

Neutral Citation Number: [2022] ECC Nor 2

IN THE CONSISTORY COURT

DIOCESE OF NORWICH

IN THE MATTER OF:

DITCHINGHAM, ST MARY – FACULTY APPLICATION 2022-074386

-and-

IN THE MATTER OF:

THE PETITION OF THE REVEREND CHRIS HUTTON (RECTOR), SALLY ELLSON (CHURCHWARDEN) AND SIMON WILKIN (CHURCH FABRIC OFFICER) and THE OBJECTION OF ANDREW MORLAND

-and-

IN THE MATTER OF:

THE PROPOSED RE-LAYING AND LEVELLING OF THE PATH AT THE CHURCH USING HOT BITUMEN AND GRAVEL AND THE PROVISION OF A DISABLED PARKING SPACE WITHIN THE CHURCH CAR PARK USING TARMACADAM

Judgment of the Chancellor

Petition to re-lay and level path – objection by a person currently living outside of the ecclesiastical parish and not otherwise qualified to be an objector under Rule 10 FJR as amended – position of objector ordinarily resident in the ecclesiastical parish but temporarily living elsewhere – representations invited on determining petition under Part 14 of the FJR

Background

1. This Petition [2022-074386] was created on June 30, 2022, seeking to re-lay and level the path at Ditchingham, St Mary using hot bitumen and gravel and to provide a disabled car parking space within the Church car park using tarmacadam.
2. I have seen photographs of both the path and the car park. I have been shown a photograph of the Earsham Path, which I am told the churchyard path will resemble.
3. The purpose of the Petition in respect of the path is (a) renewal of the path (b) making it less of a trip hazard (c) lessening dangers of slipping and (d) making it more user-friendly for disabled users. Its purpose, in respect of the car park, is to make it more suitable for disabled visitors.
4. The PCC resolved to put forward this Petition on June 22, 2022 by a unanimous vote of those present.
5. Andrew Morland objects to these proposals and wishes to become a Party Opponent. There are no other objectors.
6. Mr Morland's objections were set out in a letter dated August 24, 2022 which he copied to the editor of *The Eastern Daily Press*, the editor of *The Beccles and Bungay Journal* and the Bishop of Norwich.
7. Mr Morland refers to Form A (Faculty Jurisdiction Rules 2015, Rule 6.2 as amended – “FJR”) which was attached to the Church and describes it to be “concerning a proposed development of areas within the churchyard and adjacent car park.” He goes on to say that the “said notice makes reference to the laying of hot Tarmac on pathways and other areas within the churchyard.” Mr Morland also says he had difficulties in accessing the plans and documents in the Church Office, being informed by the occupant that she had no knowledge of the proposals. He concludes that no such documents exist or have ever existed.
8. Mr Morland says that, in his opinion, the proposed use of black hot-poured tar-based Tarmac on pathways and other larger areas within a very rural country churchyard can only be described as grotesque and deeply offensive to the more sensitive people who live in the area. He recommends the use of flint shingle properly levelled and compacted which he says is much cheaper.
9. He goes on to say: “the ancient church and its surrounds belong to the whole community, not just a few people who use it twice-monthly in pursuit of their religion.” He says

that, given the age of the congregation, it is likely to be redundant in ten years. He says there is no logic in catastrophically spoiling an important and valuable monument to the native heritage for such a relatively short remaining period of its practical life and comments that visitors of future generations will curse those who took it upon themselves to wreck the naturally acquired rural beauty and authenticity of the ancient churchyard for the sake of a bit of thoughtless self-gratification.

10. Mr Morland says that the Parochial Church Council (“PCC”) has apparently failed in its duty to seek competent advice before planning such destructive works to a treasured and historically important site and that they have made decisions they are not competent to make. He says there are many conservation groups in Norfolk who would willingly assist in such matters at little or no cost to the PCC.
11. He concludes by saying that he objects to the proposed development and intends to keep the wider community fully informed of all matters via the local press and otherwise.
12. In an earlier part of the letter, he explains he has wide experience of building conservation and restoration and has acquired a good level of knowledge and understanding regarding the design and use of materials which are sympathetic to the building and the environment in which it stands “both physical and cultural”.
13. On August 26, 2022 the Registry wrote to Mr Morland and attached the photographs and descriptions that the Petitioners had submitted with their application. Mr Morland was told he could either have his views taken into account or become a formal party to the faculty application. The relevant form and notes were attached. On the same day the Registry attached the details of Mr Morland’s objection in an email to the Rector.
14. The Rector responded to the Registry on August 31, 2022 by confirming that Mr Morland had sent it to him also and that he had also sent Mr Morland all of the documentation. I have read the letter he sent to Mr Morland whom he says he knows well in which he told him that the PCC had consulted experts and received several quotes and that the relevant documentation had been in the Church Office. He apologised that he had been unavailable on the morning that Mr Morland had called. The Rector stated to Mr Morland that the Church would not be redundant in ten years and also told him that the path would be similar to that at Earsham church which had also been photographed.
15. There was an email to the Rector from Mr Morland on September 8, 2022 in which he accused the Rector of being deliberately misleading in his response to the Registry and

made observations about bringing the point to the attention of the Church and the Consistory Court. The Rector replied the same day challenging Mr Morland's accusations and making the point that experts had been consulted and he made the observation that whilst Mr Morland had a right to object to the plans, that did not give him a right to attack the characters of the PCC. He described Mr Morland's previous letter (that relating to the objections) as being "incredibly rude" in parts and commented that over the years "we have been very generous to you."

16. On September 16, 2022 Mr Morland submitted Form 5 (Particulars of Objection). This largely rehearsed his previous objections, commented on what he characterised as the failure "to seek competent advice from a detached expert" or "to instruct professionals to oversee the contractors so that the quality and integrity of any finished work can be verified". Somewhat more elliptically, Mr Morland continues by saying "they have recently demonstrated their inability to instruct and supervise contractors with disastrous consequences for other aspects of the Church. The consequence of that disaster is ongoing at this time".

Rule 10 FJR – Sufficiency of Interest

17. On inspection of the application on the Online Faculty System ("OFS") I observed that Mr Morland, on his own account, explained he was of local origin, a former resident of Ditchingham, not on the church electoral roll and currently living in Bedingham. Bedingham is about 5 miles away from Ditchingham. He explained he was a regular user of Ditchingham Churchyard.
18. I envisaged conducting an oral directions' hearing online but vacated that hearing as Mr Morland had a throat infection and was, in any event, unsure he could find a suitable location at the place he would be in at the time of the hearing. One of the matters I had wished to canvas was whether Mr Morland was an "interested person" within Rule 10 of the FJR.
19. In view of the fact that this oral hearing had to be vacated, I decided to separate out this issue as it was in any event a preliminary matter that would determine whether Mr Morland could join the proceedings as a Party Opponent.
20. Accordingly, I determined that, in respect of this issue, it could and should be determined on the papers and I invited further submissions from the parties if they wished to add anything to their previous observations.

21. Mr Morland made further submissions in writing on October 7, 2022. He said that he had been a resident of Ditchingham for “various intermittent periods”. He said his last period of residence was from 2004 until April 2022 at which time he moved out to enable a structural overhaul of the roof of his house to take place. He says he will be returning to live permanently in Ditchingham before the end of the year.
22. In this letter, Mr Morland says he is a daily user of Ditchingham Church. He tells me he was there during the very morning on the day he wrote and is there every morning and usually there in the evening as well. He says he is the most frequent and regular user of the site and that the Rector and PCC members use it much less than he does.
23. Mr Morland says it is probably irrelevant to the matter of compliance with Rule 10 for him to go into the issues of care of the building and its facilities which he says he has “exercised” over the years. He has been told by new residents that PCC members described him as “the night watchman”.
24. He submits that it is appropriate for a member of the wider community to be allowed to voice concerns about issues from a more detached angle than would emanate from the closed circle of the PCC. His final position is that his objection complies with the requirements of Rule 10 and that he should be allowed to become a Party Opponent to the Petition.
25. The Petitioners made brief submissions on the application of Rule 10 to Mr Morland’s objection. They say, first, that he does not live in the Benefice, has attended no services, is not on the electoral roll, and is not on the PCC. He avoids all contact with PCC members and the congregation, and sometimes hides in the bushes waiting for the congregation and clergy to leave. He spends a lot of time in the Church and they believe this includes staying overnight. Some, apparently, find his presence intimidating.
26. Since reference has been made to Form 4A (Public Notice, Rule 6.2. FJR) by Mr Morland as I have set out in Paragraph 7 of this Judgment, it is correct I should make clear that the Notice *actually* says that the proposed works are “to re-lay and level the path at Ditchingham Church using a hot bitumen and gravel, and to provide a tarmac disabled parking space within the church car park.” The same wording is used in the Petition (Form 3A) and the Notification of Advice (Form 2) in which the Diocesan Advisory Committee recommended to me for approval the Petitioners’ proposals.
27. Rule 10.1 FJR.
Under Rule 10.1. (1) an ‘interested person’ in relation to a petition for a faculty means
(a) Any person who is resident in the ecclesiastical parish concerned;

- (b) Any person whose name is entered on the church electoral roll of the ecclesiastical parish concerned but who does not reside there;
 - (c) The parochial church council
 - (d) The archdeacon
 - (e) The local planning authority
 - (f) Any national amenity society;
 - (g) Any other body designated by the chancellor for the purpose of the petition;
 - (h) Any other person or body appearing to the chancellor to have a sufficient interest in the subject matter of the petition.
28. Rule 10.2. (1) states that an interested person may object to the grant of the faculty in respect of all or some of the other works or other proposals to which a petition relates in accordance with this rule.
29. Mr Morland does not dispute that he does not come within Rule 10.1. (1) (b-g).
30. On reading Mr Morland's first letter of objection, I understood from him that he had he had once lived in the ecclesiastical parish and that he was currently living in Bedingham. In his later submission he explained he had lived in Ditchingham intermittently and from 2004 to April 2002, that he had moved to Bedingham whilst structural works on his house in Ditchingham were underway and that he would be returning there by the end of 2022.

Determination of sufficiency of interest

31. In my judgment, based upon the facts put forward by Mr Morland in relation to his place of residence, he could fairly be described as being ordinarily resident in the ecclesiastical parish of Ditchingham: he has lived there for 18 years and is only absent whilst structural works are taking place on the roof of his house. "Residence" is living somewhere permanently or on a long-term basis and it is my judgment that one does not cease to be resident because of living elsewhere temporarily: otherwise, those on holiday or away from home for temporary periods would cease to be resident in their homes. This is, of course, a matter of fact and degree. Someone working abroad for a lengthy period or renting their house to others or using a property as a second home may not be seen as a resident for the purpose of Rule 10.
32. Having made that determination, I do not need to consider the question of my discretion under Rule 10.1. (1) (h). I admit Mr Morland as a Party Opponent.

33. As a Party Opponent, Mr Morland is entitled to take part in the proceedings, either by being heard in court or, where an Order is made under Rule 14.1 FJR, by making written representations. This includes a right to appeal against any Order or Judgment of the court subject to obtaining permission to appeal to the Court of Arches under Rule 22 and, in particular, Rule 22.2.

Part 14 FJR – Disposal by Written Representations

34. Having considered the Petition and all of the accompanying documentation, I have formed a preliminary view that the case can be decided upon written representations instead of by an oral hearing under Rule 14.1. (1) – “Conditions for disposal by written representations”.

35. I have borne in mind that the overriding objective is to deal with cases justly, bearing in mind particularly saving expense, dealing with the case in ways that are proportionate to the importance of the case and the complexity of the issues, as well as dealing with the case expeditiously. I also judge that the parties would be on an equal footing.

Second Directions - on mode of disposal

36. I invite the Petitioners and the Party Opponent to submit their views on my deciding the case upon written representations which I will consider before making my final decision. If there is no response from a party by **November 4, 2022**, I will assume that person is in agreement with my preliminary view.

37. I give until **November 4, 2022** to send any submissions on this aspect by email to the Registry.

38. If, contrary to my preliminary view, I decide that there should be an oral hearing, I will give further Directions.

39. Should I decide that the case can be determined upon written representations then I will allow the parties to make any final written submissions (if they wish) by email to the Registry by **November 11, 2022** on the central question of whether the Petition should be granted.

Etherington Ch:

20th October 2022