

IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE

IN THE MATTER OF ST. MICHAEL AND ALL ANGELS CHURCH, DALSTON

Determined on the papers and without a hearing

JUDGMENT

Delivered on 22 September 2022

A. Introduction

1. By a Petition dated 7 June 2022, the Reverend Benjamin Phillips and four churchwardens (David Cowen, Davidson Bell, Libby Smith and Ken Fearon) seek a faculty authorising certain works at St. Michael’s Church, Dalston, namely:
 - (a) The erection of an extension;
 - (b) Alteration of an existing WC;
 - (c) The replacement of 3 rows of pews; and
 - (d) The replacement of certain light fittings.
2. The Petition has attracted a number of written objections. None of the objectors opted to become a party opponent. Nonetheless, I have taken the objections into account in reaching my decision.
3. This judgment explains why I have decided to direct that the faculty should be granted, notwithstanding those objections. The conditions mentioned in paragraph 47 below will attach to the faculty.

B. The Church

4. The church of St. Michael and All Angels, Dalston has its origins in the 12th and 13th century. It was the subject of significant addition and alteration in the 18th and 19th centuries, and was partly rebuilt in 1749.
5. A Design and Access and Heritage Statement prepared for the Petitioners notes that it is a church without a tower, being a characteristic form in the region. It has early English architectural features and is set within a generous churchyard in the centre of the village.
6. Two diocesan bishops are buried in the churchyard: Edward Rainbowe and Hugh Percy.
7. The heritage significance of the church is recognised in its listing as Grade II*.

C. The Proposal

8. The Petitioners seek a faculty permitting the construction of a new single storey extension to the North of the church. The purpose of this extension is to provide a community centre formed of a multi-function room, library facility and office. It is also proposed to convert the existing Victorian flat roof vestry extension to provide access to the community centre, along with alterations to form an accessible toilet and kitchen.
9. The Petitioners' case is that this proposed extension will provide a modern, flexible and well-equipped facility alongside the historic building. They point to the growth and evolution of the community in the area. Over the last 2 or 3 years a new estate of 120 properties has been built nearby. The population of Dalston is around 2500, without taking into account the rural area beyond the village boundary. The Petitioners' wish is to construct a community centre that can facilitate welcoming newcomers to the area, while continuing to foster a strong community spirit. The proposals have the unanimous support of the PCC.

D. Planning Permission

10. In March 2019 the PCC applied to Carlisle City Council for planning permission for the proposed development. On 10 January 2020 permission was granted, subject to 10 conditions.
11. Condition 7 is a requirement that the development should be undertaken in accordance with mitigation measures and working practices outlined in a specified Reptile Survey, Baseline Ecology Survey and Scoping Bat Survey. This condition was imposed in order to ensure that the works did not adversely affect the habitat of protected species.
12. Conditions 8 and 9 concern measures to be taken so as to ensure adequate protection is afforded to all trees and hedges to be retained on site. They require the erection of protective fencing during the currency of construction works. Furthermore, any excavation works within the root protection zones of retained trees is to be made by hand.
13. Given that the proposal involves the loss of two Yew trees, condition 10 of the planning permission requires the submission and approval of a landscaping scheme, to be implemented during the first planting season following completion of the development.
14. I mention these conditions because they are directed to some of the concerns raised about the proposals: both in response to the planning application and now in connection with this Petition.
15. I note that the planning application had the support of Historic England, which stated (letter to the DAC dated 11 March 2022) that they did not object to the proposal on heritage grounds. By the time of the planning application the proposals had been substantially modified so as to meet the concerns that Historic England had earlier expressed. The same letter reads:

“We are of the view that the works would cause some harm to the Grade II listed building as a direct result of the proposed works, including alterations to the historic*

fabric and existing planform of the late C19 vestry. However, it is our position that the less than substantial harm would be outweighed by the public benefits of the scheme, with the proposed provisions and alterations supported by clear and convincing justification.”

“... [W]e remain of the view that the location of the extension is appropriate, minimising the impact on the architectural character and setting of the church, particularly its nave, with sufficient space to allow the church to be appreciated into the future. “

“It is important that the design and material specification of stonework, joinery and internal finishes are suitably conditioned to ensure the highest quality of the scheme. We defer this aspect to the DAC.”

E. Consultation

16. The Georgian Group and the Victorian Society were duly consulted, but did not wish to comment on the scheme.

17. The Church Buildings Council supports the proposals, stating that it

“... was pleased to read strong statements of need and significance as well as an updated design and access statement, which it found to be both useful and informative. The Council noted that the proposals were amended and re-designed to address the issues that Historic England and Carlisle City Council’s Planning Officer and Conservation Officer had originally raised.”

F. Objections

18. This Petition has attracted some strongly expressed opposition. I have read, and carefully taken into account, the written objections submitted by Dr. Judith Anderson; Annie Burgamy; the Cumbria Amphibian and Reptile Group; David Hickson; John

Miles; Ian Scott; Ken Tinning; Ron Whatley; Dr. Daniel Wilson; C. Wilson; and David Wilson (together “the Objectors”).

19. The main objections may be summarised as follows, namely that the proposed works:
 - (a) Would harm the appearance of the historic building and its immediate surroundings;
 - (b) Do not in truth respond to a proven need for a further community building;
 - (c) Are not a good use of money, and ignore the possibility of developing Church House at a lower cost;
 - (d) Are said to be highly unpopular in the village;
 - (e) Could have a detrimental effect on a population of Slow Worms (*Anguis fragilis*), common frogs (*Rana temporaria*), common toads (*Bufo bufo*), Barn Owls and several species of Bat; and
 - (f) Will result in the loss of graves and headstones.
20. I have also taken into account the written response to these objections, dated 14 August 2022, submitted by David Cowen on behalf of all the Petitioners. That has with it a letter from the Bishop of Carlisle to Carlisle City Council dated 13 May 2019, in which he expresses his support for the proposals.

G. Diocesan Advisory Committee

21. The Diocesan Advisory Committee (“DAC”) recommends the works for approval, subject to certain conditions that I shall mention, below. Its notification of advice states its opinion that the proposed works will not affect the character of the church as a building of special architectural or historic interest; its archaeological importance; or archaeological remains within the church or its curtilage.

H. Discussion

22. I will now consider each of the objections in turn. In doing so, I bear in mind that the burden of proof rests on the Petitioners to show that the proposal they make is desirable. This is because it has long been settled that “*All presumption is to be made in favour of things as they stand*” (*Peek v. Trower* (1881) 7 P.D. 21 (Court of Arches) per Lord Penzance).
23. In the first place it is objected that the proposals will result in harm to both the church and its surroundings, to the detriment of those who currently enjoy a view of the area and walking through the churchyard.
24. This application therefore engages the series of questions identified by the Court of Arches in the case of *Re St. Alkmund, Duffield* [2013] Fam. 158 at paragraph 87 (and see *Re St. Peter, Shipton Bellinger* [2016] Fam. 193 at paragraph 35). The questions are:
- (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
 - (2) If not, have the petitioners 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?
 - (3) If the answer to question (1) is 'yes', how serious would the harm be?
 - (4) How clear and convincing is the justification for carrying out the proposals?
 - (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the character of a listed building, 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 question (5), 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 to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed.

25. Historic England's view (see above) is that some harm would result to the listed building as a result of the proposed works, including alterations to the historic fabric. Nonetheless, the degree of harm is described as "*less than substantial*". This is to be read alongside the terms of the DAC's Notification of Advice (see above): which supports the same conclusion. I have also taken into account Wardell Armstrong's detailed "Heritage Impact Assessment" dated October 2019.
26. In my judgment the implementation of the proposals would result in some harm to the church as a building of special architectural or historic interest, but I agree with Historic England's assessment that the harm would not be serious or substantial. The final design of the proposed extension is one that is, in my assessment, conservative: by which I mean that it will be in sympathy with the existing building. I note in particular the proposal to face the external walls of the extension with sandstone variously recovered from the intended partial demolition of vestry walls and otherwise being Locharbriggs sandstone. I also take into account that the extension would be sited in a closed section of the churchyard that has not been used for burial for over 100 years. On balance, I am not deflected from my conclusion by the objections that I have read on this point.
27. It is then necessary to consider whether there is a clear and convincing justification for carrying out the works.
28. The Petitioners' case is set out in the "Statement Determining Need" prepared by Architects Plus, dated October 2017. They submit that the proposed community facilities are much needed, both to serve the requirements of the local community and more specifically to maintain the viability of the church. They wish to engage with more people, and to do so in new ways, in a modern, flexible and well-equipped facility. The Petitioners stress that they do not wish in any sense to compete with other community buildings, such as the Methodist Church, Victory Hall Committee or the Recreation Association. Their plans for a new extension involve internet access, a library facility, a reception/church office, an accessible toilet with baby changing

facilities, a modern kitchen and space for community functions, meetings, and in which to offer hospitality.

29. To this, it is objected that Dalston already has a number of existing community spaces. Dr. Anderson, among others, stresses that there are other “*more appropriate secular spaces*” for the activities the Petitioners have in mind. The Objectors identify specific buildings elsewhere in the village that they say would serve the same purpose as that proposed by the Petitioners.
30. With respect to the Objectors, it seems to me that the answer to what they say lies in paragraph 3.1 of the Statement of Needs. This explains that “*The proposed extension to St. Michael’s would provide a modern, flexible and well equipped facility alongside the historic building. It will ensure that the congregation’s work in the community can grow and develop enabling the church to continue as one of the ‘hubs’ in the village today and well into the future...*”.
31. The Statement of Needs therefore highlights the needs of the church and its congregation for a space adjacent to the church. It may be the case that there are other community spaces, including secular ones, in the village. That is not to say, however, in my judgment, that they would be an adequate substitute for the proposed extension, immediately alongside the existing building, and specifically available, in conjunction with the existing church building, for the furtherance of its mission.
32. I consider that the Petitioners have presented a clear and convincing justification for the proposed works. In particular, the evidence they present shows that the extension would afford new opportunities for mission, and for the church to be put to viable uses that are consistent with its role as a place of worship and mission.
33. I have also considered whether the nearby Church House, owned by the parish, could be used for the Petitioners’ purposes, and obviate the need for the proposed extension.
34. Church House is a short distance from the church. It was formerly a private dwelling house. A number of the Objectors question why a new building is required, when this building is already available to the parish.

35. I am satisfied that the stated needs of the local church cannot reasonably be met at Church House. It is also a listed building. The Petitioners say (and I accept, since there is no contrary evidence) that it is not, and cannot reasonably be made, DDA compliant. They also say (and, again, there is no evidence to the contrary) that the kitchen at Church House is inadequate in size for the preparation of meals and refreshments.
36. I now turn to the assertion that the proposed development is not a good use of money. The Petition identifies that the estimated costs of the works comes to £465,000.
37. The question of how funds should be raised, managed and spent in a parish is a matter for the PCC, in collaboration with the vicar (see Parochial Church Councils (Power) Measure 1956, section 7(iv)). In my judgment, this is not a case where it appears that the PCC (which voted unanimously to support the proposals) could be said to have failed to give proper thought to raising the necessary funds, so that I ought to intervene in some way. For these reasons, I do not consider that the Objectors' contentions in this regard are sufficient reason to dismiss the Petition.
38. There is then the assertion that the proposals are unpopular in the village. That proposition is disputed by the Petitioners.
39. My decision on this point is that the choice as to whether to implement any faculty I might grant remains one for the Petitioners. A faculty amounts to a permission to do works, not a direction mandating that they must be done. I am sure that the Petitioners, PCC and vicar will continue carefully to reflect on local public opinion when making their decision about whether to proceed and how best to communicate their aims and intentions.
40. There are then two further matters to consider, the first of which is the concern that the proposals, if implemented, might stand to harm the natural environment, and a Slow Worm population in particular.
41. This is a matter that the planning authority has already considered. I have set out the condition to the planning permission obtained by the Petitioners and that bears on this point. I have seen nothing to persuade me that the observance of that condition will be insufficient to protect Slow Worms and other local wildlife.

42. Lastly, there is the question of the effect of the proposals on buried remains and monuments in the churchyard. The Petition identifies, at paragraph 21, that the works could affect human remains and monuments. Several Objectors have raised concerns in this regard.
43. The notes of the DAC site visit record that disarticulated human remains were found in archaeological trial trenches. It was observed that the bones did not relate to the headstones and might well not be in their original location. One articulated skeleton was found, but this seemed no longer to be in its original position. The DAC noted that a pillar and beam foundation system is proposed so as to minimise the impact on human and other archaeological remains. The Churchwarden had suggested a plate would be put in the floor of the extension, so all burials were recorded.
44. As to the effect on gravestones, the DAC site view notes record the intention to move displaced headstones to suitable new locations. The DAC made specific recommendations in this regard, as to the notification of affected relatives, and the way in which such headstones should be repositioned. I reflect those helpful recommendations in the conditions I shall impose on the faculty.
45. I am satisfied that the reasonable concerns over disturbance of headstones and human remains can be properly dealt with by the imposition of suitable conditions.

G. Direction

46. For these reasons I direct that the faculty sought shall issue. In my judgment the Petitioners have discharged the burden of proof that rests on them.
47. The faculty shall be subject to the following conditions:

Archaeological Watching Brief

- (a) The Petitioners shall secure the observance of an archaeological watching brief and notify any finds to the DAC, the County Archaeologist and the National Monuments Record.

- (b) The works shall be carried out using pillar and beam foundations, so as to minimise disturbance of buried remains and archaeology.

Human Remains

- (c) All possible care shall be taken to minimise disturbance to the ground.
- (d) If any human remains are disturbed during the works, then:
 - (i) Work shall cease forthwith in the area in question;
 - (ii) Immediate steps must be taken to inform the parish priest;
 - (iii) The parish priest must inform the Registrar, the Archdeacon and Environmental Health Officer and seek their directions;
 - (iv) Subject thereto, any remains disturbed shall be reverently and decently re-interred as soon as practicable, and as close as reasonably possible to the position in which they were found;
 - (v) During any period of delay until a decision is made as to their disposal and that decision is put into effect, any remains shall be kept privately and securely;
 - (vi) Where it is thought that remains are from more than one burial, efforts shall be made to keep and re-inter them separately; and
 - (vii) The place of any re-interment is to be marked on the churchyard plan.

Gravestones

- (e) Before any gravestone is moved, the Petitioners shall use reasonable endeavours to trace any living relatives of those commemorated by such a stone, and to secure their prior agreement to it being moved. In the event of a traced relative objecting to the proposal then the Petitioners shall apply for further directions.
- (f) Any gravestones to be displaced during the works shall be repositioned and fixed in accordance with a specification agreed, in advance, by the DAC and that sets out:

- (i) Whether they are to be free-standing, and how the free flow of air is to be maintained between them and the church walls,
- (ii) Their proposed new location, and
- (iii) The mode of fixing the headstones in their new position so as to ensure stability.

Roundels

- (g) No work shall commence until the Petitioners have secured the written approval of the DAC to the final design of the roundels proposed for the external walls of the new extension.

Management Plan

- (h) No work shall commence until the Petitioners have secured the written approval of the DAC to a management plan, setting out the proposed mode of works in particular as to the storage of builders' materials and equipment, and working hours.
48. Had it not been for the planning condition concerning the protection of tree roots I would have imposed such a condition myself. As it is, I consider that the existing condition is sufficient for its purpose.

JAMES FRYER-SPEDDING

Chancellor

22 September 2022