

**Neutral Citation Number: [2023] ECC Lon 3**

**IN THE CONSISTORY COURT**

**DIOCESE OF LONDON**

**In the matter of St James's Piccadilly, Faculty Petition Number 4458**

**-and-**

**In the matter of a petition of the Reverend Lucy Winkett (Rector), Deidre Hetherington (Churchwarden) and Claire Millicent Wright (Churchwarden)**

**-and-**

**In the Matter of Major Works including Re-Ordering and the Churchyard**

**Judgment of the Chancellor, October 16, 2023**

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**Etherington Ch:**

1. By Public Notice of July 24, 2023 and by faculty petition number 4458 (undated, because the form in its concluding section has not been correctly reproduced) the Petitioners (the Rector and Churchwardens) seek permission to carry out the following works:
  - (i) Reordering works to the church and surrounding site consisting of the reintroduction of the church south door on an axis with Duke of York Street and the creation of an internal lobby.
  - (ii) Replacement of the fibre glass spire and reinstatement of corner pinnacle spires to the tower.
  - (iii) Repairs to the exterior of the church.
  - (iv) The installation of air source heat pumps.
  - (v) Alterations to the pews.
  - (vi) Redecoration of the church interior including refurbishment of the church organ, enlargement of the basement area to create new lavatories and storage space.
  - (vii) Alterations to the Piccadilly building consisting of extensions to its east and south sides, the installation of a lift and the creation of a new third

floor whilst its ground floor will be converted into a cafe with direct access from Piccadilly.

- (viii) The removal of railings along Church Place. The removal of the current link building between the church and Piccadilly building and the erection of a timber canopy to cover the route between the church and Piccadilly building.
- (ix) Conversion of the Jermyn Street building into a new rectory with a new mansard roof above the existing to provide additional accommodation and alteration of the ground floor to create a pedestrian access route from Jermyn Street.
- (x) Erection of a new thatched pavilion building in the south-west of the churchyard. Re-landscaping of the site including the creation of a new ramp.
- (xi) The excavation of trial pits and other opening up works ahead of these building works and other works as described in the plans and drawings.

2. I shall refer hereafter to the new thatched pavilion as the Garden Building.

3. The Diocesan Advisory Committee (DAC) recommended the proposed works to me on July 27, 2023 with the following provisos:

- (i) Drawings at a scale of 1:10 of the proposed new south and north-east lobbies need to be submitted to the DAC.
- (ii) Drawings at a scale of 1:5 of the proposed pew treatment and finish details need to be submitted to the DAC.
- (iii) Details of how the monuments, organ, font and reredos will be protected during the building works need to be submitted to the DAC.
- (iv) Details of where monuments will be relocated need to be confirmed with the DAC.
- (v) Details of how the monuments will be cleaned need to be submitted to the DAC.
- (vi) Details of the Air Source Heat Pumps, wiring routes, service trenches and other M&E details throughout the site need to be submitted to the DAC.
- (vii) Details of the new spire need to be submitted to the DAC.

- (viii) Details of any new metalwork and gates around the exterior of the site need to be submitted to the DAC.
- (ix) Samples of materials, cladding and roofing need to be submitted to the DAC.
- (x) Samples of materials, cladding and roofing material of the new mansard roof need to be submitted to the DAC.
- (xi) The source of the pavilion thatching needs to be confirmed.
- (xii) How the pavilion thatching will be protected from fire needs to be confirmed.
- (xiii) Apprentices must be involved with the thatching of the new pavilion building.
- (xiv) If the church decides to use an alternative material instead of thatch then details of the alternative material along with revised drawings and plans need to be submitted to the DAC.
- (xv) Drawings at a scale of 1:20 of the proposed ramp need to be submitted to the DAC and the new ramp should match the existing as closely as possible.
- (xvi) Drainage details at the west side of the church must be submitted to the DAC.
- (xvii) Details of the junctions and drainage between the church plinth and the new surface levels must be submitted to the DAC. A written scheme of investigation must be submitted to the Diocese for its approval before works commence.
- (xviii) If charnel is found during the building works it should be reinterred or dealt with according to the incumbent's wishes.
- (xix) Any uncovered burials or graveyard features should be adequately recorded and reported.
- (xx) A faculty will be required for the exhumation of any burials.

4. I note therefore that although the DAC does recommend the works to me there are 20 provisos drawn to my attention and most of these refer to the DAC having a lack of sufficient detail provided to them, so that whilst I am prepared to grant this faculty (subject to consideration of the thatched roof on the Garden Building) in principle there will be an unusually large number of Conditions.

5. Wide consultation was undertaken, but there is one remaining issue of contention and that is the proposal to use thatch for the Garden Building which is objected to by the Society for the Protection of Ancient Buildings (SPAB) who do not wish to become a Party Opponent but who ask for me to take their views into account.
6. The works therefore divide into those which involve the church itself (which are not the subject of objection) and those in the churchyard that include the Garden Building with thatched roof.
7. This, and many aspects of the works, have been the subject of a planning application which was granted on February 10, 2023 and, *inter alia*, approved the erection of the single storey garden building in the churchyard.
8. In my judgment, a good deal of what would constitute the legitimate interests of the consistory court have been considered, addressed and approved with numerous conditions by the planning authority. Indeed, I note that sensibly some consultees directed their submissions more to the issue of the planning application than the issue of granting a faculty.
9. The churchyard would appear to be a disused burial ground (“DBG”). A DBG means any burial ground which is no longer used for interments, whether or not the ground has been partially or wholly closed for burials under the provisions of a statute or Order in Council (Disused Burial Grounds Act 1884, Section 2).
10. In Form 1A (Standard Information (parish churches etc)), the Petitioners state that the churchyard or burial ground is consecrated and that it has been used for burials, but is no longer used for burials and was closed by Order in Council on August 8, 1853. There are no graves identified as war graves by the Commonwealth War Graves Commission.
11. Under the 1884 Act, it shall not be lawful to erect any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting house, or other place of worship (Section 3). Accordingly, under the 1884 Act the Garden Building would have been *prima facie* unlawful.

12. The Disused Burial Grounds (Amendment) Act 1981 excluded the 1884 Act in certain cases provided either no interments had in fact ever taken place in the land in question or no personal representative or relative of any deceased person whose remains had been so interred during the preceding fifty years immediately before the proposal to erect a building had objected and maintained the objection in accordance with the procedure set out in the Act.
13. Similar provisions were reproduced in the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 by virtue of Section 18A, which came into force on April 1, 2015.
14. Finally, the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 as of September 1, 2018 provided that the consistory court of a diocese may grant a faculty for the erection of a building on a DBG which would otherwise have breached the 1884 Act if either no interments had taken place on the land during the preceding 50 years from the date of the petition or there had been no objection from a permitted objector if any interments had taken place within that 50 year period.
15. I am satisfied from the information provided and the Registry's search of the records that there have been no interments in this DBG within 50 years preceding any point in the last five years. It is, however, important for this reason (as well as others) that the petition is properly dated.
16. SPAB's concerns were set out in an email of January 31, 2023 in these terms.  
*"The Committee was unanimous that thatch would not be an appropriate material in this location. It was felt that the strongly vernacular character of a thatched building would be incongruous in the urban environment of the churchyard and the Committee noted that the precedent examples were mostly located outside urban areas. The Committee commented that thatch was a high-maintenance material that would need replacing every 30 years, possibly more often as decay might be accelerated in what is a relatively dark area of the churchyard. The fire risk was felt to be underestimated. Lastly, the Committee highlighted the difficulty in obtaining thatching materials in the UK,*

*which might mean that sustainability claims based on locally sourced thatch could be difficult to deliver. The Committee did not object to the principle of a building in the churchyard, but suggested that consideration be given to alternatives such as a light weight timber building with a shingled or tiled roof.”*

17. On May 11, 2023 SPAB emailed again after reading the response of the Petitioners. SPAB makes it clear that its “*principal area of concern...was the use of thatch for the new churchyard building*” and says that the response did not sufficiently alleviate its concerns. It asks whether the further investigation of fire risk referred to in the thatcher’s report has been carried out and whether the parish has investigated the cost and availability of insurance for a thatched building, Nor, said SPAB, was it able to provide reassurance of sourcing thatch/water reed within the UK. SPAB makes clear, however, as I would expect given its remit, that its principal concern was what it terms to be the strongly vernacular character of a thatched building in an urban environment.

18. On July 4, 2023 SPAB made these points again emphasising that the churchyard presented as an urban churchyard in its view and emphasised that in a recent report Historic England stated that the demand for water reed thatch in England far exceeded the indigenous supply. Thus, the contentious issue relates to the proposed use of thatch on the garden building. There is no identified dispute as to the need for the building itself nor in respect of the building (other than the thatch) affecting deleteriously either the churchyard or the architectural and historical significance of the church. In those circumstances, a discussion of significance and need in the conventional sense guided by the particular considerations of *In Re St Alkmund, Duffield* [2013] Fam 158 would not be helpful.

19. SPAB’s concerns are that:

- (i) The principal concern: namely that the use of thatch on the garden building would adversely affect the character of the churchyard or church;
- (ii) The thatch may present a fire risk and has been inadequately assessed;
- and
- (iii) Indigenous thatch may be difficult or impossible to source.

20. The objection raised in respect of fire subdivides into these aspects: (i) the risk of fire generally, (ii) the risk of arson and (iii) consequent risks such as difficulties that may arise in obtaining insurance. The further issues raised in respect of the suitability of thatch are (i) the risk that indigenous thatch will be unavailable, although the consequence of such an eventuality is not particularly discussed and (ii) that it may last for 30 years at best and probably less.

21. The Petitioners say that they have taken seriously the risk of both fire generally and arson specifically and that there are a number of measures that can be taken. They say of the indigenous thatch that it may be that they cannot source it, but that they should be given the opportunity.

22. My judgment is that these considerations are perfectly proper observations for a consultee to make although perhaps at the fringes of SPAB's remit since the building itself is to be a new building and SPAB's concern about the visual impact of the thatch is sufficiently set out in its principal objection (the visual objection). The Garden Building has been the subject of a successful planning application. The risk of fire is better considered by the planning authority. Arson is clearly a consideration and should be mitigated as far as is possible. If the Petitioners cannot source indigenous thatch or obtain insurance then that may be a bar to their using thatch (particularly the insurance requirement) but that is a bridge to be crossed. Conditions can adequately deal with those potential problems. The question of the durability of the thatch is a matter for the Petitioners in my view. It is they who will have to replace or refurbish it and they who will have to maintain it.

23. The real issue that SPAB raises is, notwithstanding planning permission, the contention that the thatch roof would deleteriously affect the character of the churchyard or the architectural and historical significance of this famous church.

24. I do not consider that a proper case has been made out that the use of thatch on the Garden Building will adversely affect the character of either the churchyard or the church itself. I accept that preferences will differ and that not everyone will be attracted to thatch which is unusual in an urban setting. I do

not consider, however, that this can be raised to a level of saying that the churchyard or church will suffer as a result. The Garden Building is a single storey building. It is a new building. It is not part of the church or physically connected to it. I understand that SPAB has strong feelings about the particular feature of the thatch and I have taken this into account with particular care as I have with all of SPAB's observations.

25. Thus, given the Planning Authority's clear understanding of this area in terms of conservation and given my assessment that the feature of one thatched roof on this modest single-storey new building will not have any deleterious effect on the churchyard and the church, I see no basis for refusing that aspect of the petition and, accordingly, I grant the faculty as prayed.

26. I impose the following Conditions:

Where any proviso of the DAC has already been complied with then any Condition drawn from proviso is satisfied.

- (i) Drawings at a scale of 1:10 of the proposed new south and north-east lobbies must be submitted to the DAC.
- (ii) Drawings at a scale of 1:5 of the proposed pew treatment and finish details must be submitted to the DAC.
- (iii) Details of how the monuments, organ, font and reredos will be protected during the building works must be submitted to the DAC.
- (iv) Details of where monuments will be relocated must be confirmed with the DAC.
- (v) Details of how the monuments will be cleaned must be submitted to the DAC.
- (vi) Details of the Air Source Heat Pumps, wiring routes, service trenches and other M&E details throughout the site must be submitted to the DAC.
- (vii) Details of the new spire must be submitted to the DAC.
- (viii) Details of any new metalwork and gates around the exterior of the site must be submitted to the DAC.
- (ix) Samples of materials, cladding and roofing must be submitted to the DAC.



- (x) Samples of materials, cladding and roofing material of the new mansard roof must be submitted to the DAC.
- (xi) The source of the pavilion thatching (Garden Building) must be confirmed and must be indigenous unless the court has ruled otherwise. If the church decides to use an alternative material instead of thatch then details of the alternative material along with revised drawings and plans must be submitted to the DAC.
- (xii) The plans to protect the pavilion thatching from fire be confirmed *and* the existence of insurance against fire for that building and its roof must be confirmed with the DAC. I do not impose as a Condition that “Apprentices must be involved with the thatching of the new pavilion building” but the Petitioners are asked to bear this in mind as highly desirable if it is reasonably possible;
- (xiii) Drawings at a scale of 1:20 of the proposed ramp must be submitted to the DAC and the new ramp must match the existing one as closely as possible.
- (xiv) Drainage details at the west side of the church must be submitted to the DAC.
- (xv) Details of the junctions and drainage between the church plinth and the new surface levels must be submitted to the DAC. A written scheme of investigation must be submitted to the Diocese for its approval before works commence.
- (xvi) If charnel is found during the building works it should be reinterred or dealt with according to the incumbent’s wishes.
- (xvii) Any uncovered burials or graveyard features should be adequately recorded and reported. The Petitioners are reminded that a faculty will be required for the exhumation of any burials.
- (xviii) The petition must be dated and re-served on the Registry, although I permit the Faculty to pass the Seal on the understanding that the dated petition will be re-served within 21 days from the date of the faculty.