

## **Neutral Citation No [2019] ECC Yor 10**

### **In the Diocese of York**

### **In the Consistory Court**

### **The Parish of Preston**

### **The Church of All Saints**

1. By a Petition dated 2<sup>nd</sup> August 2019 and filed online, the Rev Dr Susan Pulko, Rector; John Myers, Churchwarden; and Richard Thorp, Fabric Officer; all of the Church of All Saints Preston, sought a faculty “to construct a glazed timber framed self-contained Chapel in the North Aisle as per Drawing Nos. PRS:05/101 April 2019, 05/201 Rev D July 2019 and 05/202 Rev A July 2019 by Wiles and Maguire Architects”.
2. The proposal has been put forward because the church is effectively unheated. The infrared heaters in the nave are ineffective, The Victorian system failed long ago and the pipes have been removed. The cost of installing a modern heating system throughout the church would cost between £80,000 and £100,000 which the parish cannot afford. For some time the parishioners have been considering how they could isolate an area of the church and heat that on a budget that they could afford both for the installation and also for the ongoing cost of heating the proposed isolated area.
3. Consideration of the possibilities soon led them to exclude the chancel (visually too intrusive), the tower (access needed for bell ringing and the space is not large enough), south aisle (too narrow and the structure would therefore be squashed against the external walls and would cut across the windows) and the nave (also visually too intrusive and in any event the nave is needed for weddings and funerals and other big festivals and events). That left the north aisle which is wider than the south aisle, less intrusive both visually and on other usage of the building. They therefore began to discuss matters with their architect and the DAC.
4. The scheme that has finally been devised is to build in that aisle a self-contained chapel, described in some of the documents as a “pod”. It will fill the central 2 of the 4 bays in the north aisle. It will be an oak veneered MDF and glass structure which will be freestanding apart from being held in position by 8mm stainless steel anchors fixed to the mortar joints between the ledger stones.
5. The design principles adopted have been that the pod is “an independent introduction in the volume, rather than being attached to the fabric, which will allow a visitor to see it as an honest introduction that is capable of removal both physically and (with some imagination) intellectually”. It is intended to be “as transparent as possible and to have a design pattern which works with the pattern of the column arcade and the windows beyond”. It is conservative rather than radical in the pallet

of materials used. The detail has been designed to reduce the impact on things such as historic floor slabs, and the components are capable of removal to inspect the fabric or in the case of the west doors the floor is absent so that the historic slabs can flow through.

6. Sensitivity to the historic building is of course necessary. It is Grade I listed. Historic England in its observations says: "The earliest part of the church is the C13 north arcade which, due to the width of the C15 north aisle, allows the low wide arches and the contribution these make to the spatial qualities of the church to be fully appreciated in the round."
7. The CBC has been consulted and they made some suggestions that the petitioners have adopted. In particular they suggested that the height difference created by the pod floor level being above the church floor level would be better managed at the west end in preference to the originally proposed removable ramp to the east door, adjacent to the altar when the chapel is in use for worship. Access at the west would be equal for all users and the obvious point of entry from the nave. It is also close to the toilet and servery.
8. The matter was considered by the DAC in the course of its meetings in May, June and July 2019. In the May meeting they were concerned about moisture rising below the floor, that the appearance had that of a conservatory with elements being "off-the-shelf" and in softwood rather than oak and they referred the matter back to the architect for his observations on these initial concerns. At the June meeting they were provided with some answers to those concerns. The floor would be Newton 500, a ventilated membrane which would create an 8 mm void allowing moisture to dissipate. The design had been restricted by the available budget which had taken years to raise, and the possibility of painting the softwood and thus enabling the funds to cover the cost of bespoke doors was discussed. The DAC raised concerns about how the chapel would be heated and sought clarification about that. Following further discussion with the architect, the July meeting was informed that it would now be possible for the structure to be made in oak by making some of the savings shown in the amended drawing. This met with the committee's approval, subject to some further suggestions the committee made about extending the line above the doors to the full length of the structure which would both look better and provide extra rigidity. Following the meeting, the architect agreed with those suggestions, consequently the Secretary to the DAC issued a Form 2 recommending the proposals for approval by the court.
9. The Form 2 recommended the petitioners consult with the CBC because the proposals "involve demolition of a listed building or its alteration or extension to such an extent as would be likely to affect its character as a building of special architectural or historic interest."
10. The matter was referred to me immediately on the Online Faculty System. I was aware of the potential involvement of the CBC. Although they were notified of this matter on 5<sup>th</sup> August I was concerned about the timescale of any visit and report, as

the petitioners were very keen for this work to be done before the winter set in. I caused enquiries to be made as to when I could expect any report from the CBC. I was told that unfortunately they would not be able to organise a visit until 21<sup>st</sup> September 2019. I was also aware that they would then want to consider the matter in committee before committing themselves to any views. Although they initially indicated that the chair had delegated authority in urgent matters, following the visit they decided that the matter should go to the full committee on 17<sup>th</sup> October and promised a response by late October.

11. Although not suggested on the Form 2, Historic England had also been notified of the proposals by the petitioners. They responded on 22<sup>nd</sup> August 2019. Not surprisingly they said “We understand that the proposal is to provide a separate space for meetings and worship. This involves installing a structure into the North aisle that will be fixed to the floor using 8 mm stainless steel anchors set into the joints between the ledger stones. In our view, the subdivision of the space by introducing an oak veneered MDF and glass structure will detract from the historic character and the special qualities of the church. This will result in a harmful impact on the significance of the Grade I listed building.” They then have a number of observations about some of the details and also about the approach the court should adopt in cases of this sort. They conclude “we have concerns about the proposal on heritage grounds. Therefore, we recommend that the Chancellor will need to carefully weigh the harm that would be caused to the significance of the Grade I listed building against the public benefits of the proposal.” They asked to be informed of the outcome.
12. The CBC advice, dated 17 October 2019, reached me on 25<sup>th</sup> October. I have already referred to it in part and to the alterations that the petitioners have made to their design of the entry point to the pod as a result.
13. In its response the CBC helpfully summarises its understanding of the Petitioners’ needs – “It is seeking to address a pressing issue with the building being uncomfortably cold during winter months. This is a hindrance to regular worship and wider church life. Opportunities to meet elsewhere are limited as the other public building owned by the church is leased to the parish council and heavily used. Disrupting this to get the hall back would cause significant pastoral damage in the village. It would also tend to move church activities away from the church and this would be regrettable.”
14. The Council was convinced that there is a strong need for the new facility. It said “The main reason for the proposals is the great discomfort from cold experienced in this church and the impact that this has had on the local community. The church has no meaningful legacy heating system, and infrared-heaters in the nave have not been effective. Investigations into whole-building heating have not found a solution that the parish could afford to install and then run. It was noted that 10 years ago it would have cost £14k to connect the gas supply alone.”

15. The CBC asked that careful attention was given to the impact on the ledger stones in the north aisle and the north aisle pews. It also encouraged the petitioners to consider keeping the church open for visitors during the day and if the village Post Office closes to explore whether to offer to host it as a community venture.
16. The CBC observed more generally that the choice of the north aisle location did a lot to mitigate the impact. They noted that “the church has good light from its clerestory windows and the south aisle. This will tend to minimise any disruption of light from the north and prevent any sense of a shadow from the chapel falling into the nave. It will relate effectively to the new servery and toilet facilities installed at the west of the north aisle. The chapel is intended to support worship use, seating twice the number of the present regular congregation. It is also arranged so that it can be contiguous with worship in the nave by folding back glass doors in the easternmost arch of its extent. This opens directly onto the pew platform. The Council felt that shortening the pews adjacent to these doors would add considerably to the usefulness of the chapel in relation to the nave. This would give scope for greater equal access seating and enable easier flow of people at well-attended events.”
17. Notwithstanding the support given by the CBC and the earlier recommendation by the DAC, the decision is still mine as to whether the harm that will be done to the historic character and the special qualities of this Grade I listed church by the insertion of this chapel into the north aisle is justified in a clear and convincing manner. The presumption is against such a change unless the benefits will clearly outweigh the harm.
18. It is not in dispute that there is a need to address the problem that this building is not warm enough in winter for people to gather for worship. There are others uses to which the building is put in the warmer months – a café and village social gatherings which cannot be held in the colder months. No use means no income. A new incumbent wishes to address all these issues and she has the support of the PCC and congregation. She would like to commence additional all age worship services, begin a Start course and hold bible studies. It is the hope and prayer of all that this will lead to numerical growth of the worshipping community, and increased income. Additionally they would wish to increase the wider community events that take place in the church. The Statement of Need puts it this way: “During the past 20/30years the church volunteers have actively hosted many events to encourage the wider community to special Church services concerts, craft fairs, art, and flower shows, quilting displays etc. We encourage group visits such as History groups, photographic groups, organ playing groups, to share the attributes of our splendid church. We are encouraged by our many visitors on our open days, heritage weekends during the year to view old and recent parish records and the church artefacts which is always popular. At present these activities can only take place in the warmer months as the building is too cold the rest of the year. There is a community hall but it is so successful that the church feels concerned that we could be displacing some other vital community function by holding our meetings, we always aim to work with the community as they do with us. By creating new facility

exclusively managed by the church we will be able to meet to our own timetable. Our intention is for the church to become a HUB of the village life to ensure the sustainability for the church and its building going forward for our future generations.”

19. It is also worthy of note that it is planned to build in the region of 11 new homes in the village, commencing shortly with over 100. The church is planning for potential growth and wants to be able to invite people into a place in which they will feel comfortable all year round.
20. As previously stated the cost of providing a modern heating system for the whole church is beyond their budget and they see no means of raising the money for such a project. They have considered how they might heat a part of the church so that it can be used in the winter months as they would wish and have concluded that the current proposal is the least intrusive way of doing this. Neither Historic England nor the CBC suggest that there is a less intrusive way of constructing an enclosed space that is affordable than the one proposed. As referred to at paragraph 16 above CBC has noted the way in which this design mitigates and minimises the impact it has on the inevitable harm to the heritage done by the insertion.
21. In all these circumstances the answer to the *Duffield*<sup>1</sup> questions is in my judgement crystal clear: (a) this proposal if implemented will do harm to the special architectural and historic interest of this Grade I listed church which dates back in part to the C13; (b) as there will be harm the second question is not applicable; (c) the harm would in my judgement be not of the highest level given the mitigation its design incorporates but it is nevertheless significant harm; (d) the justification as I have summarised it in paragraph 18 above is in my judgement both clear and convincing; (e) bearing in mind the presumption against such harm being permitted I am satisfied that the benefits will outweigh the harmful effect in particular because of the mitigating features referred to and also the fact that it does not alter the fabric into which it is inserted and could be removed thus restoring the building to its *status quo ante*.
22. In these circumstances I direct that a faculty shall pass the seal until further order.
23. It will be a condition of the faculty that the ramped access to the chapel shall be from the west not the east end and removable so that the ledger stones can be viewed.
24. The CBC began its letter by expressing regret that it had been consulted late in the day and not at an earlier stage in the proceedings. I would echo that note of regret. It is vital that everyone (incumbents, churchwardens, architects, and even archdeacons and DAC officers) understand and always have in mind the rules in relation to obtaining faculties, and no more so than when it is a substantial proposal regarding a Grade I and II\* listed church. Any substantial alteration is almost bound

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<sup>1</sup> In *Re St Alkmund, Duffield* [2013] Fam 158

to be considered to be of “such an extent as would be likely to affect its character as a building of special architectural or historic interest” and in that case consultation with Historic England and any national amenity society that has an interest in that work (either because it relates to their period or their interest) must take place<sup>2</sup>. There must also be consultation in such cases with the CBC.<sup>3</sup>

25. There should be help provided by the DAC at an early stage in relation to this matter, since the DAC should not issue its final advice unless it is satisfied that those provisions have been complied with<sup>4</sup>. So it may be helpful if DACs had in mind that as soon they are aware of a proposal beginning to emerge from a parish with a Grade I or II\* building that they should be advising the parish and its architect to approach the relevant amenity bodies, Historic England and the CBC, unless of course satisfied that the proposal is not one that could possibly be said to “be likely to affect its character as a building of special architectural or historic interest”. The bottom line is “if in doubt – consult”. I am sure that the relevant bodies will quickly say so if they do not regard the case as one they need to become involved in.
26. The final decision on any such faculty will be made the chancellor. If those bodies have not been consulted then everything will have to come to a halt, as it did here, whilst that consultation takes place. Even though I rather suspected that when the CBC visited it would be persuaded that this scheme had merit and would overcome the *Duffield* hurdles, it was not possible for me to second guess that even by issuing a faculty conditional upon that advice being positive.
27. There will of course be cases where the proposal is more controversial and those who must be consulted will have greater concerns about the degree of harm and whether it might be mitigated in other less harmful ways than the proposal intends. This may in turn lead to an agreement and changed designs involving further expense, or it may lead to a contested case and eventual rejection of the proposal. In all cases it will lead to delay and usually additional expense, and in some cases it will result in rejection and the need to start all over again.
28. I hope that these rules and practices if not already there will quickly become embedded in the thinking of all those who are in any way concerned with proposals to carry out any substantial alteration to Grade I or II\* listed churches.

Canon Peter Collier QC  
Chancellor of the Diocese of York.



13<sup>th</sup> November 2019

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<sup>2</sup> Faculty Jurisdiction rules 2019 rule 4.5

<sup>3</sup> Faculty Jurisdiction rules 2019 rule 4.6

<sup>4</sup> Faculty Jurisdiction rules 2019 rule 4.9 (1)(a)