

Neutral Citation Number: ECC Oxf 1



**IN THE CONSISTORY COURT OF
THE DIOCESE OF OXFORD**

Date: 14th May 2018

Before :

**THE REVEREND AND WORSHIPFUL ALEXANDER McGREGOR
CHANCELLOR**

**In the matter of :
Holy Trinity, Headington Quarry**

Determined on consideration of written representations

JUDGMENT

The Chancellor:

1. The Vicar and churchwardens have submitted a petition dated 20th November 2017 seeking a faculty to authorise works and other proposals described in the schedule to the petition as follows–

The construction of an extension to the north side of the church to accommodate toilets, kitchen, store room, meeting room and refurbished choir vestry and vicars vestry and toilet. The introduction of a rooflight within the existing modern vestry. The creation of bespoke cupboards designed by Bates and Lambourne at the West end of the nave. Disposal of 7 pews and shortening of one further pew, removal of pew platforms and remedial works to the floor in these areas. Choir stalls, lectern and music stands to be disposed of and replaced in accordance with designs by Bates and Lambourne. The font to be relocated centrally to the West wall. The extension of the dais and introduction of a ramp. Replacement of radiators within the north aisle, new lighting system and redecoration of the church interior. Relocation of several windows from the north aisle to the new vestry.

The plans will involve building over one grave of which there are no direct descendants, the headstone of which will be re-located. The extension will come very close to two other graves.

2. The Diocesan Advisory Committee has recommended the works for approval by the court.
3. The Victorian Society was consulted and had no objection to the generality of the proposals but considered that the extension would benefit from a pitched roof. The proposals to which the petition relates now provide for a pitched roof.
4. Historic England was consulted but as the church building is listed as grade II they were content to leave the matter to the Diocesan Advisory Committee.
5. Twenty-one letters of objection to the proposals were received by the Registry. None of those who wrote letters of objection elected to become parties opponent to the petition.
6. A public petition containing a fairly large number of signatures – what the older cases refer to as public memorial – was submitted to the registry by Holy Trinity Preservation Group. It was held by the Court of Arches in *Rector and Churchwardens of Chapel St Mary, Suffolk v Packard* [1927] P 289 at 300 that such a memorial is inadmissible in evidence. The Dean of the Arches said–

I think a memorial of this sort, when there is no opportunity of the Court's knowing the representations made to the signatories before their signatures were obtained and no opportunity of cross-examining them at the hearing, it is not admissible.

7. I am conscious that the practice of consistory courts has developed since that judgment was given and that the written representations procedure under which I am determining this petition provides some flexibility. Rule 14.5(1) of the Faculty Jurisdiction Rules 2015 provides that where (as in this case) an order has been made for the determination of the proceedings on consideration of written representations, “the chancellor may proceed to determine the proceedings upon consideration of all

relevant material before the court ...”. Nevertheless, even if a public petition is not, as a result of that change in court practice, strictly inadmissible, there remains the objection to such petitions that the court does not know what representations were made to the signatories before their signatures were obtained. That at least means that the court can place very little reliance on such petitions.

8. In any event, the public petition merely states that the signatories “formally object” to the proposals for the extension without any reasoning. As it adds nothing of substance to what is said in the letters of objection that were duly submitted in accordance with the Rules I do not propose to give further separate consideration to it.
9. On 13th March, with the written agreement of the petitioners (being the only parties), I ordered under rule 14.1 that the proceedings be determined on consideration of written representations and gave directions to enable the petitioners to make final written submissions.
10. I visited and inspected the church and churchyard under rule 14.4 on 21st April 2018.
11. There is no suggestion from anything said by the Diocesan Advisory Committee or by the Victorian society that what is proposed will result in harm to the significance of this listed building. Having examined the plans and visited the church I accept that as the position.
12. As the proposals would not result in harm to the significance of the listed church, guidelines set out in *Re St Alkmund, Duffield* [2013] Fam 158 that are concerned with listed buildings are not applicable. The test that is applicable in relation to the proposals that affect the churchyard is the test set out by Lord Penzance in *Peek v Trower* [1881] P 21 at 27:

All presumption is to be made in favour of things as they stand. If you and others propose to alter them, the burden is cast upon you to shew that you will make things better than they are – that the church will be more convenient, more fit for the accommodation of the parishioners who worship there, more suitable, more appropriate, or more adequate to its purpose than it was before; and if you cannot shew this to the court, at least shew the court that a majority of those for whose worship the church exists desires the alterations which you propose.

13. The issues raised in the letters of objection include the following–
 - that the proposed extension would result in the disturbance of graves in the relevant part of the churchyard (some objectors refer to this as ‘desecration’)
 - that the memorial window to C.S. Lewis (who used to worship in the church) would be put at risk or diminished in some way
 - that the design of the extension is inappropriate to the existing church and that the proposals as a whole would be out of character
 - that the extension is not needed.
14. The proposed extension would involve building over one known grave. That is the grave of Cyril Frederick and Florence Coppock who died, respectively, on 23rd January 1975 and 25th February 1980. There is a headstone associated with the grave.

Cyril Frederick and Florence Coppock married in their sixties and have no descendants. A parishioner has come forward objecting to the extension being built over their grave. She does not state her relationship to Cyril Frederick and Florence Coppock beyond saying that they “are a branch of our family tree”.

15. Objections to building over the grave of Mr and Mrs Coppock are also raised in some of the other letters of objection but not by any person claiming a family relationship with them.
16. While I understand the concerns that some people have with building over burials, I should make it clear that is not uncommon for that to happen. Very many churches have been extended both in past centuries and in more recent times. It is not infrequently the case that the only viable means of extending churches is to build over the places where burials have taken place. There has never been any general rule or principle that forbids such building. The only relevant legal rule that exists is the rule that was introduced by the Disused Burial Grounds Act 1884. The 1884 Act prohibits the putting up of buildings on a disused burial ground “except for the purpose of enlarging a church, chapel, meeting house, or other places of worship”. The provisions of the 1884 Act are intended to preserve the open spaces which disused churchyards provide (see *Paddington Corporation v Attorney General* [1906] AC 1 at page 4) rather than to prevent building over places of burial.
17. The 1884 Act is not applicable in the present case because – as stated in the standard information submitted with the petition – the churchyard is still used for burials. But in any event, what is proposed would not in this case be prohibited by the Act even if this churchyard were a disused burial ground because the proposed building work is for the purpose of enlarging the church.
18. Section 18A of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (which was inserted into the 1991 Measure by the Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure 2015) provides that where the prohibition contained in the 1884 Act does apply, a faculty may nevertheless be granted to authorise the building on a burial ground if one of the two following conditions is satisfied:
 - that no interments have taken place in the land on which the building is to stand during the period of 50 years immediately prior to the date of the petition for the faculty;
 - that no personal representative or relative of any person whose remains have been interred in the land during that period has objected to the grant of the faculty or that any such objection has been withdrawn.

Because the 1884 Act is not applicable in this case, it is not necessary for the court to determine whether either of those conditions would be satisfied. It may nevertheless be instructive at least to consider what the position would be here if the 1884 Act applied.

19. Clearly, given that Mrs Coppock died in 1975 and Mr Coppock died in 1970, interments have taken place in the land on which the extension is proposed to stand within the period of 50 years immediately prior to the date of the faculty petition. However, it seems to me that the second condition would be satisfied on the basis that “no personal representative or relative” has objected. As I have said, a parishioner

with the maiden name of Coppock has objected and has stated that the late Mr and Mrs Coppock “are a branch of our family tree”. But I consider that would be far too vague a relationship to bring the objector within the meaning of “relative” in section 18A of the 1991 Measure. The Disused Burial Grounds (Amendment) Act 1981 – which makes equivalent provision to section 18A but in respect of unconsecrated burial grounds – provides, ““relative” means in relation to any person whose remains are interred, a spouse or civil partner, parent or grand-parent, or child or grandchild, including a legitimated child, and any person who is, or is the child of, a brother, sister, uncle or aunt’. That definition does not appear in section 18A of the 1991 Measure (or in the equivalent provision in section 44 of the Mission and Pastoral Measure 2011). Nevertheless, I note that section 18A adopts an almost identical approach to the 1981 Act. I also note that in section 18A “relative” is an alternative to “personal representative”. The conclusion must be that that the expression “relative” in section 18A is not intended to mean any person who can establish any form of relationship to the deceased however distant. It must mean someone who can establish a particular relationship with the deceased that can be described in certain and specific terms.

20. I therefore conclude that even if this were a case in which the strict provisions of the 1884 Act and section 18A of the 1991 Measure applied (which it is not), the court would be able to grant a faculty to permit the extension to be built.
21. I do not accept – as some of the objectors have suggested – that building an extension to the church over a known burial amounts to a ‘desecration’. The proposed extension will rest on pile foundations, avoiding the need for excavation. A similar situation was considered by Chancellor Newsom in *Re St Andrew’s Church, Backwell* (Bath and Wells Consistory Court, 1982, unreported). At page 20 of his judgment he said:

Apart from aesthetic objections with which I have already dealt, the only substantial complaint of this witness was that the proposed building [an extension of the church into the churchyard] would “desecrate” the churchyard, since it would be built over graves. ... the desecration point runs through much of the other evidence. It is due to a misapprehension of the law. A burial ground is consecrated for the interment of the remains of deceased parishioners and certain others. Human remains, when in consecrated ground, are under the protection of the ecclesiastical court and cannot be interfered with save under the authority of that Court, which is not given except for good reason. One such reason is to allow road widening: see *St Botolph, Bishopsgate* [1892] P 161 and *Re St Mary, Woodkirk* [1969] 1 WLR 1867. Another is add to the church [*sic*]: *Re St Ann’s, Kew* [1977] Fam 12. Orders of this kind are not made without due care and the Court must in each case be satisfied that some incidental disturbance of human remain is an unavoidable element in a scheme which it is otherwise prepared to authorise. Every reasonable precaution must be taken. In the present case the structural engineer, Mr Wayman, gave impressive evidence of the manner in which a limited number of narrow piles would be driven into the ground round the outer edge of the proposed building so that the weight of the building would rest on them, and there would be no general excavation of the area on which

the building would stand. If in any case the proposed scheme did involve a considerable excavation of ground containing human remains (as would, for example, occur if the proposal were to add to the church by forming a subterranean building) that would be a different case. ... In the present case I am satisfied that the proposals will not lead to any appreciable interference with human remains in the churchyard underneath or near to the proposed building.

I adopt the approach taken in the *Backwell* case by Newsom Ch which is founded on established authority and clear principle. In the present case, the report of the DAC states that the diocesan archaeological advisor agrees piling to be the best method and that no geophysical survey is required.

22. I would add that the result of an extension such as that proposed in this case is that a burial which was formerly outside the church building becomes a burial within the church building. If anything, being located within the church building is a more honoured place of burial than in the churchyard. It is certainly not a desecration.
23. While – despite some suggestions in the letters of objection – there is no good evidence of there being other, unmarked, burials immediately to the north of the church where the proposed extensions would stand, if there were any such burials, the same reasoning as set out above in relation to the grave of Mr and Mrs Coppock would apply equally to any such burials.
24. So far as objections relating to other known burials in the churchyard are concerned, I accept that two other known graves are very close to walls of the proposed extension. The petitioners accept the need to protect those graves during the building works, if necessary temporarily removing memorials or parts of memorials to ensure that they are not at risk of being damaged. I consider that to be an entirely reasonable approach on the part of the petitioners. I do not consider the proximity of the two burials in question to the extension to amount to a reason for not permitting it if other factors indicate that it should, in the court's discretion, be permitted.
25. I do not consider that the objections relating to the window commemorating C.S. Lewis carry any weight. When I inspected the church I carefully noted the quality and details of the window and identified where it would be located in relation to the extension were it to be built. The window would become an internal window. It would be lit from a sky light in the extension. It would no longer need – as is currently the case – to be protected by a steel grill which significantly detracts from its aesthetic quality. It would continue to be a worthy commemoration of a highly notable past parishioner.
26. I do not accept that the proposed extension or any of the other proposals represent inappropriate designs or that they would be out of keeping with the character of the church. The proposed internal changes have been sensitively developed to be appropriate to the character and history of the building and the proposed new furnishings would be of good quality and design as the drawings and descriptions which accompany the petition show.
27. The design of the extension is entirely appropriate to the historic church building. It is single storey and modest in size (producing an increase in the size of the church of

approximately 10%). The design of the extension, with a pitched roof to complement that of the existing church, is sympathetic to what is already there. The Victorian Society, which is an advocate for, and has particular expertise in, the preservation of buildings of this age and importance, did not consider the proposals objectionable save for the lack of a pitched roof in an earlier form of the proposals – and that has now been modified to meet the Society’s concerns.

28. The case for the parish’s need for the extension is set out in detail in the statement of needs, and added to in the written representation submitted following the order I made in March.
29. **The church has over 100 worshippers on Sundays, adults and children.** From my inspection, it was clear that this must result in the church being – and feeling – quite full. There are three children’s groups and a youth group. The PCC has adopted as part of its mission the development of ministry with young people and families with children. Accordingly, they wish to make the church welcoming, both in terms of the welcome given by its people – in which it seems to be succeeding – and in terms of the facilities which it offers. It is in respect of the latter that the church is currently deficient. In the church, there is currently just a small area at the west end where children can be accommodated. The existing on-site facilities are limited to a very small vestry that has to be shared by the clergy and the choir and one lavatory (which is not easily accessible).
30. There is a community building some 200 yards away from the church down a footpath (where it is not visible from the church) which the church is able to use on Sunday mornings, on the payment of a fee, for drinks after the service and for some activities with children during the service. I accept the petitioners’ case that this is not an adequate facility for the needs of the church. Having walked from the community building to the church, it was clear to me that it was inconveniently far from the church to be used for taking children out to Sunday school activities during a service. In any event, the church reasonably requires decent facilities for a kitchen, a creche/meeting room, a vestry and an accessible lavatory on site. That is simply a standard, reasonable expectation for any busy church today.
31. **I note that the parochial church council has undertaken extensive consultation within the parish and that the proposals have been developed over the past 10 years.** The steps taken by the parochial church council by way of consultation are set out in a document that has been provided to the court. They are to be commended for taking such care over these consultations. The PCC has taken account of the points made and the proposals have been significantly scaled back in order to address local concerns. What is now proposed is focused on the church’s essential needs and the impact of the proposals on the church building and the churchyard is limited to the bare minimum to meet those needs.
32. **I note that planning permission has been granted for the extension.** I also note from their minutes that the extension has the unanimous support of the parochial church council.
33. I consider that the petitioners have discharged the burden on them to show that the proposals would “make things better than they are – that the church will be more convenient, more fit for the accommodation of the parishioners who worship there, more

suitable, more appropriate, or more adequate to its purpose than it was before”. These amount to good reasons for the proposals generally but also, in particular, for building into the churchyard over the grave of Mr and Mrs Coppock.

34. A faculty will be granted accordingly.

35. The faculty will be subject to the usual conditions to protect human remains. It will also be subject to a condition that the drawings and specification of works produced for tendering (which must include details of the locations of the pile foundations) are agreed with the Diocesan Advisory Committee or, in default of such agreement, approved by the court. The existing memorial on the grave of Mr and Mrs Coppock must be removed for safe keeping during the works and replaced in the churchyard, near the wall of the extension, after the works have been completed. For the avoidance of doubt, the faculty is to include authority for the measures that need to be taken for the protection of the burials and their respective memorials mentioned above which will be very close to the extension, including, if necessary, the temporary removal of those memorials should that be necessary.