

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

ST. BARTHOLOMEW, TONG

JUDGMENT

- 1) The church of St Bartholomew in Tong has a Grade I listing. It dates from 1260 but in its current form is largely the result of rebuilding undertaken in 1410. The interior was restored in 1889 - 92. The church contains one of the finest groupings of medieval tombs and effigies in the country.
- 2) The Priest in Charge and the Parochial Church Council are engaged in the Tong Twenty Twenty project. This ambitious project has involved a number of works of reordering and restoration aimed at making the exterior of the church watertight and fitting the interior and the church as a whole for the Twenty-First Century. Sundry works have already been approved as part of the project and it is of note that the approach being taken has the support of the interested heritage and conservation bodies. The various proposals have been developed over time and there has been close cooperation between those involved on the ground in the parish and the Diocesan Advisory Committee and the other interested bodies involving several site visits.
- 3) As part of that project the Priest in Charge and churchwardens petition with the support of the Parochial Church Council seeking a faculty for a reordering of the East end of the North aisle. What is proposed is the introduction of oak screening and cupboards to create a storage area. That area will be used to store chairs, the chest containing altar frontals, and sundry items of paraphernalia. Much of that material is already stored at the East end of the North aisle but in a somewhat untidy manner.
- 4) The works will involve the moving of the tomb of Sir Humphrey Vernon. This is a chest tomb dating from the 1530's. The tomb is empty but has an alabaster top on which there appear incised effigies of Humphrey and Alice Vernon. The effigies are now somewhat worn but are still visible. The tomb is markedly plainer than the other tombs in the church. The tomb is not in its original position and

appears likely to have been moved to its current location in the course of the Victorian restoration. The proposal is for the alabaster top to be relocated and to be positioned on the wall of the south porch while the sides of the tomb are to be dismantled under archaeological oversight and then disposed of.

The Procedural History.

- 5) The Diocesan Advisory Committee certified that the proposed works would affect the special significance of the church but recommended approval subject to consideration of the details of the proposed joinery. The Petitioners provided details of the joinery and Mr. Mathias, an architect member of the Committee, was asked to consider them. He responded saying that the proposals had been “well detailed with reference to the existing adjacent organ case” and noting that “the timber to be used is to match this joinery and will be of a suitably high grade.”
- 6) The Diocesan Advisory Committee also recommended the provision of a suitable written scheme of investigation in relation to archaeological matters and one has been provided.
- 7) Historic England are supportive of the proposals commenting favourably on the “comprehensive and well detailed supporting documentation”.
- 8) The Victorian Society has stated that it does not wish to comment on the proposed works.
- 9) The only response to the public notice was a letter of objection from John Watts.
- 10) Mr. Watts has chosen not to become a party to the proceedings but I have taken into account his objection as set out below. Mr. Watts at one stage contended that there should be a further period of public notice in respect of the details of the proposed joinery those details having been provided after the original proposals and in response to the request of the Diocesan Advisory Committee. I declined to direct a further period of public notice but did provide time for Mr. Watts to submit comments in respect of the joinery details.

11) I am satisfied that it is expedient to determine this matter on the basis of written representations. The Petitioners have consented to that course and have provided submissions addressing the objection put forward by Mr. Watts.

The Objection.

12) Mr. Watts objects to the proposed works not because of any inherent deficiency in the works themselves. Rather he objects because they will, if implemented, preclude the installation of a toilet and kitchenette in this location. It is to be noted that Mr. Watts is supportive of the Tong Twenty Twenty project as a whole and commends the work which has been done to undertake the extensive external repairs.

13) The Tong Twenty Twenty project envisages that in due course application will be made for permission to install a toilet and kitchenette in the church or adjacent to the church. No application has yet been made but there has been consultation about such an application. The Petitioners had indicated that they intended to apply for permission to install these features at the West end of the church. That is still their preferred solution but there have been a number of reservations expressed by members of the congregation and the Petitioners are taking stock as to the way forward. In addition to a location at the West end of the church they are considering applying for permission to install an external toilet although both the Diocesan Advisory Committee and Historic England have expressed opposition to that course.

14) Mr. Watts is opposed to the suggestion that a toilet be installed in the West end of the church. He does not suggest that it is not appropriate for the toilet and related works to be installed in the church. However, he regards the West end as an unsuitable location. Conversely he believes that the East end of the North aisle is the most suitable location for such an installation. He sets out his contention that this is the best location by reference to the space available; the availability of services; and the discreet nature of the location. It is in the light of that assessment that he opposes the current proposal. He believes that if the faculty sought is granted and the works undertaken the location which is most suitable for the installation of a toilet will have instead been used for a different purpose. Although Mr. Watts does not put it in precisely these terms his concern

is that this would in due course lead to the installation of a toilet and kitchenette in a location which he regards as inappropriate.

- 15) In addition Mr. Watts contends that the installation of the toilet at the end of the North aisle is likely to be a less costly arrangement than installing it at the West end of the church.

The Petitioners' Response.

- 16) The Petitioners explain that they had considered the end of the North aisle as a potential location for the toilet previously and that the Parochial Church Council reconsidered that question in the light of the comments from Mr. Watts. They accept that Mr. Watts makes a strong point in relation to the availability of services at that location but they remain of the view that it is on balance not a suitable location for the toilet which they will wish to install in due course. There are three reasons for this. The first is that the Petitioners do not believe that there will be sufficient space to enable wheelchair access to a toilet at this location. Mr. Watts disputes this but even if there is strictly speaking sufficient space to enable wheelchair access (which the Petitioners dispute) it is apparent that there will not be generous space for that purpose. Next it is said that the proposed works have been designed so as to enable the memorial stones along the East wall to be seen and that would probably not be achievable if the location were to be used for a toilet and kitchenette. Finally, anyone wishing to access a toilet at this location from the nave would have to traverse the crossing and so would be visible to those in the body of the church. This would discourage use of the toilet during services and on the occasion of weddings when the crossing is occupied by bellringers and cannot be traversed by others on grounds of the danger posed in doing so.

Analysis.

- 17) St Bartholomew's is a Grade I listed church and the proposed works will clearly have an impact on the church's special character. In the light of that the approach laid down in *Duffield: St Alkmund* [2013] 2 WLR 854 as modified in *Re Penshurst: St John the Baptist* (2015) 17 Ecc L J 393 is to be applied. I must consider whether the proposals would, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest. If they will not

the question is whether the Petitioners have shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted. If there would be harm to the significance of the church as a building of special architectural or historic interest I must consider how serious that harm would be and then consider how clear and convincing the justification for carrying out the proposals is. Then I must consider whether the benefit to be achieved outweighs the harm bearing in mind the strong presumption against proposals which will adversely affect the special character of a listed building and conscious that serious harm to a Grade I listed church should only be permitted in exceptional cases.

18) If it were not for the objection from Mr. Watts that exercise would be a straightforward one. There is a real benefit to be gained from the proposed works. The provision of an area for storage is a real albeit low order benefit and will assist in the life of the church. The provision of an area for storage would not justify serious harm to the special character of this church but the proposal must be seen in its context. The screen will enhance the appearance of the East end of the North aisle by providing an ordered setting in place of the current clutter. Moreover, the proposed works are of high quality and are part of a programme of works enhancing the life of St. Bartholomew's and fitting it for the Twenty-First Century while preserving its special character. The positive support for these proposals from the Diocesan Advisory Committee and Historic England combined with the absence of criticism from the Victorian Society is telling.

19) What is the effect of the argument put forward by Mr. Watts?

20) I accept for present purposes that it would be physically possible to install a toilet and kitchenette in this location and I also accept for the purposes of this exercise that faculty permission would be given for such works. In theory granting the faculty currently sought and the consequent performance of the proposed works would not preclude a subsequent application for permission further to reorder this part of the church to install a toilet. However, I accept that in reality if I grant this faculty this use of this area for a toilet will be precluded.

- 21) The Petitioners have considered the possibility of seeking to install a toilet in this area. They have decided against doing so and have given a reasoned explanation for that decision.
- 22) It is possible to envisage circumstances where the fact that proposed works would preclude a different potential use of part of a church could be relevant to the issue of whether those proposed works should be permitted. That might be the case if those seeking a faculty had not addressed their minds to the effect of the works on other uses or if there was a difference of opinion with a substantial body of opinion wished to implement the works which would be precluded by those under consideration. However, such cases will be exceptional. In most cases the fact that granting permission for particular works will have the effect of precluding a different potential reordering using the same space in a different way will not be a factor against the relevant works. It has to be remembered that the court has no power to compel the incumbent, churchwardens, and the Parochial Church Council of a church to make particular alterations (other than by way of restoration of unlawfully removed items) to a church. It is not for the court, save in exceptional circumstances, to choose between arguments as to the best way to use a particular part of a church.
- 23) In the circumstances here there is no proposal (other than from Mr. Watts) that the East end of the North aisle be used as the location for a toilet. Moreover, the Priest in Charge and the Parochial Church Council have considered using that location for that purpose and have decided against doing so. Not only have they done so on a reasoned and considered basis but in any event their assessment as those with knowledge of the church and charged with responsibility for it must carry considerable weight. Moreover, it is for the Parochial Church Council as the elected representatives of the laity and not for the court to determine questions of what is or is not an appropriate way of spending parochial funds. It follows that refusal of the petition would not necessarily lead to an application being submitted for a toilet to be installed in the space which will be occupied by the storage area if the petition is granted. Refusal of the petition might still result in an application to install a toilet at the West end of the church: an application which would have to be considered on its merits.

24) Although Mr. Watts does not express it in this way his argument really is that allowing the proposed screen to be installed in this location will increase the risk of a toilet being installed in a different and, he would say, less appropriate location. That concern cannot operate as a factor in respect of the faculty sought in this petition. If in due course an application is made for a faculty for the installation of a toilet then such an application will be considered on its merits and by reference to the approach set out in *Duffield: St Alkmund*. If such a proposal involves greater harm to the special significance of the church than can be justified in light of the benefit to be obtained then a faculty will not be granted for such an installation.

25) It follows that a proper case has been made out for the grant of the faculty and the objections from Mr. Watts cannot operate to prevent the grant of permission. Accordingly, a faculty will issue in the terms sought.

STEPHEN EYRE

HIS HONOUR JUDGE EYRE QC

CHANCELLOR

22nd December 2019