

**Neutral Citation No. [2019] ECC SEI 3**

**IN THE CONSISTORY COURT**

**DIOCESE OF ST. EDMUNDSBURY & IPSWICH**

**In the matter of**

**GRUNDISBURGH: ST MARY THE VIRGIN**

**-and-**

**In the matter of**

**A PETITION TO CONSTRUCT AN EXTENSION TO PROVIDE FACILITIES, REMOVE OR DEMOLISH CERTAIN ITEMS, RE-OPEN THE NORTH DOOR TO FACILITATE ACCESS and ASSOCIATED WORKS**

**Judgment of the Chancellor**

**April 29, 2019**

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**JUDGMENT**

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1. By a petition dated November 23, 2018 the Reverend Clare Sanders and Robert Fletcher seek permission by way of Faculty to undertake certain construction, demolition and associated works to the church of Grundisburgh, St Mary the Virgin which is a church listed (Grade 1) under the Planning (Listed Buildings and Conversation Areas) Act 1990. The works are:
  - a. Demolition of an existing boiler-house chimney;
  - b. Partial demolition of an existing underground boiler-house (re-using existing foundations);

- c. Construction of a single storey extension for the purpose of housing two water closets, and a plant room;
  - d. The construction of an oil tank enclosure;
  - e. New underground foul and surface water drainage;
  - f. Replacement of existing rainwater goods on the north elevation of the nave.
  - g. Removal of two pews against the door on the north wall of the nave (which will have the effect of providing access) and
  - h. Associated works illustrated on the architect's drawings (912/18/1-8) and the structural engineering drawings (13/9731/10B, 11A and 12A.)
2. The proposed works have been the subject of advice from the Diocesan Advisory Council ("DAC"), Historic England ("HE"), the local planning authority and The Society for the Protection of Ancient Buildings ("SPAB"). I am advised by the DAC that the works are likely to affect (1) the character of the church as a building of special architectural or historic interest and (2) archaeological remains existing within the church or its curtilage.
3. For reasons that will become obvious, it is not so much the interior of the church that could be affected in respect of its architecture or historic interest but rather its external appearance. However, I have read carefully and with interest in the Statement of Need the interior attributes of this church. I turn principally to its exterior:
  - a. The tower is particularly striking. It replaced the mediaeval tower in 1732 and is in a visually arresting red brick Classical style.
  - b. The windows are mid 14<sup>th</sup> century and the rainwater spouts are gargoyles. The Chantry Lady/Chapel has three windows in the Perpendicular style and the north and south walls have two such windows. To the north and the nave there are three windows in the Perpendicular style with a (presently) blocked north doorway with a 14<sup>th</sup> century arch. Its outline can be seen. The blocking occurs from a restoration in the 1870s. There is an east window in a Decorative style dating from the same period.
  - c. Looking at the Church from a distance it is a striking building with significant (and in some cases) unusual features.

4. The consultees said this:
  - a. SPAB had no adverse comments on the proposals. It made a useful suggestion that a conservator should advise on whether the wall painting on the north wall should be protected given the large amount of dust that is likely to be caused;
  - b. HE is supportive of the reconsideration that took place of some earlier ideas resulting in “a much smaller extension which is more easily assimilated as part of the historic church.” HE was also supportive of the proposed north porch design.
  
5. Planning permission has been granted by Suffolk Coastal District Council for the purposes of The Town and Country Planning Act 1990 subject to standard conditions.
  
6. However, the DAC on March 1, 2019 advised that it did not recommend these works to me as, in its opinion, “the elevations of the proposed extension are not in proportion to the mass and scale of the church.” This is the sole reason given to me for not recommending the petition. I noted the DAC’s correct analysis that archaeological remains may be disturbed during the works and I am satisfied that, if the petition is granted, the scheme proposed by Suffolk Archaeology is a sensible plan for dealing with the risk.
  
7. I have received some written observations on the scheme, and, in particular, the DAC’s decision not to recommend it to me.
  - a. Many of these emails express disappointment and puzzlement both as to precisely what the DAC is saying and why. I have a sense that the writers feel they are going round in some sort of circle from which there is no escape and that their project has become mired in criticisms of their solutions (developed, adjusted and refined over quite a long period of time) without any alternatives being offered upon which there is agreement.
  - b. I have read messages from Jenny Taylor (15-03-19), Clare Sanders (20-03-19) [the incumbent and a petitioner whose letter also covers broader ground including need and mission], Trevor Hill (14-03-19), Hilary Hill (20-03-19), Peter Brunning (29-03-19) [the chairman of the committee charged with this project] Michael Payne and Jennifer Payne (13-03-19), Paul Wiffen (12-04-

19), Patricia Fletcher (05-04-19) and R. A. Fletcher (08-04-19). They all comment on the need for lavatories if the church is to attract new members or visitors and flourish. Many comment on the present unattractive arrangements behind the church and there is a strong consensus that the proposed works would be a great improvement and provide much-needed facilities.

8. It may be that the particular considerations set out *In Re St Alkmund, Duffield* [2013] Fam 158 apply. The Court of Arches in *In re St John the Baptist, Penshurst* [2015] WLR (D) 115, reaffirmed the approach it set out in *In Re St. Alkmund, Duffield* [2013] Fam 158 in performing the necessary balancing exercise when determining petitions affecting listed buildings attracting the ecclesiastical exemption. It is this:

- (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historical interest?
- (2) If the answer to (1) is “no”, then the presumption is to be in favour of the *status quo* but it can be rebutted more or less easily depending upon the nature of the proposals.
- (3) If the answer to the first question is in the affirmative, it is necessary to ask is how serious the harm would be;
- (4) Then, it is necessary to assess how clear and convincing is the justification for the proposals;
- (5) Generally, the greater the harm, the greater the benefit will need to be to demonstrated to justify the proposals and, importantly, in the case of a building that is listed grade 1 or II\*, if serious harm would result then the justification would need to be exceptional.

9. First of all, whilst I can understand that proposals of this kind should at least trigger an investigation as to whether the enhanced test is applicable, my view, having considered all of the evidence is, that, if it does, then it is very much at the margins. I have some difficulty deciding what the harm to the significance of the church as a building could actually be. I am clear that the interior works cause no harm to this significance at all and, that, indeed, the restoration of the previously blocked door and the removal of two of the pews will enhance that significance, not harm it.

10. Outside, I appreciate that the DAC advises me that the elevations of the proposed extension are not in proportion to the mass and scale of the church. This, in my view, depends on what the extension is and what it is for. It may be a very different matter if one was considering the building of a church hall as opposed to a building for two WC's and a plant room. I also note that HE is positively approving the reconsideration of earlier plans resulting in a much smaller extension which is more easily assimilated as part of the historic church. I have some sympathy with church members who feel if it is larger then one body will be criticising them and, if it is smaller, another will be doing so. I also notice the DAC itself was not unanimous in whether to recommend, make no observation or positively not recommend the proposal to me. Seven members voted not to recommend and five voted either to recommend it or not oppose it and one person abstained altogether.
11. It is important that the process is understood. Some of those who wrote messages may have thought that I represented the appeal process. I do not. I make the actual decision. The DAC makes a hugely important contribution in advising me and I always consider advice from the DAC very carefully and thoughtfully. However, it is, and remains, advice.
12. As there are no objectors to the scheme, although the DAC advises me not to grant the Faculty, I am able either to decide the case on the papers or to have a full hearing in open court. Sometimes such a full hearing is necessary even when everyone else involved is agreed that the petition should be granted, but when I feel that there are matters which I need to resolve in a full hearing, where witnesses can be called and examined.
13. I am entirely satisfied here that I may properly judge this petition on the papers. The issues are clearly set out and I understand what the opposing contentions are.
14. I have approached this particular petition in the following way. First, although I have had some reservation, I am just persuaded that I should answer the first question in *Duffield* by saying that if the elevations of the proposed extension are not in proportion to the mass and scale of the church, this could cause harm to its significance as a building of special architectural or historical interest, even if the

contention is that the extension is not *large* enough as opposed to it being some towering monstrosity blocking light and views, where the harm would be more readily appreciable.

15. I then have to consider how serious this harm would be. HE congratulated the petitioners on reducing the scale of the extension and found this meant it would be more easily assimilated by the church building as a whole. SPAB expressed no unfavourable views about it. I entirely accept that different people, particularly those whose expertise lies in the area of church architecture, construction and design, may hold strong views about the scale and proportion of an extension and, as I have already said, one can readily think of examples where this would clearly damage the special significance of an existing building. I went back and carefully examined the plans and the photographs that Tim Buxbaum, the architect, submitted to show the scale of the proposals. Although I have the utmost respect for the views of the DAC in this Diocese and am myself witness to the enormous expertise, help and effort they bring to this process, I regret that on this occasion I am wholly unpersuaded that the harm, if harm there be, would be anything but of a low order.

16. I then considered the question of need. It is expressed to me in this way.

- a. Grundisburgh is a growing parish. Modifications were allowed in 2010 to provide a community area and in 2012 to allow refreshments to be served. There is running water, hot and cold.
- b. It is the largest public space in the village and hosts many events, some sacred and some secular, some with music and a number with very good attendance to the “standing-room only” point..
- c. It is also the largest building in the Carlford group of churches (12 parishes) and is the one place where the parishioners of each can meet together to worship.
- d. The provision of lavatories close to the church is non-existent: the nearest are a hundred yards away in a parish room accessed across a back lane and open-sided bridge: not a joy in inclement weather. It requires a key. There are no provisions for people with special needs who might need an adjusted lavatory.

17. I consider that a very good case is made out for the provision of the extension and the other works. This church already has as part of its mission a wish to put itself in the heart of the village, not just by location but also by its ability to offer basic amenities for people attending services, celebrations, weddings, special services and the like.
  
18. No-one is contending that the need does not exist for what will be provided if these proposals are permitted. The argument is over the size and scope of the extension. I considered whether or not to ask the petitioners to return to the DAC with revised proposals, but this matter has now been the subject of considerable discussion, debate and revision. The petitioners followed the suggestion of HE in reducing the size of the extension and, in my judgment, enough to-ing and fro-ing has taken place. A decision needs to be made. SPAB and HE do not object to these proposals. Indeed, HE commends the revision that has taken place. All those writing to me have not only been in support of the proposal but have also made cogent and telling submissions as to why a Faculty should be granted. Whilst I respect the sincerely and strongly-held views of the DAC, I have no hesitation in concluding that a Faculty should pass the seal in the terms requested by the petitioners. Such harm, if any, that would be caused by these proposals is greatly outweighed by their benefits. A clear and convincing case is made out for them. A conservator should be appointed, if one has not already been, to advise and keep a watching-brief on the wall-painting in the vicinity of the north door during the works there. The plan outlined by Suffolk Archaeology should be followed in respect of protecting any archaeological remains that might be encountered.
  
19. Subject to those conditions, Public Notice having been given on March 7, 2019, this Faculty is granted.