above.

The tombs must therefore remain and no faculty will issue for their removal.

Underfloor heating, lighting and sounds systems, levelling of the floors throughout the building and removal of the York stone flooring.

These topics are conveniently dealt with together as they are connected.

The architect's evidence on this topic was challenged by the Victorian Society and the Twentieth Century Society as being an unnecessary step in that it required the removal and levelling of the floor, and suggested that other methods should be preferred and investigated. The Church Buildings Council, although initially concerned about the proposed designs to be "painted" on the floor, were satisfied that it was a sensible option, and took the view that provided that the "designs"

were not persisted in (they were in fact withdrawn before the hearing) they would not object. English Heritage were concerned to attach conditions to the layout of the floor, but in broad terms accepted the proposals, particularly after negotiating some changes. The Diocesan Advisory Committee approved the plans, subject to conditions as to detail.

The Respondent indicated that heating and lighting should be a minor consideration for those called to a monastic life, and since it included the necessity of removing the stone flooring, (which she also contested) declared it unnecessary. The Court took into account the views of those not appearing as Parties Opponent in coming to a conclusion, and also the views of the Respondent, but came to the conclusion that the unchallenged evidence of both the architect and the quoted views of the engineers involved, provided the best available type of heating for the conditions in the church. The references in the Victorian Society's representations that under-floor heating was unsuitable because of possible attraction of damp to old buildings, were countered satisfactorily by the expert evidence produced, to the effect that these contentions related only to buildings of greater age than this one, and the Court accepted that view as being correct.

The written evidence of the architect had produced a series of comparators which dealt with the various available systems, providing the advantages and disadvantages of each. The final conclusion was that the best system was underfloor hot water piping, which required to be laid on an insulation bed, and then covered with ceramic tiling. The York stone when coupled with the insulation would a) inhibit the flow of hot air upwards, and b) would cause the weight of the floor to be so great as to require structural work to support the ceiling of the Lower Church. The views of the Victorian and Twentieth Century Societies were that the removal of this stone was not conservation led, and that it amounted to harm to the appearance of a building of this vintage. The Church Buildings Council and the English Heritage regretted the loss of the stone floor, but conceded that the reasoning of the architects could not be faulted to any great degree. The Respondent averred that the stone flooring was part of the heritage and history of the church, and that as it was probably excavated close to the church itself, one could hear the resonances of those working the stone in the building itself. This argument was weakened somewhat by evidence that the stone was in fact mined about 40 miles north of York, and that very good hearing would be required to pick up resonances, in view of the very considerable distance intervening.

The levelling of the floors was required in the Petitioner's contentions, to prevent accidents to visitors (some of which had occurred on occasions), to allow a) the disabled brothers (of which there are many) to take part in processions around the church, b) to celebrate the sacraments with their fellow brothers in the same service rather than in a different area, c) to allow the ordained brothers to celebrate the Eucharist themselves, and d) to comply with the legislation which prevents discrimination on the basis of disability.

The statement made by the Visitor to the Community, Bishop James, dealt with the importance of a monastic church and its differences from a parish church. The Ministry of the Community involves the attendance of diverse groups at pilgrimages, special services, retreats etc. The needs of the brothers required an ability both to worship together as part of a community, and to be involved in the training of potential ordinands, in liturgy and sacramental theology, in the attached theological College..

The Court took into account the differing voices of those who chose not to become Parties Opponent, and in particular the view of the Victorian Society that the series of changes of level throughout the church was a gradation of rising levels, towards the Chapel of the Resurrection. This was a substantial part of their argument. This was weakened however on close examination of the plans of the original designer, Tapper, which showed that it was originally envisaged by him that a screen should be erected behind the High Altar, which would have the effect of removing any view of the Resurrection Chapel or its gradations of level, from the rest of the building. This suggests that the reason for the different levels was possibly rising ground, rather than any particular design of the architect.

In addition, because entry to the church is effected close to the East End, there is room for confusion as to which is the High Altar, and precisely what the status of the Chapel of the Resurrection is. In fact the Resurrection Chapel has the nature of a Lady Chapel, but in the present arrangement, is sometimes seen as the area of the High Altar. It is unlikely therefore that the levels were seen as an aesthetic or spiritual gradation, and that their removal therefore is of less importance.

As a matter of simple observation any gradations of level are not visible from the nave area or the choir area, even without the originally proposed screen.

Objection was also taken by the Amenity Societies to the necessary exposure of the bottoms of the pillars, with the lowering of the floor level. However the Court had evidence of other similar situations encountered by the architects which made it clear that this was a problem easily overcome.

No real point was taken by anyone as to the lighting or sounds systems.

The Choir Furniture

The evidence of the Superior was that the choir stalls and screen were an anonymous gift in memory of a previously deceased brother, whose identity or connections could not be traced other than his Christian name. The Community had added to the gift from their own funds when the choir stalls were installed in the 1950s. The Amenity Societies largely regretted the loss of what appeared to be good quality furniture, but it was apparent that the Superior's evidence of the discomfort suffered by those who had to use them for many hours a day, was demonstrated adequately by those sitting all day in the hearing. Consideration had been given to adapting the stalls to make them more convenient and comfortable, but the expense of so doing was said to be out of scale and not any real improvement. The Church Buildings Council hoped that the furniture would be put to use somewhere in the building or reused elsewhere.

The Respondent's view was that the stalls represented the work done by the Order in Africa, and therefore should be retained symbolically of that fact. The brothers should also be able to rise above discomfort. It was however, pointed out that the work of the Order was in a very different part of that Continent than the area from which the wood came, and from a very different part from that which the Respondent herself originated, (in spite of an apparent claim to an African interest on her part).

Articles donated in memory of others (if only in part) clearly require examination as to their place in the heritage and history of the building. The Court was satisfied that proper enquiries had been made to attempt to establish any claim to ownership or interest, which had produced no result, and that in any event the Community had itself contributed largely to the cost. The screen which presently shields the choir from the congregation, who sit in the rather attenuated nave, also has the effect of removing the congregation even further from the High Altar and from the sacramental events taking place. Whilst the furniture is of good quality, it cannot be said to be of long association with the church because of the date of installation, and is clearly inappropriate for present use.

Gallery,

The present gallery is very narrow and accommodates a small organ. It is the Community's plan to buy a larger organ which is needed for increasingly large congregations on occasions, and also to use the gallery for a choir. The extension by one bay was not opposed by English Heritage or the Church Buildings Council, and was mentioned only in passing by the Respondent.

The remaining proposals were uncontested except as to detail, and not opposed by the Respondent or the Amenity Societies. The Petitioners had made extensive changes to their plans in order to accommodate objections from English Heritage and the Church Buildings Council. The Diocesan Advisory Council had been consulted on a regular basis throughout the life of the proposals and their recommendations had been complied with.

Sacristy, altars, lower church, lifts, fonts and other alterations were not the source of any contention and will be the subject of a faculty.

The Law

The court was referred by both parties to the Bishopgate questions, referred to above, as extended and modified in later cases. In re St Helen's Bishopgate (unreported but noted in 1993) Cameron Ch (as she then was,) set out the relevant test:

The Court should first ask itself a) whether the Petitioners have proved a necessity for some or all of the proposed works, either because they are necessary for the pastoral wellbeing ...of...the church, or for some other compelling reason. The second question is then b) whether some or all of the works adversely affect

the character of the church as a building of special architectural or historic interest?

If the answer to the second question is “Yes,” then the question arises “is the necessity proved in question 1 such that in the exercise of the court’s discretion, a Faculty should be granted for some or all of the works?”

It was accepted on all sides that the question of “necessity” was the required standard. It was also accepted that pastoral considerations can be a balancing factor when faced with proposals which will fundamentally and possibly adversely affect a listed church. The question as to whether the works in this case would be “adverse,” depends on the view taken as to whether the Victorian Society and the Twentieth Century Societies views are correct on that point.

The relevant fourth question which should be posed in this case is “Whose need is to be considered?” This building is not an average parish church but a community serving a very diverse collection of members of the public as pilgrims, visitors and worshippers, in addition to the regular use by the brothers themselves for their own offices, and the teaching and training of others in liturgy and theology. The requirements of the Disability Discrimination legislation require the need of both brothers and public to be considered, as does the monastic need of brothers acting in community of worship and liturgy.

“Necessary” has been construed as being something more than merely convenient or desirable, but less than essential, i.e. something that is requisite or reasonably necessary. (St John the Evangelist Blackheath 5 Ecc L 217) The strong presumption against change in listed buildings which undoubtedly exists, can be rebutted by pastoral wellbeing needs, or other compelling reasons.

Conclusions

This church is almost completely abandoned as a monastic centre for worship, in spite of the fact that it attracts considerable numbers of students to its College, and in the past, pilgrims and visitors, and large numbers of worshippers at high festivals. It is also a monastic centre whose life is centred on the offices, and the particular mode of life of a monastic community, e.g. processional liturgy in which all can be involved. At the present time, many of its members are incapable of living a communal life of worship, are unable to take part in the celebration of the sacraments or liturgical processions together, and for the general public there is the lack of access for those who are disabled, as well as the disabled brothers themselves. The pastoral reasons for allowing the changes are, in the court’s view, overwhelming, and there are reasons which are wholly exceptional which allow the changes proposed. Faculties will therefore issue subject to conditions dealt with later.

The question of reversibility also arises. Whilst a reversion to its present form would be expensive and time consuming, it is not impossible. If future generations wished to re-instate the original levels of the flooring, then it would be perfectly possible, if difficult and expensive. I direct that photographs of the church as presently constructed be taken and kept available for viewing. In addition, photographs of the choir furniture should similarly be kept. The stone flooring, unless it can be re-used elsewhere can be sold in order to reduce the cost of the works, but the choir furniture must be disposed of to another church (I understand that there is possibly one in the wings) or if not should be stored either in whole or in sections, should any future chapter wish to restore them to use.

The strong necessity is for this church to be restored to proper use both for the brothers , students and the general worshipping congregation, and this necessity is such as to permit the alteration of a listed building.

The details of the work as it progresses must be overseen by the Diocesan Advisory Council at each stage of the work. The conditions previously suggested by them should be adhered to, together with any future suggestions. The faculty which the Court will issue will include all the matters which have not been in contention, but were prayed for in the original petition, together with the matters in contention (except for the tombs). The Faculty will be regarded as an “umbrella” Faculty, and each stage of the work should be submitted to the court for approval, (particularly the design and colour of the ceramic floor in different areas). The advice of the Diocesan Advisory Council should accompany each submission.

Costs

The normal rule in faculty hearings is that the Petitioner (even if successful) should pay the costs. However, in the event of an Appeal, the normal rule is that an unsuccessful Appellant pays the costs.

The Petitioners must therefore pay the court costs and their own costs.

In addition, since the Respondent has been partially successful, reasonable costs of accommodation and travel should be paid to her by the Petitioners. However if any claim is made for preparation of the case by the respondent, those costs should be taxed, following an indication by the Chancellor as to what proportion (if any) should be allowed. The Respondent did not have the opportunity to argue costs in view of the judgment being reserved, and so the court will order that she shall have the opportunity to argue the matter on paper (no more than two foolscap pages) within 7 days of the receipt of the Judgment. The reason for taxation is that the court was satisfied that much of the argument was irrelevant, unnecessary and unreasonable. The question of such preparation costs will be considered if and when such an application is made.

His Honour Judge Paul Downes

Chancellor

6th November 2010