

**IN THE CONSISTORY COURT
OF THE DIOCESE OF CARLISLE**

RE ST JAMES STAVELEY

**JUDGMENT
delivered on 28 July 2022**

Introduction

1. In 1856 the old Kendal parish was re-organised and in 1858 Revd William Chaplin became the first vicar of the new parish of St James Staveley [‘the Church’]. Although, according to Chaplin’s obituarist, the church was in a poor state of repair and the congregation described as ‘small and spiritless’, by contrast Staveley was prosperous and by 1863 Chaplin had raised enough money for the building of a new church, largely through the benefaction of a local landowner who had a strong sense of duty towards the local community. So it was that the Church was built in 1864-5 to replace an earlier church, St Margaret’s which was demolished apart from its tower.
2. The Church was designed by the Manchester based architect J S Crowther predominantly in the gothic style. It consists of a nave without aisles and a chancel flanked on the south side by the vestry and organ chamber. It has rubble walls of local stone with window reveals and other masonry trim of sandstone. The chancel reflects the influence of the Arts and Crafts Movement. The east window was designed by Edward Burne-Jones and William Morris and installed in 1881. The main entrance to the Church is at the south west corner with a projecting porch. In 1993 a small kitchen and toilet annex was added to the existing building.
3. In 1952 the parish became a united benefice with Kentmere and in 1993 a larger united benefice was created with the parish of Ings.
4. The Church is listed Grade II and its Legacy Record, published by English Heritage, describes it as follow:

‘Parish Church 1864-5 by J S Crowther. Roughly coursed slate rubble with sandstone dressings, graduated green slate roof with stone ridge and copings. Five bays to nave, three to chancel. Small bell turret to west end. Gabled porch in south side with pointed-arched openings and cross; pine inner door with decorative hinges in pointed-arched

openings. Listed for light East window: glass by Morris & Co. after designs by Burne-Jones. Centre light shows Crucifixion over Ascension with angels, side lights three tiers each of single angels against a background of dark blue with stars. In memory of David Harrison d 1878.'

The Petition

5. By their Petition dated 26 April 2021 Shanthi Thompson, the incumbent, and Margaret Farnall and Katherine Morris, the churchwardens [together described as 'the Petitioners'], sought a faculty to undertake the following works, namely:
 - 5.1. Installation of outer doors to the church porch;
 - 5.2. New floor paving and internal notice boards;
 - 5.3. Replacement of the current doors with a new inner door; and
 - 5.4. New access arrangements for those with reduced mobility and associated steps, handrails and lighting.

As appears below it is in fact proposed that the current timber doors be retained and a glazed door inserted immediately in front of the same.

6. Tenders for the said works obtained in 2020 estimated the cost of the proposed works at £ 70,074 including vat and a contingency.
7. The justification for the said works was expressed thus in the Statement of Needs. The Church serves the thriving and vibrant village of Staveley, a working community with a wealth of services, shops, and businesses on the main access route into the Lake District National Park. There are some 1700 residents albeit with a slight bias towards an older age profile. Since both the Roman Catholic and the Methodist churches have closed in recent years, the Church seeks to be a community church, welcoming and valuing all those who attend. The Church is open daily and is frequently visited. It has a regular attendance each Sunday of about 40 persons and there are numerous other activities either at the Church or within the joint benefice. It engages extensively across the wider community.

Prior consultation

8. In mid-2019 and prior to the filing of the Petition, the Petitioners had consulted both the Victorian Society ['VS'] and the Diocesan Advisory Committee ['DAC'].
9. In its email sent on 12 July 2019 VS responded as follows:

'The Statement of Needs highlights a need to provide a more inviting welcome to the building and to improve energy conservation. We acknowledge and appreciate the desire for both, but we are not convinced that what is proposed is either the best way of achieving it, or - in the case of the nature of the welcome - that it would necessarily achieve it at all. Moreover, the motivation for glazing in both inner *and* outer openings is unclear.

I was lucky enough to visit the church around a year and a half ago, at which time I was grateful to have the opportunity to sit in the porch, a space that was neither inside, nor

quite outside either, and which feels, as a result, both unique in the context of the building and comfortable and informal in a way that the interior cannot be. It offers shelter and welcome, but without being strictly inside the building. And, of course, that is precisely the sort of space porches were generally intended to create. It is a liminal space; a middle-ground; the part of the building providing passage from inside to outside. Spatially the present porch is defined by the notable wideness of its entrance and an inherent generosity of the space within. In our view the very openness and spatial qualities of the porch are what make it welcoming, and to install glazed doors could only undermine that quality, particularly if it is the intention to keep them closed most of the time, when instead of an open entrance, one would be presented with a solid barrier. Alternatively, if it is the intention to keep them open when the church is in use, one might reasonably question the need for them at all.

The historic timber doors within the porch are very attractive indeed and we would, I'm afraid, object strongly to their disposal.

Has the option of an internal draught lobby been considered?

The regrading of the ground outside the church is surely uncontentious: the level difference between the present paths and the floor inside the porch is small, and addressing it need not require any significant interventions.

- 10.** On 5 August 2019 there was a meeting between some members of the DAC and the two churchwardens and the church architect. At such meeting it was noted that:
 - 10.1.** the Parochial Church Council ['PCC'] was keen to replace the inner porch doors with wood-framed glass doors to improve head retention and to enable people to see inside the church, to make it feel more welcoming and to let in more light;
 - 10.2.** the intention was to make the porch a more comfortable area, especially for those awaiting special services;
 - 10.3.** the disabled access would be from the side entrance and would prove a gentle, ramped slope with paving to match the existing; and
 - 10.4.** VS had expressed concerns as to the door proposals.
- 11.** At such meeting the DAC representatives welcomed the step-free access proposals and the general principle of introducing glazed doors but it was agreed by all that the existing attractive timber entrance doors could be retained as had been suggested by VS. Such could normally be held in the open position but closed at night for reasons of security. The DAC representatives preferred that the inner and outer doors of the porch opened outwards. It was agreed that the church architect would produce new drawings incorporating the suggestions made at such meeting.
- 12.** On 2 September 2019 the church architect advised the DAC that following such meeting the PCC had agreed that the existing timber entrance doors would be retained and that a second glazed door be installed immediately in front thereof so that when the Church was open the existing timber doors would be open and the new inner glazed door and the external glazed doors would provide a weather proof lobby and allow

visibility into the Church. The amendment to the proposed works was illustrated in a further drawing.

13. Although VS's concerns as set out below significantly relate to the replacement of the existing timber doors by glazed doors, this seems to be based on a misunderstanding in that although it was initially proposed that the existing timber doors should be removed, the current proposals involve the retention of such timber doors but the placing of a glazed door immediately in front of them.
14. The original drawings also correctly show two glazed doors at the outside entrance to the porch opening inwards, the existing porch floor taken up and replaced by York stone slabs, a regraded path leading to some steps to enter the porch with handrails at each side and a regraded path at one side for direct disabled access to the porch.

The support of the PCC and DAC

15. The proposed works, now amended, were unanimously supported by a resolution of the PCC on 12 December 2019.
16. At its meeting on 5 September 2019 the DAC recommended the proposed works on condition that ventilation was incorporated in the lobby.
17. A Public Notice identifying the proposed works was displayed between 18 March 2021 and 16 April 2021. There were no objections in response thereto.

The Special Notice and the responses thereto

18. On 2 June 2021 I directed that Special Notice of the application for a faculty be given to Historic England ['HE'], VS and the Church Buildings Council ['CBC'].
19. On 14 June 2021 HE responded thus:

'Our specialist staff have considered the information provided and do not wish to offer any comments. It is not necessary for us to be consulted on this application again, unless there are material changes to the proposals.'

20. On 5 July 2021 CBC responded thus:

'It seems a shame to lose the existing doors which are attractive and quite possibly contemporary to the church. They could be fixed open during the day and provide additional security when the church is closed. However, the Council does not object to the proposals and wishes the parish every success in making the church accessible.'

I have already noted that the revised proposed works involve the retention of the existing timber doors.

This echoed the point made at the meeting with the DAC in favour of retaining of existing timber doors, the merit of which has been recognised by the PCC.

21. On 26 July 2021 VS filed particulars of objection which I will refer to below. On that day I ordered that the Petitioners should within 6 weeks file and serve on VS their response to VS's objection and that I would thereafter decide whether there should be an oral hearing rather than a determination on the basis of written representations. I stated that I inclined to the former as I did not know the Church and it would be easier to understand the respective contentions if I was present at the Church.
22. On 10 August 2021 the Petitioners filed a response to which I refer to below.
23. On 13 August 2021 I directed that there should be an oral hearing on 2 October 2021 at which both the Petitioners and VS should attend so that there could be a detailed evaluation of the matters raised by VS.
24. By an email sent on 8 September 2021 VS stated that it did not wish to appear at any hearing but asked that I should take into account its objection in determining the application for a faculty. As hereinafter appears, I have done so.
25. No hearing was therefore necessary but before determining this application I visited the Church. I indicated that representatives of VS were welcome to attend but no such representative attended.

The legal context for my determination

26. Before considering the merits of the representations made by VS, it is important to set out the legal context in which I am required to make my decision.
27. In determining whether I should grant a faculty, the burden of proof lies on the Petitioners who propose a change in the status quo by undertaking the proposed works and they are required to satisfy me on the balance of probabilities that it is appropriate for me to grant the faculty sought. Although the views expressed by the PCC as to the proposed works are of considerable weight, particularly when there is unanimity, there can be no presumption that such views will inevitably prevail because that would usurp my function as Chancellor to decide applications for faculties and the discretion which I am required to exercise in so doing.
28. In the case of a listed Church, and of course this church is listed, until 2012 the appropriate test for determining the petition was to adopt the questions first posed by Cameron Ch, as she then was, in *Re St Helen Bishopsgate* (1993) 3 Ecc LJ 256 and approved by the Court of Arches in *Re St Luke the Evangelist Maidstone* [1995] Fam 1. Such questions were:
 - (1) Have the petitioners proved the necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of the parish or for some other compelling reason?
 - (2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?
 - (3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?

29. This approach had the disadvantage of requiring the court to determine what constituted a 'necessity'. In *Re St John the Evangelist Blackheath* [1998] 5 Ecc LJ 217 George Ch, as he then was, suggested that in the context of the *Bishopsgate Questions* 'necessity' meant 'something less than essential but more than merely desirable or convenient ... something that is requisite or reasonably necessary' and such an approach was followed by other chancellors.

30. In *Re St Alkmund Duffield* [2013] Fam 158 the Court of Arches considered the *Bishopsgate Questions* and stated:

'87. In our opinion chancellors should be freed from the constraints of the *Bishopsgate* questions. We have much sympathy for the view of Chancellor McClean in *Re Wadsley Parish Church* (2001) 6 Ecc LJ 172, at para 24, that there is a danger of imposing an unduly prescriptive framework in what is essentially a balancing process. For those chancellors who would be assisted by a new framework or guidelines, we suggest the following approach of asking:

1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
2. If the answer to question (1) is 'no', the ordinary presumption in faculty proceedings 'in favour of things as they stand' is applicable and can be rebutted more or less readily, depending on the particular nature of the proposals ... Questions 3, 4 and 5 do not arise.
3. If the answer to question (1) is 'yes', how serious would the harm be?
4. How clear and convincing is the justification for carrying out the proposals?
5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *St Luke Maidstone* at p.8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2*, where serious harm should only exceptionally be allowed.'

31. I shall endeavour to apply the principles set out in *Duffield* to the facts of this case.

The proposed works

32. I have already set out the detail of the proposed works and the PCC's justification for such works as set out in the Statement of Need.

33. I now turn to consider the representations made by VS, the responses thereto by the Petitioners and my determination in respect of such representations.

Victorian Society

34. VS's objection to the proposed works may be summarised thus:

- 34.1.** The installation of glazed doors would introduce an unwelcome modern element into what is a well-preserved 19th century church and would alter the character of the church and the impression given to those arriving, and, as such, harm the significance of a listed building. The installation of such glazed doors would frustrate the Petitioners' aim of making the church building more welcoming to worshippers and visitors.
- 34.2.** The porch as it is, by its generous proportions and openness, is inherently welcoming. Enclosing the porch with glazed doors would physically deter people from entering the porch and thus the church because glazing is never invisible and the reflections caused by glazed doors would deter visitors. The lack of welcome would be increased by the removal of the existing benches. Opening the doors in daylight hours to mitigate these adverse effects would invalidate any justification for their installation
- 34.3.** The issue of draughty timber door which the Petitioners seek to replace could be solved by the provision of an internal draught lobby.
- 34.4.** The replacement of the current timber doors with new inner doors would harm the significance of a listed building since the doors are original and are described in the listing as possessing 'decorative hinges' which are a fine feature and add interest to the building. VS point out that the project architect had pointed out that it was possible for these historic timber doors to be retained even with a new interior glass door.
- 34.5.** The replacement of the existing porch floor was unjustified and would constitute harm to the significance of a listed building.
- 34.6.** VS accepted the need for improved access to the Church but believed that the proposed works would unnecessarily harm the significance of a listed building, would be invasive and would damage the semi-rural churchyard setting of the building by the addition of ramps, steps, railings and lighting and would harm the significance of this well-preserved and substantially unaltered Victorian church. VS believed that the required access could be achieved by gently building up the ground in front of the porch to be level with the floor of the porch which be a simpler and inexpensive solution.
- 35.** I add that:
- 35.1.** part of VS's objection relates to the removal of the existing timber doors which is not pursued by the Petitioners; and
- 35.2.** the Petitioners do not expressly say what will happen to the existing benches in the porch. My expectation is that, once refurbished, such benches will remain in the porch or that other appropriate seating will be provided.

The response of the Petitioners

- 36.** In response to the VS, the Petitioners stated as follows:
- 36.1.** We believe St James' Church needs to be developing as a modern forward-thinking community if we wish the church to survive. The [DAC] have accepted our plans and we have had no adverse comments from [HE] or [CBC]. There is an example of doors like the ones we wish to install at the Parish Church of Holy Trinity, Kendal which is a Grade I listed building.

- 36.2.** The glazed doors would give a sense of openness and welcome which the present doors do not provide; we would suggest that they provide the complete opposite. During daylight hours the doors would be unlocked so visitors could continue to be welcomed. Even when the inner door is locked the outer doors could be left open for access to the porch, and for those wishing to gain refuge particularly in the winter months and the outer doors would provide an additional means of shelter. The inner door can be opened inwards and outwards and there would be room for seating within the porch as we appreciate people do sit in this area before a wedding or funeral as well as at other times.
- 36.3.** An internal lobby was considered as an alternative way of conserving heat but would by necessity have to be quite large to follow building regulation requirements for accessibility and would severely impact upon the space within the nave which is already quite small. In our opinion, and that shared during conversations beyond the PCC, the installation of a lobby would detract from the ambience of the church interior.
- 36.4.** Our plans include the retention of the existing wooden doors in their present position.
- 36.5.** The stone slabs which form the floor of the porch are most likely the original and after 156 years of wear the surface is breaking up and becoming more uneven. It is possible that the slabs could be reversed and reused but their condition cannot be established until they are lifted and inspected. The cost for the work must be made on the assumption that replacement will be required.
- 36.6.** The suggestion to gently build up the ground in front of the porch does not seem to take into account that the porch entrance is at an intersection of three pathways and that the proposed solution is designed to accommodate both the varying levels and to provide a safe approach for wheelchairs, pushchairs and mobility scooters, with space available for the latter to be safely parked. The proposal has been specifically designed to compensate for the interacting angles that would be produced by simply raising the levels of each pathway.
- 36.7.** There is a balance between a building and developing Christianity within a community and we believe our plans provide a welcoming, accessible, safe, and more environmentally friendly, in relation to heat loss, answer. Clearly the congregation could opt to move to a building that is already more suited to providing a warm and inviting environment but the wish is to continue to enjoy the most excellent church that we have. Neither the PCC nor the Staveley community would wish St James Church to become yet another derelict symbol of Christianity.

Conclusion as to the merits of the application for a faculty

- 37.** I apply the test set out in *Duffield* as set out above.
- 38.** Given that the revised proposed works include the retention of the existing timber doors, which seems to have been the most significant objection raised by VS, I have to consider whether all the other matters raised by VS, in particular the installation of the new glazed door immediately in front of the existing timber doors, the exterior glazed doors to the porch, the re-flooring of the porch and the provision of ramps, steps,

railings and lighting, would result in harm to the significance of the church as a building of special architectural or historic interest.

39. For some of the reasons given by VS, I am satisfied that such, particularly the installation of glazed doors to the porch, would result in a degree of harm but I am completely satisfied that the seriousness of such harm is very low.
40. In such circumstances I am required to ask myself how clear and convincing is the justification for the proposed works which will result in such a very low degree of harm to the significance of the church as a building of special architectural or historic interest.
41. I have carefully considered the justification put forward by the Petitioners for the proposed works and I am wholly satisfied that they have made a clear and convincing case for the proposed works to be undertaken for the following reasons:
 - 41.1. The glazing of the porch is something which has already been authorised in other locations, even at the Grade I listed Holy Trinity Kendal. The PCC has carefully thought out what it wishes, has amended what it proposed in the light of comments made by the DAC and are supported by the CBC [their only comments was about the existing timber doors which are not to be removed] and by HE. In particular I reject VS's contention that the glazing of the porch will undermine its value as a welcoming space: indeed, I think that the reverse is the case.
 - 41.2. Given that the existing timber doors are to be retained, thereby preserving an attractive feature which may well be contemporaneous to the erection of the Church, I can see no harm in there being a glazed door immediately in front of such doors. Such glazed door will have the double benefit of allowing the inside of the church to be seen when the Church is open and creating a weather-proof lobby.
 - 41.3. The whole purpose of the proposed works is to encourage church attendance by providing a more welcoming experience.
 - 41.4. The Church will have a fully accessible entrance which it does not currently have. The steps together with handrails will provide assistance for those who are more able.
 - 41.5. An internal draught lobby, as was suggested by VS, was considered by the PCC but rejected because it would diminish the available space in the already quite modest nave. I agree that such diminution in the nave would be undesirable.
 - 41.6. Although the proposed works includes the cost of replacement York slabs as flooring, my clear understanding is that the Petitioners are alive to the possible re-use of the existing stone flags in the porch and that that expense will only be incurred in the event that the existing stone flags cannot be re-used.
 - 41.7. Having myself seen and appreciated the gradients outside the porch, I do not accept that the minimal works envisaged by VS will be sufficient to allow disabled access
42. In the exercise of my discretion, I am convinced that the justification for the proposed works to be undertaken far outweighs the low degree of harm to the significance of the Church as a building of special architectural or historic interest. This is the conclusion

with members of the PCC have reached, notwithstanding the substantial cost of the proposed works, and that view has been supported by the DAC, CBC and HE.

43. In reaching my conclusion I have borne in mind that even if I was in error in my assessment of the degree of harm or the justification for carrying out the proposals, which I do not believe that I am, the insertion of all the glazed glass doors in the porch are entirely reversible because they need only be lightly fixed to the existing building and could be removed at any time in the future without causing any damage.
44. I will thus grant the faculty sought. I will impose the condition recommended by the DAC as to ventilation but will give liberty to apply to dispense with such condition, if it should prove difficult to achieve.
45. I conclude this judgment by again citing dicta of Sir John Owen who, when giving judgment in *Re St Luke the Evangelist Maidstone*, stated:

`Respect for the past and for the fabric of the building has an important part to play when a decision has to be made about proposed changes to any listed building, secular or ecclesiastical, but preservation does not preclude all alteration: otherwise no listed building consent would ever be given. Whilst taking full account of the characteristics of the building, which have justified the listing, it is always necessary to bear in mind that the primary purpose of a church is for the worship of Almighty God and the making of changes to meet the justifiable requirements of the present generation of worshippers can sometimes be the best way of securing the continuing use of the building for that purpose.`
46. Since the VS, having made a formal objection to what was proposed withdrew such objection and asked me to take into account its views in reaching my decision, it is the settled practice that the Petitioners must bear the costs of these proceedings and I so order, although I waive any fees which are payable to me.

GEOFFREY TATTERSALL QC

Chancellor of the Diocese of Carlisle

28 July 2022