

Neutral Citation Number: [2024] ECC Wor 3

OFS CASE NUMBER: 2022-073653

IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER

RE: ST BARTHOLOMEW LOWER SAPEY

RE: Reordering works including the installation of kitchenette, construction of an accessible WC, installation of a new ceiling and relocation of existing font and introduction of new moveable font.

JUDGMENT

THE CHURCH

1. The current church building of St Bartholomew, Lower Sapey is in fact located in Harpley, a village within the parish of Lower Sapey and dates from 1877. It was built by Frederick R Kempson of Hereford and consists of a chancel and nave with porch and vestry. It is Grade II listed. The listed fittings include the contemporary tiled floor, altar rail, pews and pulpit and the 'plain cup shaped medieval bowl from the Old Church of St Bartholomew on a C19 base'. The current church was built to replace the old church of St Bartholomew. Old St Bartholomew's is in the village of Lower Sapey itself, just under 2.5 miles away by road (around a mile in a straight line). Old St Bartholomew's is now in the care of the Churches Conservation Trust. In this judgement 'St Bartholomew's Church' refers to the Victorian Church that is the subject of this application unless specifically stated otherwise.
2. The worshipping community that meet at the church of St Bartholomew is small, rarely numbering over 20 save for major festivals or occasional offices. This is unsurprising when I am told there are less than 200 inhabitants in the parish, although I am also told that some housing development is planned that will increase the population. There is no other community space within Harpley. The nearest village hall is in Clifton-upon-Teme, around 2 miles away (both by road and in a

straight line). The church has obtained its silver Eco Church award from A Rocha UK of which they are appropriately proud.

THE BACKGROUND TO THE APPLICATION

3. The current PCC of St Bartholomew's is motivated to keep the church open, following the closure for worship of six other local churches. To achieve this, they take the view that the church building needs not only to be available for public worship, but also for community events. The PCC engaged in a wide public consultation in 2019 for which they obtained external funding, to understand the needs of the local community and what changes to the church building were needed to enable the church building to serve those needs.
4. The main need identified was loneliness, with many of the parishioners being retired and living alone. Other major issues identified were cold/fuel poverty, lack of public transport, lack of children's facilities, lack of mobility and lack of community space. There was a lot of support for using the church building for community events such as music performances, exercise classes, special interest talks, craft groups, quiz nights, film screening and book groups etc. The facilities that were identified as most needed to enable such use were WC facilities, kitchen to prepare drinks (and to a lesser extent, food), heating and light control, parking, flexible layout, and internet access.
5. The church community are already taking steps within the limitation of the present facilities to meet those needs, including by hosting Arts festivals, an annual 'Big Breakfast', concerts, WW1 Exhibition, a mini 'antiques road show'. However, their view is that kitchen and toilet facilities are essential for community use to be sustainable.

THE PROPOSALS

6. The proposals as set out in the petition are as follows:

“To re-order the church to create a flexible space for Worship and Community activities with kitchen and toilet facilities. To replace the falling ceiling with a lower ceiling. To remove the font and replace with a portable font. To install kitchenette in the South West corner. To create an extension on North West wall for accessible toilet.”

7. These proposals are developed in a substantial document from APEC Architects entitled 68301 Faculty Application – Supporting Documentation Version 02 dated 31 May 2022. This sets out the context, the detailed proposals, supplies photographs and works specifications and adds appendices detailing the Feasibility Study undertaken and setting out the technical specifications for the proposed septic tank. Multiple plans have also been supplied.

APPROACH TO APPLICATION

8. I shall deal with these proposed works in 3 parts:
 - a. The installation of the toilet and kitchen facilities with the associated drainage works and relocation of a monument;
 - b. The work to the ceiling;
 - c. The removal of the old font and replacement with a moveable font.
9. I also note that the supporting information from the Architect also provides for external works of repair to stonework. There is no application in respect of this work, much of which would come within List B if there is no substantial replacement of historic fabric, and no new material is introduced. I trust this work is also going to be undertaken as part of the project, so as to keep the building sound and watertight and thereby protect the internal fabric.
10. There is also reference within the papers to the further removal of pews and rearranging of remaining pews and/or introduction of chairs. This forms no part of the application before me and I make it clear that no permission for such actions is granted. If this is wanted a further petition must be brought.

CONSULTATION, NOTICE AND DAC VIEWS

11. Historic England has been consulted and by letter dated 21 March 2023 from Dr Dale Dishon it was confirmed that they did not wish to offer any comments on the proposals.
12. The Victorian Society has been consulted and by email from James Hughes dated 17 March 2023 they expressed concern that the removal of the old font would undoubtedly cause harm to the significance of the building, as it was the loss of a fixture of enormous historic interest and also eroded the C19th design and layout that intentionally incorporated the historic font. However, Mr Hughes also confirmed that the Victorian Society did not wish to object to the proposal and was content to defer to the detailed advice of the DAC.
13. Formal notice also gave rise to some local opposition. Two letters have been received, one from Mr R A Dursley, a parishioner living in Harpley, attending St Bartholomew's regularly, singing in the church choir and on the electoral roll of the church, and one from Ms D B Smith who lives in the nearby village of Clifton-on-Teme but was born in the parish and christened at St Bartholomew's, as were her children. Parents, grandparents and other family members are buried in the churchyard and she supports events at the church, pointing particularly to a successful Harvest Supper in 2022 that took place despite the limited facilities.
14. In his letter dated 12 April 2023 Mr Dursley objected primarily to the removal of the font and lowering of the ceiling. He did not object to the introduction of kitchen and toilet facilities in principle, but felt they would be better situated elsewhere – particularly the kitchenette in the 'alcove' on the north side of the chancel (I assume this means the storage room forming part of the vestry) with an external toilet located through this room, rather than at the west end of the church. His objection came from himself and his wife. He also states that the removal of the font is 'strongly resisted by many parishioners whether regular churchgoers or not'. Such a statement is difficult to assess when no-one other than Ms Smith has also written to

express their views, nor have they, according to the petitioners, expressed such views during the consultations. I take the view that is likely there is some grumbling locally about the proposals, but it is hard for that to be given much weight when the strength of feeling is insufficient to have resulted in any further letters of objection.

15. Mr Dursley subsequently met with the Churchwarden and revised his view that the 'alcove' was a suitable alternative location for the kitchenette. However, he stood by his other previous comments and remained essentially opposed to the proposals, particularly as to the ceiling and removal of the font.
16. Ms Smith's main objection is the removal of the font by which, she considers, 'the heart will be torn out of this beloved church'. She disputes the extent of the risk posed by the font plinth, pointing out there are other such risks such as grids that could catch heels and suggesting other ways of minimising any risk from the plinth. She also suggested behind the organ as a location for the kitchen and felt the current Portaloo provided sufficient toilet facilities.
17. She also referred to strength of feeling against the proposals by 'true locals' – by which she means people living in the area for generations rather than recent incomers – who 'live in fear of retribution' from wealthier people who have moved into the village who tend to 'bulldoze their way through anything they feel they want to do'. This is a most concerning allegation and not one I am in position to determine one way or another. However, I trust the minister of the parish and the Archdeacon are aware of this letter and are addressing the pastoral issues exposed by it. As above, it is difficult to attach much weight to the views of others who have not provided any letters of objection.
18. The Diocesan Advisory Committee has provided a notification of advice dated 31 March 2023 which recommended the works, subject to very substantial provisos as follows:

1. The building of an extension will require planning consent. Confirmation to be included in the final petition, or to be confirmed with the DAC before works start – including any conditions that may affect the Faculty consent. 2. The building of an extension, and the installation of accessible WC and kitchen, will be subject to Building Regulations approval by South Worcestershire Building Control. Confirmation this is in place to be included in the final petition, or to be confirmed with the DAC before works start. 3. The removal of the font to the Old Church will require Scheduled Monument Consent for its installation there. This to be sought from Historic England. Confirmation to be included in the final petition, or to be confirmed with the DAC before works start. The font is not to leave this church until that consent is obtained and confirmation sent. 4. The architect’s final drawings, materials specification and schedule of work to be confirmed with the DAC before works start. The architect to be contract administrator for the building works. 5. Further discussion is required with the DAC on the design of a new, portable, font. The example provided in this application is not felt to be sufficient. 6. Confirmation to be made with the DAC over the final design of drainage proposals. The DAC’s preference is for the trench arch option; the DAC will be pleased to know the Planning Authority’s view. 7. The archaeological brief and the required level of supervision for the excavation of the site for the extension and subsequent drainage is to be agreed with the DAC before works start. Archaeological report to be submitted to the DAC at the end of the project. 8. Best efforts to be made to contact the descendants of Arthur Geoffrey Evans (d1951) to inform them that the plaque in his memory is to be relocated within the church. 9. The PCC to submit as part of the final petition a formal budget for the project and details of funding in order that the Chancellor can be assured that the PCC is ‘in-funds’ for the works.

19. I am, as always, very grateful to the DAC for identifying what they see as the key issues raised by these proposals, some of which have now been resolved by the petitioners and some of which can form conditions to the faculty granted below.

THE LAW

20. In all cases where an application is made for permission to make changes to a building on consecrated ground, the legal test for whether such a faculty should be granted is set out in *Re St Alkmund, Duffield* [2013] 2 WLR 854 which directs the Chancellor to answer the following questions in determining the petition:

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 the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals.
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 special 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 is to a building which is listed Grade I or 2*, where serious harm should only exceptionally be allowed.

APPLICATION OF THE LAW TO THE PROPOSALS

Kitchenette and WC

21. The proposed kitchenette facilities here are a run of low-level kitchen units on the west end wall of the nave, with a gap in the middle where the wall has an alcove with a window, and with a sink on the west end of the south wall adjoining the southern part of the run of units, but at right angles to them. The detail is in plan numbered 68301 DD3.600. The level of these units is below the westernmost windows on the north and south walls and below the monuments on the west wall. The proposals would be broadly reversible save for any low level permanent changes needed to bring water pipes into the body of the church.

22. The proposed toilet facility is for an extension to be built on the north side of the west end of the north wall to house a single accessible toilet. The doorway to this toilet will be created by a new opening in the north wall between the westernmost and second westernmost windows. I expressed some concern about sound pollution as only a single doorway is proposed with no lobby area and this has been addressed to some degree by the architect. This proposal will obviously cause permanent change to the church. This change is mitigated by the external walls to the toilet extension being built with the same stone as the main church including replicating the string course running around the church. The doorway into the toilet extension from the nave will be made from the same materials and be styled to match the other doorways in the church as also set out on the plan numbered above.
23. It is clear that these proposals will cause some harm to the significance of the church, by changing its appearance and changing the footprint of the building. I assess the level of that harm as moderate. However, the missional and pastoral need to provide kitchenette and toilet facilities is clearly made out, both for the use of the worshipping congregation, and for the increased community use that is hoped for and is already developing. The public benefit flowing from the church's ability to offer hospitality through the provision of toilet and modest kitchen facilities is manifest and substantial.
24. There are some associated works in connection with these proposals that need consideration. The proposals require the relocation of the monument to the late Arthur Geoffrey Evans from its current location on the north wall where the doorway to the toilet extension is proposed to the south wall, to the east side of the south door. At my direction the descendants of Mr Evans have been contacted, all of whom consent to the relocation of the memorial, and some of whom express enthusiasm for the proposals to reorder the church for increased community use. I therefore raise no objection to the relocation of this monument and indeed shall require its relocation to the south wall as proposed as a condition of the faculty granted below.

25. The second set of associated works is the need for water supply and, more pressingly drainage of both water and foul waste. There is water supply to the exterior of the church building, so supplying it into the building for the WC and sink will be relatively straightforward. The waste removal proposals are for a septic tank the detail of which is contained as Appendix B to the architect's report. However, the DAC have expressed a preference for a trench arch drain. The architect has indicated that a feasibility study for this will cost around £2,000 so the parish wish to know whether there will be a faculty granted for the works in principle before committing funds to the investigation. I will therefore deal with this issue by way of conditions.
26. There will be conditions as to the avoidance of disturbing any burials within the churchyard, both in the installation of any water supply, drain and/or septic tank, and by the processes required to empty the septic tank periodically if that solution is retained after further consideration. An archaeological watching brief will also be required.

Ceiling

27. There has been only limited concern expressed about the ceiling proposals, save by Mr Dursley who expressed the view that lowering the ceiling will damage the 'pleasing architectural design that imparts an aura of sanctity'. The Victorian Society has not expressed any concern, nor have the DAC or HE. Nevertheless, I understand Mr Dursley's view, and accept that the lowering of the ceiling will cause some harm to the significance of the church, architecturally. I also note that no consideration has been given of any changes to the acoustic properties of the church that may arise if the ceiling were to be lowered and whether any steps can be taken to mitigate that. This may impact on musical uses of the church, both for worship and for secular concerts, etc.
28. I therefore determine that the amount of harm caused to the significance of the church is a moderate.

29. The justification given for the proposed works are:

- a. To replace a currently defective ceiling; and
- b. To provide better insulation to the church, which will in turn
- c. Support the proposals for increased community use of the church, and
- d. Reduce the carbon footprint of the church.

30. It is undoubtedly the case that the roof is defective, with plaster having fallen and netting having been installed to protect the users of the building. The question is then whether there should be a like-for like repair or the insulation of the ceiling to provide better insulation which will reduce the costs of heating the church and make such heating more effective. There is good evidence from the consultation process that a warm space will encourage community use.

31. The petitioners are also clear that part of their motivation is to further reduce their carbon footprint (whilst increasing the use of the church) and become an Eco Gold Church. I am told that the costs of a like-for-like repair and the lowering and insulating of the ceiling are the same, such that it will be overall more cost effective to lower the ceiling as this will reduce fuel costs to heat the church. Vitally, I am told it will also reduce the carbon emissions of the church from their heating, as they will be able to use less energy to maintain the same level of heat. The specific evidence supplied by the parish in support of this assertion as it applies to this particular building is rather limited. However, the effectiveness of such schemes generally is in the public domain, and I can appropriately take judicial notice of it. Consideration of such insulation is recommended by the Church Building Council's Pathway to Net Zero document and the current proposals have been recommended by the church architect to provide the appropriate levels of insulation and ventilation.

32. The carbon reduction advantages, and cost reduction advantages of these proposals, together with the benefit to the mission of the church to increase the community use of the building are ample public benefit to outweigh the harm to the significance of the building caused by these proposals.

33. However, I shall also direct that investigation is undertaken into the extent of the impact on the acoustics of the church and whether that can be mitigated. But provided any such impact is considered acceptable by the petitioners and DAC this will not stand in the way of the proposals.

THE FONTS

34. The third proposal is to remove the early mediaeval (Saxon) font and return it to Old St Bartholomew's and replace it with a moveable font. The stated justification for this is that it limits the flexibility of use of the west end of the church, makes the use of the proposed kitchenette more difficult and is a tripping hazard.

35. The removal of the Saxon font will undoubtedly cause harm to the significance of the church. It is the oldest item in the church and is of great historical significance being said to be around 1400 years old. It is also, vitally, of liturgical and theological significance as the clearly visible place of baptism, placed close to the main entrance of the church building, symbolising the significance of baptism as the rite of initiation into the Church as the body of Christ. To remove it would cause serious harm to the significance of the church. There is some mitigation of that harm by relocating it to Old St Bartholomew's, the listed building from which it originally came and where it will remain subject to faculty jurisdiction. I understand that the Churches Conservation Trust are willing to receive it and indeed it could be used for baptisms in that location by agreement. I have no doubt that CCT would do an excellent job of looking after it and articulating its historical importance. However, before considering whether the overall benefit of the proposals justify its removal from St Bartholomew's, I need to consider the proposals for the replacement.

36. The specific proposal for the moveable font is a copper bowl on a stand. The copper bowl is said variously to be 'Victorian' or 'Victorian style'. I have been given no other provenance for it. It looks like a kitchen mixing bowl, albeit a relatively attractive one.

I am not aware of any Victorian Church that had such a bowl installed as a font. Victorian fonts, whilst coming in various styles, are almost always of stone.

37. I have seen photographs of the bowl placed on a metal stand (which is otherwise used as a flower stand) and on a taller wooden stand. The provenance of the wooden stand is also somewhat vague. It is clearly not a new purpose-made item. It looks like it may also be a flower stand or candle stand. The Rev'd Anne Potter, Team Rector of the Worcestershire West Rural Team that includes Lower Sapey has confirmed that in December 2023 it was being used as a 'Christmas Tree'. She also confirmed that the wooden stand makes the bowl too high for comfortable use, preferring the metal stand.

38. She also queries why there is need for a faculty for something that is only going to be used very occasionally and suggests, broadly correctly, that this is because it is replacing the stone font that is intended to be moved, 'even though it is portable and not a permanent feature in the church'.

39. This has highlighted a further concern in respect of the font, in addition to the legal test identified in *Re St Alkmund Duffield*. This concern is the requirement of Canon F1 Of the font which provides as follows:

F 1 Of the font

1. In every church and chapel where baptism is to be administered, there shall be provided a decent font with a cover for the keeping clean thereof.
2. The font shall stand as near to the principal entrance as conveniently may be, except there be a custom to the contrary or the Ordinary otherwise direct; and shall be set in as spacious and well-ordered surroundings as possible.
3. The font bowl shall only be used for the water at the administration of Holy Baptism and for no other purpose whatsoever.

40. The current proposals in respect of the new portable font do not fulfil either the letter or the spirit of Canon F1. The petitioners' attention is also drawn to the CBC Guidance Note on fonts.
41. I do not consider a copper bowl with two small rings on the side to be 'a decent font with a cover'. In my judgment a loose bowl that is kept in storage and brought out occasionally does not properly recognise the importance of baptism as one of the two sacraments specifically instituted by Jesus. The risk of this bowl being used for other purposes in those circumstances is very high. There needs to be, permanently visible within the church, a font of good quality that is used solely and exclusively for the purpose of baptism. That could, in principle, be a moveable font, capable of being kept in a convenient but visible location within the church when not in use and then brought into a central and focal place for use. A particularly high-quality font of this nature may be seen within the Diocese of Worcester at Holy Trinity, Wordsley. There are doubtless many others.
42. As was confirmed in *Re St Mary, Lenham* [2014] a Chancellor can permit the relocation of an existing font within a church away from the main entrance if there is sufficient reason to justify it. It is also permissible, if a suitable case is made out, for a redundant font to be removed from a church, particularly where there is an appropriate destination available for it. However, I cannot accept that any justification has been made out, or indeed could be made out, for the proposal to remove this font from the church entirely and replace it only with a loose copper bowl. I therefore decline to grant a faculty for this proposal.
43. The petitioners are free to make a further application, if they wish to do so, to (a) relocate the current font within the church, or (b) remove the existing font to Old St Bartholomew's and replace it with a font that, whilst moveable, is of rather greater architectural/artistic quality commensurate with its important purpose. Any such application will be considered on its merits at the time.

44. As to the health and safety concerns in respect of the existing plinth, proposals to resolve those pending determination of the longer-term plan for the font must be agreed with the DAC and implemented within 6 months (if no faculty is required) or a faculty application must be issued within 6 months if a faculty is required for the identified solution. I shall make this requirement a condition of the faculty permitting the installation of the kitchenette.

FACULTY

I accordingly grant a faculty (subject to the conditions below) for:

- a) The installation of kitchenette and toilet facilities in accordance with plans numbered 68301 DD3.201, 68301 DD3.300, and 68301 DD3.600 (save that the font is not to be removed and subject to any minor variations agreed with the DAC); and
- b) The replacement of the ceiling with a lower ceiling in accordance with plans numbered 68301 DD3.200A and 68301 DD3.201.

But I decline to grant a faculty for

- c) The removal of the font and replacing it with a portable font.

CONDITIONS

I impose the following conditions:

1. No work may commence until copies of all necessary secular planning and listed building consents and Building Regulations approval have been lodged at the Registry and with the Secretary of the DAC and if conditions are placed upon such consents/approval they must be adhered to. In the event of any conflict between the faculty and secular consents, the matter must be referred back to this court.

2. No work may commence until the final form of the architect's drawings, materials specification and schedule of work is agreed in writing with the DAC.
3. The architect shall be the contract administrator for the works.
4. No work may commence until the acoustic impact of the ceiling proposals has been considered and the petitioners and the DAC are agreed that such impact is minimal and/or has been mitigated as far as possible in the circumstances.
5. No work may commence until the final design of the drainage proposals is agreed in writing with the DAC. If a septic tank solution is agreed, this must be capable of being emptied without contractors driving over any graves.
6. No excavation may take place on the site of any known graves.
7. If human remains are unexpectedly disturbed they must be reverently and discretely reburied as soon as practicable at the direction of the minister.
8. No work may commence until the architectural brief and required level of supervision for the excavation of the site is agreed in writing with the DAC.
9. The archaeological report shall be submitted to the DAC at the end of the project.
10. No work may commence until a formal budget and details of funding have been supplied to the DAC and Registry and sufficient funding is in place to enable the works to be completed.
11. No work may commence until written confirmation of insurance (taken out by the PCC or the contractors as appropriate) is filed with the Registry and DAC covering the buildings, the public, workers and volunteers for the duration of the works.

12. Upon completion of the works the Portaloo shall be removed from the churchyard.
13. Upon the monument to Arthur Geoffrey Evans being removed from the north wall of the church it shall be reinstalled on the south wall on the east side of the south door, midway between the door and the nearest window to the east. The method of fixing to be agreed with the DAC in writing in advance.
14. No work shall commence until the petitioners have agreed in writing with the DAC how the health and safety concerns relating to the plinth upon which the font stands may be alleviated.
15. Unless a faculty is required, the agreed steps to alleviate the health and safety concerns shall be undertaken so as to be completed not later than the last to occur of:
 - a. Six months after the date of this order; and
 - b. Completion of the works in respect of the kitchenette and toilet facilities, provided such works have commenced within six months of the date of this order.

In the event a faculty is required such application shall be made within six months of the date of this order.

16. The toilet facilities shall be accessible to wheelchair users and people of limited mobility and shall include baby changing facilities.
17. No works shall commence until the plans to minimise noise associated with use of the toilet facilities are agreed in writing with the DAC.
18. Electrical work is to be undertaken by an approved contractor registered with The National Inspection Council for Electrical Installation Contracting (NICEIC), Electrical Contractors' Association (ECA) or The National Association of Professional Inspectors

(NAPIT) in accordance with the latest edition of IEE regulations and in line with the up-to-date guidance of the CBC.

19. In the event of any dispute between the petitioners and the DAC the disputed matter shall be referred to this court.

JACQUELINE HUMPHREYS
CHANCELLOR OF THE DIOCESE OF WORCESTER
21 February 2024