

Neutral Citation Number: [2017] ECC Wor 1

In the Consistory Court of the Diocese of Worcester

**Archdeaconry of Worcester: Parish of Worcester, St Martin with St Peter and Whittington:
Church of St Philip and St James, Whittington**

Faculty petition 16-23 relating to extension of church building

Judgment

1. The Parish Church of St Philip and St James in Whittington was built between 1842 and 1844, replacing a medieval building (built in C14 or C15) that had been on roughly the same site. It was listed by the Secretary of State as a building of special architectural or historic interest, Grade II, in May 2014. The list description notes that it is an essentially modest building, representing very well the period of transformation between the C18 and early C19 type of church, with box pews and gallery, and the type of church, advocated by the Camden Society, complete with furnishings.
2. A number of pews were removed from the front and the back of the church in 1997, to provide greater flexibility in those areas. As a result, the church now has limited seating capacity, in the form of ten box pews, and two further benches at the front, with a small open area at the back (west end) of the nave, beneath a gallery. The main access, via the south door and porch, opens into this area, although there is also a west door, opening into a lobby off which is a small vestry. The church has been used in the past for coffee mornings, Christmas bazaars and school workshops, but space is limited.

3. To the south-west of the church is Whittington Lodge, an attractive early 19th century house, of Regency character, listed Grade II in 1965. The house immediately abuts the boundary with the churchyard.
4. Adjacent to that boundary is a modern temporary structure, erected in 2002. It houses a toilet, and a room (known as the Jubilee Room) that can be used for children's groups, small meetings, and other purposes ancillary to the efficient operation of the church and the churchyard. I refer to this below (as it seems to be referred to by everyone else) as a portacabin, but I am not certain whether it was in fact manufactured by Portakabin Limited.
5. To the north of the church is the churchyard, which has been used for burials for many years – probably many centuries.
6. Also to the north is a large yew tree, which has probably been in existence since the end of the thirteenth century; it is thus around 700-750 years old. It is in a conservation area – but it does not appear to be the subject of a TPO. The centre of the trunk is approximately 9.5 metres from the outside face of the north wall of the church. Although this has been referred to by some as an "ancient" yew tree, it seems to me that the term "veteran" may be more appropriate; I return to this below.
7. The parish of St Philip and St James is just to the east of the City of Worcester, between the edge of the main built-up area and the M5 motorway. Its population is set to grow significantly in coming years with a considerable influx of new housing.

The portacabin

8. As noted above, the portacabin containing the Jubilee Room was erected in 2002. It was authorised by a faculty and planning permission, both granted in March 2002. In granting a faculty, I stated as follows:

This seems to me to be an unfortunate proposal in that it will probably have an adverse effect on the appearance of the churchyard. However, I understand the reasons for it, and note that the planning authority has authorised it for five years, even though it is within a conservation area. And it seems to me inappropriate for this court to intervene in relation to what is, essentially, a matter of visual amenity, if (as in this case) the planning authority is taking an active and helpful part.

In all the circumstances, therefore, I am content that a faculty should issue for this, but limited for five years (to coincide with the planning permission). ...

I note the desire of the DAC to see a further scheme within five years; in the light of my comments above, it will come as no surprise that I share that desire.

9. In April 2007, with some reluctance, I allowed the faculty to be amended to authorise the temporary arrangement to continue for a further five years. The planning permission was also renewed for a further five years. However, the faculty and the planning permission both expired in 2012.
10. The main purpose for the room was to provide facilities for children and general community use. However, almost without exception the uses to which the Jubilee Room have been put have been found to have inadequate space; and some have had to stop altogether for that reason. The planning permission was extended for one further period, but the planning authority has made it absolutely clear that after May 2018 the portacabin will have to be removed.
11. In February 2012, plans were therefore drawn up by Nick Joyce Architects LLP, the Church's architect, for the erection of a permanent structure to replace the portacabin, on more or less the same site (that is, to the south-west of the church, and separate from it) but considerably larger in floor area. This might have had an unfortunate effect on the setting of Whittington Lodge; and it was the subject of strong objection by the owner of the house.

12. That proposed replacement building would have also been close to two mature yew trees, not as important as the veteran yew to the north of the church. Specialist advice was therefore taken from Roy Finch, an experienced tree consultant and tree advisor to the Diocesan Advisory Committee (DAC), who advised that they would need to be substantially pruned, but would not be otherwise harmed in the long term provided that suitable steps were taken to protect them during the construction works.
13. That proposal was not pursued.
14. A further proposal was prepared in November 2012 for a new meeting room and toilet to the west of the church. This would have been less obtrusive than the previous proposal, but would have resulted in the loss of one of the two mature yews. This too was not pursued.

The present proposal

15. The proposal that is the subject of the present faculty petition is for the construction of a new extension to the north of the west end of the church (also designed by Nick Joyce Architects). It contains a meeting room, approx. 5.5m x 6m. The new room can be reached from the area at the back of the church via a lobby, which also gives access to a unisex accessible WC. Access can also be gained directly from the outside. To the north of the meeting room are a store and a kitchen.
16. The new building has been carefully designed so as to minimise its impact on the veteran yew tree to the north-east. The eastern elevation of the meeting room is accordingly glazed, and curved, so that no part of it comes within 6.5 metres of the trunk; and the kitchen is between 5 and 5.5 metres from it. The building as a whole has been designed to minimise interference with tree roots by using a pile and beam type of foundation (recommended by Roy Finch in connection with the previous proposal, noted above).

17. Minor modification would be necessary to the north wall of the church, but the line of buttresses along the north side would be preserved. The new building would be sited in an area of earlier burials (c.1850), but the chosen foundations would be over the top of old graves to ensure that they are not disturbed.
18. The new building would contain the same elements as those currently in the existing portacabin, namely an accessible toilet, a store, a kitchen and meeting room. The meeting room would be of sufficient size to support local social and health requirements, but would be intended to complement other provision locally and in particular the village hall.
19. The cost of the new building has been estimated (by a quantity surveyor) to be around £250,000, of which £35,000 is currently available to the PCC. The balance, £215,000, is being sought from grants or fund raising.

The local planning authority

20. The planning authority granted planning permission in May 2015 for the new building, subject to a number of conditions. The decision report states as follows:

“The curved wall is located 6m away from the bowl [*sic*] of the tree and although likely to intrude on the tree root protection zone the foundations will be designed to accommodate this by using a pile and beam type of foundation which has minimum impact on the root zone, an area used in the 19th Century for burial. The type of foundation proposed is the same as that recommended in an arboricultural impact assessment for a previous application for a separate building in the church grounds.”

This is a direct quotation from the heritage impact assessment produced by the church’s architect.

21. The tree officer from the planning authority has more recently confirmed that she inspected and accepted the details regarding foundation design submitted within the design and access statement and the arboricultural impact assessment, and was

satisfied that the potentially damaging impact of the new building on the tree would be minimised. She noted that the fact that the area immediately surrounding the tree had been used continuously for burials suggests that the rooting area would not be as extensive as would be the case with a tree growing in the open.

Historic England

22. The overall principle of this extension is supported by Historic England – not least as it results in the removal of the existing portacabin. It has raised concerns as to the design and materials of the doorway from the church into the new extension; and also wishes to be involved in any further proposals for other works affecting the church itself and its furnishings, consequent upon the construction of the new building.

The Victorian Society

23. The overall principle of the new building is also supported by the Victorian Society, which agrees that the spot chosen for the extensions is the appropriate one.
24. The Society is concerned as to the scale of the proposed extension, and has suggested that it be moved away from the church, with a link. The latter suggestion does not seem to me helpful, as I have seen a number of cases where a gap was created between a church and an extension of this kind, for much the same reasons as here, which has become an unattractive feature, attracting rubbish etc. In practice, even if there were to be greater separation, all that would be seen from the inside will be a single doorway; and from the outside the new extension as proposed would dominate in views of the church from the north, and would be clearly visible in views from the west.
25. The Society also raises various points as to the detailed design of the new building. However, I note that the design has been approved by the planning authority, Historic England, the CBC, and the DAC.

26. In spite of its reservations, the Victorian Society has chosen not to make a formal objection, and has been content to rely on written representations.

The Diocesan Advisory Committee

27. The overall principle of this extension has been and is supported by the DAC. In its recommendation of the proposals, it indicated that it required to see “a full and detailed specification of the works, to include materials and finishes and details of the heating system”.
28. It had nothing to add on the possible impact of the new building on the veteran yew tree, in the absence of a tree adviser.

The Church Buildings Council

29. The Church Buildings (“CBC”) accepts the Parish’s argument as to the need for a new building, to house the activities currently housed in the portacabin.
30. However, it has raised the issue of whether the new building will interfere unacceptably with the veteran yew tree. It produced a detailed report dated November 2015 by Hilary Taylor, who pointed out that the root protection area (“RPA”) for a tree of this kind, determined in accordance with BS 5837:2012 would be at least 15 metres in radius. The whole of the footprint of the new building would be within this area; and it would represent 25% of the RPA. The CBC accordingly concluded that “Whittington’s ancient yew – of which the parish is rightly proud – should not be threatened, in any way, by this new development.” And it suggested that the Parish should consider an alternative location in which to provide the facilities it was looking for.

31. In response to the CBC comments, the parish produced a new tree report, from Mr Howell, a chartered forester, who had inspected the tree in December 2015. This report did not indicate what RPA should be selected, if not the 15 m put forward by the CBC; and it contained no detailed analysis of the effect of the building's foundations on the tree roots, merely an observation that the tree was in good health, and an assertion that it would remain in good health after the extension had been built. But the parish emphasised that it intended to ensure that the area would be investigated to ascertain the best location for the foundations to minimise the interference with tree roots.
32. At my request, the parish instructed Mr Howell to produce a further report. This report (entitled *Detailed comments on various yew tree reports*) was produced in December 2016, and was significantly more thorough. It pointed out that the veteran yew was and is already in some difficulties due to past action – including collaring in Victorian times, more recent pruning, and latterly storage of materials at the base – leading to central rot; that there had been numerous burials in the RPA of the yew; and that the foundations would be appropriately designed, and their construction carefully supervised, to ensure minimum interference with graves and roots. He also considered that there was plenty of space to the north of the tree in which the yew could send out new roots, and thus (in effect) extend its RPA. Mr Howell was accordingly still of the view that the tree would survive in spite of the building works.
33. The CBC then produced a further report, in the form of a letter dated March 2017. It pointed out that there was no way in which to be certain that the yew would in fact extend its root area in the way postulated by Mr Howell. Further, the proposed pile-and-beam foundations proposed, although generally good practice, would not completely avoid damage to the roots growing under the new building, due to less access to water, oxygen and nutrients. The very act of construction itself, followed by activity around the new building, would lead to pressure on roots, and demand for pruning to minimise loss of light to the new meeting room. It also suggested that “this is an ancient tree which is in the final stage of its life cycle, and the fact that it appears healthy cannot be taken to mean that it is not experiencing decline.”

34. The CBC reiterated its support for the parish's desire for a new meeting room, and noted that everyone agreed that the yew is very aged and precious. In such circumstances, the British Standard states that construction within an RPA should only be as a last resort where alternative design solutions are not available. The CBC therefore suggested that other locations for the new building should be explored, notably to the west of the church. And it concluded that it was still unable to support the proposal. But it did not formally become a party opponent, nor did it wish to be present if there was to be a hearing, being content to rely on the extensive written representations that had been made by all parties.

Other parties

35. The Archdeacon has consistently supported the scheme.
36. Mr David Hallmark, the owner (at least until very recently) of the neighbouring Whittington Lodge, questioned the overall principle underlying this proposal, on the basis of there being insufficient need for it. He also suggested that the same space could be provided within the main church itself, by replacing the remaining pews with chairs or stackable benches.

Procedure

37. In view of the fact that no-one had required an oral hearing, and in the light of the extensive written submissions that had by now been submitted, I decided that an oral hearing was not needed. But I did visit the church and the churchyard in August 2017, and I also inspected them from the grounds of Whittington Lodge. Representatives from the Parish and the DAC were present at that site inspection, as were the Archdeacon and Mr Hallmark.

Discussion

38. Having carefully read again the reports produced on behalf of the CBC and the Parish as to the possible co-existence of the yew and the proposed extension, it seems to me that the key issues to be considered are as follows:
- (1) What is the significance of the church, and of any other listed buildings nearby, as buildings of special architectural or historic interest?
 - (2) Will the extension now proposed cause (or any alternative proposals) harm to the significance of the church or any other listed buildings as buildings of special interest?
 - (3) What is the significance of the yew tree to the north of the church?
 - (4) What is the likelihood of harm being caused to the tree – by the initial soil investigations associated with the present proposal, by its construction of the new building, and by its subsequent use?
 - (5) Has the proposed extension been designed to minimise the potential harm to the tree?
 - (6) If the tree were to suffer subsequently, is there anything that could be done to mitigate the likely problem?
 - (7) Is there a need for new facilities, to replace those in the portacabin?
 - (8) Must those new facilities be provided in a building at the location now proposed, or is there any alternative location?
 - (9) Must a building at this location be of this design and size?
 - (10) If I find that there is a possibility of future harm to the significance of the building or to the tree, is it outweighed by the need for the extension?
39. This echoes the list of questions posed by the Court of Arches in *Duffield, St Alkmund* [2013] Fam 158, but takes into account the particular circumstances of possible harm to a neighbouring building, or to a significant tree, rather than just the normal situation of harm being caused to the significance of the church building itself.

The effect of the new building on the significance of the church and Whittington Lodge

40. Firstly, then, I consider the significance of the church itself, and of other listed buildings nearby, as buildings of special architectural or historic interest. As I have already noted, the church is of some interest; but I agree with the assessment in the listing description that it is an essentially modest building. It is noticeable that it was only listed very recently, whereas many parish churches have been listed for fifty years or more. I also note that the description makes it plain that the interest of the church lies particularly in its interior. The exterior is pleasant, but not spectacular.
41. I consider that the extension now proposed has been designed carefully to minimise harm to the significance of the church as a building of special interest. It makes almost no impact on the interior, other than by the insertion of a new doorway into the north wall of the cleared area under the gallery. I note that some comments have been made as to the design of the doorway and of the new door, but I have no doubt that this could be the subject of discussion with the DAC.
42. As to the impact on the exterior, the new building would be clearly visible from all sides – even though less obtrusive seen from the south, which is the principal elevation. In this respect, too, it has been well designed to harmonise as far as possible with the Victorian church, although it might well be seen in years to come as very much a building of its time, modest and lightweight in appearance. Ironically, its form and thus its appearance may be the result of a proper concern to minimise its bulk, to lessen its impact on the yew tree.
43. I thus conclude that there will be harm to the significance of the church as a building of special architectural or historic interest, but that the significance of the building is modest, and the harm will not be great. I also note that the planning authority has granted permission for the new building; and that in reaching that decision it will have had special regard to the desirability or preserving (that is, keeping safe from harm)

the church, its setting and any features of special architectural or historic interest that it possesses (see Planning (Listed Buildings and Conservation Areas) Act 1990, s 66(1)).

44. Just as important as the significance of the church itself, it seems to me, is the significance of other listed buildings nearby. In the present case, Whittington Lodge – in terms of architectural or historic interest – is at least as important as the church; and it has been recognised as a building of special interest for over fifty years. It is close to the boundary with the churchyard, and dominates the character and appearance of the section of the churchyard to the south-west of the church, between the church itself and the boundary.
45. The existing portacabin is close to the Lodge, and has a major adverse effect on its setting, as seen from the churchyard. It is for this reason that it has only been allowed on a temporary basis. And other new building at or near the same site would potentially have the same problem, although the magnitude of its effect on the setting of the Lodge would depend on its design.

The possible effect of the new building on the yew tree

46. The yew tree to the north of the church, which has become the main focus of concern in this case, is reckoned to be around 700-750 years old. It was thus around 150 years old when the medieval church was built; and around 600 years old when the present church was built.
47. The best information as to old yew trees generally appears to be the website maintained by the Ancient Yew Group. This has no official status, and contains a variety of different lists and registers, some of which are not entirely consistent. In particular, it identifies three categories of yews, by age – “notable” (300 to 700 years old), “veteran” (500 to 1200 years old); and “ancient” (at least 800 years old). The overlap between the categories reflects the fact that the age of particular trees is often

being reassessed, usually upwards. However, it would seem that the yew at Whittington falls squarely within the “veteran” category.

48. The general list identifies two ancient yews in the Diocese (at Alvechurch and Broughton Hackett), six veteran yews (not including Whittington), and 17 notable yews, including Whittington. This appears to be based on a survey carried out in 1999 and 2006. There is a further list of eleven “ancient or veteran yew sites” identified in the Diocese of Worcester, including Whittington.
49. In England as a whole, the general list identifies 1,860 yews (either in churchyards or elsewhere), including 205 ancient yews, 578 veteran yews, and 931 notable yews. This data does not appear to be entirely consistent. Nor is it clear to what extent the survey material is wholly comprehensive.
50. I recognise that surveys of this kind are carried out by volunteers, but they need to be made consistent, and the basis on which they have been prepared should be explicit, if they are to be fully relied on in cases such as the present. Nevertheless, the figures above may be compared with 127 church buildings listed at Grade I (and a further 214 at Grade II*) in the Diocese of Worcester; and 8,400 church buildings listed at Grade I or II* in England. They suggest that veteran and ancient yews are significantly less numerous than Grade I or II* buildings.
51. I am therefore satisfied that the yew at Whittington, however it is classified, is not only of very substantial age, but is also of considerable rarity value. I thus consider that it merits protection as far as is reasonably possible.
52. The next question is, what is the likelihood of harm being caused to the yew tree – by the initial soil investigations, by the construction of the extension, and by its subsequent use? Clearly the loss of the yew would be highly undesirable; but construction of a new building close to it might also be undesirable. But there has to

be some objective assessment as to how close a building must be to a tree before its construction can be considered likely to damage the tree.

53. The CBC points to the analysis contained in the relevant British Standard (BS 5837:2012, *Trees in Relation to Construction*), which highlights the need for a root protection area (“RPA”) around any tree. The significance of the RPA is explained in the BS as follows:

“7.1.1 Construction within the RPA should accord to the principle that the tree and soil structure take priority, and the most reliable way to ensure this is to preserve the RPA completely undisturbed. Soil structure should be preserved at a suitable bulk density for root growth and function (of particular importance for soils of a high fines content), existing rootable soil and roots themselves protected.

7.1.2 The ability of a tree to tolerate some disturbance and alteration of its growing conditions depends on specific circumstances, including prevailing site conditions, and in general, the older the tree, the less successfully it will adapt to new conditions.”

54. Both Mr Howell, on behalf of the Parish, and the CBC consider that the British Standard, produced by independent experts, is appropriate to form the basis for my consideration of the possible impact of the new building on the yew. I agree.

55. The RPA in this case, calculated in accordance with the guidance in the BS, amounts to 707 sq m – that is, a circular area of radius 15m. The extent of this area is shown on a drawing in the first CBC report, the accuracy of which has not been challenged by the Parish. This also shows that a significant proportion of this theoretical RPA overlaps with the footprint of the existing church, so that the RPA has already been reduced to less than 650 sq m. The new building would take up a further 11%. This is not the 25% of the RPA initially suggested by CBC, but is still a significant proportion of it – especially if the portion of the RPA to the far (west) side of the new building is also taken into account.

56. Mr Howell on behalf of the Parish points out that the veteran yew is thriving, which is the best evidence of its health. He notes that half the width of the existing church lies within the RPA of the yew; and that it was built within what would have been the RPA of the yew back in 1844. Burials, including some vaults, have taken place around the yew from 1800 to 1850. And the vestry was added in 1890. He also notes that “the junk and oddments” previously stored under the tree have now been removed.

57. Mr Howell draws attention to the advice in the BS that elevated beams, supported by piles, can be used to bridge over the RPA whilst allowing the retention of roots greater than 25mm in diameter. He notes that the internal floor level of the church is slightly higher than the ground level to the north, enabling the floor to be designed so as to minimise interference with the ground and with any roots in it. He suggests that the RPA can extend by 85 sq m to the north-west.

58. The CBC rightly acknowledges that the proposals reflect the Parish’s desire to minimise damage to the tree’s roots and, were this tree a young or even mature specimen, they would represent best practice, and might have a successful outcome. However, it continues:

“But, there is not enough, here, to address the fundamental issue to which the BS responds: that construction within an RPA is damaging both because of the harm caused by digging and compaction of soil during the works (which, of course, has an impact on an area of ground even greater than the footprint of the building) and – potentially even more damaging – because, in the long term, the new structure will diminish the tree’s access to water, oxygen and nutrients. These are not threats which an ancient tree could, with certainty, overcome.”

59. I have considered carefully the arguments put forward by the CBC and by the Parish. I note that the CBC is not saying that the construction and use of the new building will inevitably lead to the loss of the tree, or harm to it. Its conclusion, reached after careful thought, is

“This an old and fragile tree of immense significance, which *may* not withstand a major building programme. It is possible that the true impact

of the proposals *may* not be understood within our lifetime. The parish has thought hard about how it could mitigate the impact of the new building, but the report provides little evidence of to support the assertion that the measures proposed will certainly be sufficient to save the tree from harm.

In addition, the CBC considers that this harm would be caused for an unsatisfactory result, as it will be impossible to achieve a light environment in the new room, given the proximity of the yew canopy. As future generations seek to make the room less dark, future interventions to manage the tree may well be harsher, endangering it further. If the tree were to die, then the form of the extension, which explicitly responds to the tree, would be unsatisfactory.”

[emphasis added.]

60. The Parish, by contrast, is saying that:

“The tree has survived; the tree now thrives, and will continue to do so after the extension has been built with appropriate care.”

The effect on the yew: conclusion

61. I start by observing that the curved, glazed wall of the new meeting room is 6.5m from the bole (trunk) of the tree, which is significantly less than half the 15m separation recommended in the BS. And the eastern, solid wall of the new kitchen is only just over 5m from the base of the yew at its closest point. The location of the new building is thus not just impinging slightly on the edge of the RPA of the veteran yew; it is wholly within it. The construction of any new building at this location is thus wholly at odds with the advice in the BS. The measures being proposed by the Parish, notably the adoption of the beam-and-pile foundation design and the protection of the area around the tree during construction, will no doubt minimise the possibility of harm, but they will not eliminate it altogether.
62. Secondly, I note that the construction of the new building will inevitably involve a certain amount of coming and going along the outside face of the new curved wall, closest to the tree. And if this is minimised by relying on access to the new building during the construction process via the other elevations, these too are still within the

RPA. I thus conclude that the portion of the RPA that will be disturbed in one way or another by the construction of the new building will be significantly greater than merely the footprint of the finished building – and may indeed be around 25% of the total RPA, and a higher proportion of the reduced RPA allowing for the presence of the church itself.

63. Thirdly, I note that the yew would be immediately outside the glazed wall of the meeting room, which will contain doors opening out onto the churchyard. This will encourage greater use of the area between the meeting room and the tree – for example, on fine days in the summer as members of the congregation go outside with their coffee. And if the meeting room is used for community events, that foot traffic will increase. Even if the doors are normally secured shut, the canopy of the tree would be to the east of the new windows, lessening the daylight and sunlight reaching the interior of the room. I suspect that there would be considerable pressure in the coming years to reduce the canopy of the tree, which would be a potential source of further harm to the tree.
64. I note the confidence of the Parish, and particularly that of Mr Howell, that harm will not occur, but I agree with the CBC that there is little evidence, as opposed to mere assertion, to support, that conclusion. In particular, the fact that the tree is currently healthy does not support the conclusion that it would remain healthy if the new extension were to be built. It may do so, but it may not. And the mitigation measures proposed are only that – they may mitigate possible harm, but they will not necessarily avoid it altogether.
65. I place little weight on the assessment by the planning authority of the impact of the new building on the tree, as it was relying heavily on the material submitted by the Parish, and at that stage no-one had raised any serious objection on arboricultural grounds.

66. I therefore conclude that the construction of the new building at the location proposed will lead to a significant risk of harm to the veteran yew tree, and a smaller but still significant risk of its total loss. Further, if such harm were to occur in the future, following the completion of the new building, I have seen nothing to suggest anything could then be done to lessen or avoid the problem; it would be too late.

The need for the new facilities at this location

67. I now turn to consider the need for the new facilities proposed.
68. The uses of the new building are expected to be the same as those housed in the existing portacabin, namely an accessible toilet, a store, a kitchen and meeting room. The internal size of the existing meeting room is in the region of 3m x 4.5m. The main purpose of the room was to provide facilities for children and general community use. As noted above, almost without exception these uses have been found to have inadequate space; and some have had to stop altogether.
69. The new building will enable tea and coffee to be served after church services; and a children's group could meet during the service, without the need for going out of doors in poor weather. I note that these uses are referred to in passing in the statement of need, but not particularly emphasised. And the new meeting room will of course still only accommodate one children's group, which is far from ideal.
70. The new meeting room is to be around 5.5m x 6m; the floor area will thus be slightly over twice the floor area of the existing room in the portacabin. The Parish hopes that it would be of sufficient size to support local social and health requirements, and would be intended to complement other provision locally and in particular the village hall. But I suspect that, once the portacabin has gone, the new room too will seem to be very small. I have been provided with no evidence of other community facilities that are available or are planned in the vicinity, but if the area grows as expected, the new room now envisaged would not be a particularly attractive option. I also note

that there is no additional parking proposed, which could be problematic if the new facility were to be used more intensively.

71. The new toilet will replace the existing one; and the new kitchen will replace the existing kitchenette in the portacabin. The store in the new building will be an additional facility.
72. Overall, I can see that the facilities in the new building will be a significant improvement over those now available in the portacabin; but largely for church purposes. And I can see that it will be a welcome improvement for them to be in a building attached to the church, rather than in a separate structure.
73. I therefore conclude that the Parish has proved a need for new facilities of some sort, although I am not convinced that the community use of the new room will necessarily be as great as is currently hoped.
74. The final question is whether the new facilities must be provided in a building of the size proposed, and at the location now proposed, or is there any alternative location?
75. As to the size of the new building, any extension will need to be of an appropriate size in relation to the church, which itself is small. Equally, I can see that a new hall must be of at least a minimum size to be of any use. I am therefore satisfied that the new building as proposed is of an appropriate scale. And I note that the two alternative buildings being considered in 2012, to the west of the church, were broadly comparable in size.
76. As to the location of the new building, if there were no issue with the yew tree, the location now proposed would seem to be the most appropriate for an extension. It is always preferable, other things being equal, for new church facilities, used in

connection with worship services, to be contained either within the volume of an existing church building or in a new building directly connected to it. Children's groups are better accommodated in a building directly linked to the church, with no need to go outside in bad weather; the same is true of refreshments after church services. And the new building would link to the back of the church, and would enable people to come and go discretely, to use the toilet or to gain access to the new meeting room.

77. On the other hand, a building in either of the locations proposed in 2012 would not be far from the church building. Whilst such a building would not be ideal for worship-related activities, because it is not physically connected to the main worship space, it would be just as convenient for community uses. It would also be equally suitable for church meetings (PCCs, midweek groups and so forth) not directly linked to worship.

Balancing the need for the building against possible harm

78. The Court of Arches in *Duffield St Alkmund*, considered how a consistory court should assess a proposal for works that might harm the significance of a church of special historic interest. At paragraph 87 of its decision, it held that, having considered the extent of the possible harm and assessed the justification for the works, a chancellor should then ask the following question:

“Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *St Luke, Maidstone* [1995] Fam 1 at p.8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?”

“In answering [this question], the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or 2*, where serious harm should only exceptionally be allowed.”

79. I have found that the new building proposed in this case would cause some harm to the significance of the church itself as a building of special architectural or historic

interest, but that the significance of the building is modest, and the harm will not be great. I have also noted that the presence of the existing portacabin causes harm to the setting of the listed Whittington Lodge, and that its removal would accordingly be an improvement.

80. I have also concluded that the Parish has proved a need for the new facilities proposed, in terms of benefit both to the worshipping congregation and (to a lesser extent) to the wider public. And I consider that the size and location of the new building proposed – absent the problems arising from the proximity of the yew tree – are appropriate.
81. I am therefore satisfied that the need for the new building, and the benefit to the setting of the listed Whittington Lodge, amply outweighs any modest harm caused to the special character of the listed church.
82. However, I have also concluded that the construction of the new building at the location proposed would lead to a significant risk of harm to the veteran yew tree, and a small but still significant risk of its total loss. Often, in considering the effect of proposed works, the conclusion is reached that they will definitely cause minor harm – here, by contrast, the conclusion is that they may cause major harm, or even total loss.
83. It seems to me that the total loss of an ancient or veteran yew (as those terms are defined above) is equivalent to serious harm to a grade I or II* building, and should only be exceptionally allowed. In the present case, I accept that it is by no means certain that the new building will cause the loss of the yew, but I consider that the risk of its loss, and the harm that would result if it were to be lost, are sufficiently great that they are not justified by the benefit that would undoubtedly arise from the new building.
84. I have therefore concluded that I am not willing to grant a faculty for this proposal.

85. In reaching that conclusion, which I do with considerable reluctance, I echo the final comment of the CBC in thanking the Parish for its patience and courtesy throughout the extended process that has led to what will, I know, be a very disappointing outcome. I note that the CBC has offered every support in developing a viable alternative solution, possibly along the lines explored in its most recent report under the heading “alternative options”. And I am sure that the DAC would also be more than willing to assist the Parish in such an exercise.

CHARLES MYNORS

Chancellor

12 November 2017