

**Neutral Citation Number: [2018] ECC Der 2**

**In the Consistory Court of the Diocese of Derby**

**In the Matter of Killamarsh St Giles, and**

**In the Matter of a Petition dated 13<sup>th</sup> March 2018, presented by Rev Canon Helen Guest, the Rector, and Mrs Eileen Hall and Mr Ben Wheelhouse, Churchwardens.**

### **Judgment**

- 1) This is a petition seeking permission '*to undertake repairs and refurbishments*' in a sum of over £150000. It raises no special difficulties save a procedural problem that (in my experience) is all too common, concerning the wording on the Public Notices, which is, of course, carried over from the petition itself. As a result, it is not possible to give approval without addressing the deficiencies that have arisen, which I further describe in paragraphs 9 onwards.
- 2) The church dates back to the 12<sup>th</sup> Century with alterations in the 14<sup>th</sup> and 15<sup>th</sup> centuries, and the addition of a vestry and north aisle in the late 19<sup>th</sup> century, when rebuilding of the chancel and porch also took place. It is a listed building, in Grade II\*, and so is a church of considerable architectural and historic importance, as well as being a local centre of mission and worship. It is not in a conservation area. The church has fallen into a state of considerable disrepair and a Historic England Report for HLF's Grants for Places of Worship Scheme, prepared following a visit on 19<sup>th</sup> September 2016, concluded with a Heritage at Risk assessment of *Very Bad*. It was to be placed on Historic England's published Heritage at Risk Register.
- 3) The Report states '*Inclusion in the Register implies no criticism of the owner of the building or those that manage the building*', a view I am happy to endorse, as many of the problems are of long-standing. It summarises the main areas of concern. There has been differential foundation settlement due to coal mining, causing cracking of the north aisle stonework and west window tracery, and this has allowed rainwater to penetrate, causing severe damp internally. The window glass itself has been damaged. A Report dated 25<sup>th</sup> May 2017 from MDS Stained Glass Ltd sets out what needs to be done in respect of this window, identified as W12 on the window plan, and also another window known as W7. The south wall is cut into the hillside and the concrete gutter is ineffective, and there is, as a consequence, damp internal plaster. A new system of piped ground drainage is required. Internally, parts of the stonework have been coated with a mixture of cement slurry and emulsion paints, which are impermeable and need to be removed. The flat roof to the WC area needs to be renewed in a better and longer lasting material than the present felt. Some time ago a truss in the nave was affected by damp and a bearing device was inserted as a temporary repair, but a permanent repair is now needed. A Report dated 11<sup>th</sup> August 2017 from consulting

engineers, Messrs Ward Cole of Hucknall in Nottingham, sets out what needs to be done. In addition to the above, some roof repairs are required, and re-decoration. These, I believe, are the main issues.

- 4) The church architect, Jane C Holt, prepared a Repairs Schedule in February 2018, for the purposes of the Grants for the Places of Worship Scheme. Her proposals are supported by 20-25 hand-drawn plans and sketches to illustrate the various aspects of the work, designated by 1403A and variously numbered. In addition to the repairs, the drawings indicate proposed improvements to the toilets in the building, a re-designed ramp within the structure and various other minor improvements to the kitchen and elsewhere. A letter from HLF dated 30<sup>th</sup> May 2018 indicates they will make a grant of £100400 towards the total costs of just short of £157000.
- 5) There has been the usual to-ing and fro-ing between the architect, the parish and the DAC, as details were worked out. The DAC Notification of Advice is dated 13<sup>th</sup> March 2018, following a meeting of that body on the previous day, and *Recommends* the scheme to the Court for approval. The DAC considered the work would not be likely to affect the character of the church as a building of special architectural or historic interest, and made no recommendation for consultation with any amenity body. I AGREE WITH THOSE VIEWS. As a consequence I have not thought it necessary to give a fuller and more detailed description of the church or the diverse aspects of the total scheme.
- 6) As some of the drainage work will inevitably impact the exterior of the building to some extent, enquiries were made of the local authority as to whether any *planning permission* was required. It was intimated verbally this was unlikely, and eventually a written response was made by the authority, which I shall not name to spare its blushes. In an email of 7<sup>th</sup> March 2018 to the DAC Secretary, Mr Nigel Sherratt, and copied to the architect and petitioners, a planning technician wrote: "*I have now received confirmation from the local authority's Planning Dept. that listed buildings are exempt from the requirement for planning permission, as alternative arrangements are in place involving consulting the DAC and Historic England*".
- 7) This is presumably a reference to the so-called *Ecclesiastical Exemption*, which is not always easy to understand or apply. In general it exempts ecclesiastical buildings in use as such, from the need to obtain *listed building consent* for repairs or alterations to the fabric, and sometimes other forms of statutory permission. The faculty jurisdiction with its checks and balances and the consultations required thereby in appropriate cases, is considered sufficient. However churches are as much bound by the need for *planning permission* as any other buildings; they are not exempt. If planning permission is needed, they must obtain it. Local authorities generally deal with planning applications, and the Consistory Court or Chancellor have nothing to do with them, and cannot ignore or override the planning decisions of the local authority. The advice as set out above is therefore given on a mistaken basis, but it is not my job to set the local authority straight on the extent of its duties. It seems to me, it is extremely unlikely that a new and effective drainage

system would require such permission from the local authority, or that any other features, including some roof repairs, would do so.

- 8) As a result of the conclusions I have reached about the effect of the proposals on the significance of this listed building, it is not necessary to go through the questions set out in *Re Duffield: St Alkmund* [2013] 2 WLR 854, as refined in *Re Penshurst: St John the Baptist* (2015) 17 Ecc L J 393. That being so, it follows that the test to be applied is whether the petitioners have shown reasons for the proposed work sufficiently strong to justify giving permission for what they want to do. Obviously the majority of the work is to put the building into good order and make it weather-proof, and to at least reduce significantly, if not remove, the adverse effects of damp ingress. Apart from that, improvements to the facilities are to be made. If the matter stood there, then I would have no hesitation in approving the proposals at this stage.
- 9) However, there is *a serious procedural problem* that has to be addressed. That is a significant part of the chancellor's role in all faculty cases, to be a sort of procedural guard-dog to ensure that the requirements of the relevant law and procedure, as set out particularly in the *Faculty Jurisdiction Rules 2015*, have been met. The instructions for completion given on the *Petition, Form 3A*, include: *Please fully and accurately state the work or other proposals for which a faculty is sought*. There is then an invitation to include references to the drawings and specifications. The wording adopted by the petitioners is this: *'To undertake repairs and refurbishments in accordance with the Schedule of Works ref 1403A prepared by Jane Holt Architect 16.02.18 and accompanying drawings numbered.....'* (and there follows a list of the 20-25 documents to which I have already referred.) I have not the slightest doubt that the petitioners consider they have followed these instructions to the letter.
- 10) Under the on-line system, this wording is transferred onto two other documents, namely the DAC's *Notification of Advice, Form 2*, and the *Public Notices*, that must be exhibited in these cases. As far as the members of the DAC are concerned, they have access to all the details on the specifications and drawings, so the *'repairs and refurbishments'* can be 'realised' and actually means something. As far as parishioners (or anyone else who conceivably may have an interest in what is proposed) are concerned, however, the *Public Notice, on its own*, is meaningless and therefore insufficient. The drawings, and so on are not, and could not conveniently be, attached to the *Public Notice*. This document should be self-contained and set out in straightforward language what is proposed, without the enquirer having to search out and interpret other documents, drawings or specifications. I have never seen a petition (in over three decades as a Chancellor) where the work to be done cannot be spelled out on a single sheet of paper *in sufficient detail* to explain to the enquiring parishioner what is proposed. That is the purpose of the *Public Notice*, so that he or she may comment or object to the proposals, or some part of them, by writing to the Registrar, and eventually, if so minded, by becoming an objector and a party to the litigation, by completing *Form 5*.
- 11) Of course the same wording on the *Petition* – where it originates – allows the Registrar, the DAC Secretary or members, or anyone from an amenity

society, Heritage England, the local authority, or the Chancellor, to grasp at the outset, the nature of the proposals. How much easier it is then for them to start looking at the details.

- 12) This problem is not to be laid at the door of the on-line system, as such, but springs from a lack of understanding of how the whole process is intended to work, and in particular what is the purpose of the Public Notice. The instructions on the *Petition* are misleading to the extent they do not make clear that what is needed is a straightforward, comprehensive and comprehensible statement of the work to be done, in sufficient detail to give a clear picture of what is proposed. To explain further by way of an example: '*General Reordering*' is insufficient; it covers everything and nothing! Instead, for example: '*Removal and disposal of two pews at front of each side of central aisle; Re-location of font to front of nave by chancel arch on north side; Replacement of inside porch doors with engraved glass; together with making good and minor works of re-decoration, all in accordance with the plans and drawings of XY Architect numbered AB 1-17 and dated June 2018*', is the sort of thing required. The Schedule of Works or Proposals on the *Petition* should NOT have any explanation or justification included within it. That is for the Statement of Needs to set out. The Schedule of Works or Proposals should explain **what** is to be done, not **why** it should be done (in the petitioners' view).
- 13) The Schedule is there simply to set out what is required so it can be immediately understood, and when translated through the on-line system to the *Public Notice*, it will be immediately understandable by the reader. A *Public Notice* should not be an invitation to embark on a quest for information before the petitioners' plans can be understood. If the reader is concerned to know more, let him or her by all means refer to the various documents and drawings mentioned.
- 14) There has of course been no objection raised in the light of the present *Public Notices*, (and I doubt if any will be raised in the light of the new Notices that are required). That is not the point. The Rules set out a careful process so that those potentially affected – chiefly the parishioners - may know what changes or works to the church building are proposed, from the *Public Notice*. That has not happened here, and it is no answer to say: '*Well, if they were that interested they could make enquiries as to what the specification and drawings indicate.*'
- 15) So what is to be done?
- 16) **I DIRECT** that the petitioners prepare a list of the various items of work to be carried out so as to give a comprehensive and comprehensible indication of what they propose. It does not require undue detail, but needs to explain what the various areas of work are. It is to form the basis of new *Public Notices*. References to the drawings and so on, may be included as at present, if desired.
- 17) **I ORDER by way of an Interim Faculty under Part 15 of the Faculty Jurisdiction Rules 2015, that:**  
**The Petitioners be authorised to carry out the work described in the Petition, strictly on the following conditions:**

- i) subject to the provisos on the DAC Notification of Advice, insofar as they are not yet met**
- ii) the revised Public Notices are to be exhibited for 28 days**
- iii) the work may start as soon as the Notices are exhibited, but if any objection is made, it is to be notified promptly to me through the Registry, and *if the Court so orders*, the work, or any specified part of it, shall cease**
- iv) if any objection is subsequently upheld, and *if the Court so orders*, the Petitioners shall cause any work previously undertaken pursuant to this Interim Faculty, to be re-instated not later than 3 months after the Court's Order requiring re-instatement**
- v) the work authorised by this Interim Faculty is to be completed not later than 31<sup>st</sup> October 2020**
- vi) the Petitioners may seek further directions by letter or email to the Registry**
- vii) the costs of the Registry in complying with this Order shall be met as an enhanced correspondence fee in a sum to be approved by the Chancellor, under the arrangements current in the Diocese for the payment of faculty fees, or, if not payable under those arrangements, shall be met by the Petitioners.**

**18) Postscript relating to the Diocese of Derby**

The procedural problem which has arisen in this case, has happened far too often in different cases in the recent past, and in circumstances far more blatant than here, where the petitioners have obviously prepared their petition with care and, on its face, strictly in accordance with the requirements printed on the petition form itself. I want the practice that I have criticised in this case, to cease, and the wording on the petition itself to be self-contained, and comprehensible and comprehensive, without reference to other documents, drawings, specifications or the like, so that it makes sense to the reader of the public notice, who will have no immediate access to the specification or drawings. I therefore request that all those who handle petitions at an early stage, or are consulted by petitioners – in particular Archdeacons, the DAC Secretary and Registrar – to have regard to the concerns that I have raised, and ensure, so far as they can, that the works described on petitions are suitable to appear on the public notices. Insofar as any slip through the net, I will return them to the Registry without further ado, so the deficiencies can be rectified and fresh notices prepared. This earlier remedy of a breach of the Rules will inevitably give rise to delay, which is regrettable, but will avoid time being unnecessarily wasted by those who are grappling to understand in a given case, what it is all about!

John W. Bullimore  
Chancellor  
18<sup>th</sup> July 2018