

IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER

IN THE MATTER OF ST MARY'S CHURCH, DOVERDALE

PETITION REF. 2021-066545

JUDGMENT

Introduction

1. This judgment relates to a suspected failure to comply with a faculty condition.
2. The petition in this case was submitted in May 2022 and the Petitioners were the Reverend Mr Stephen Winter (at the time, Rector of St Mary's church, Doverdale, Worcestershire), Mr Robert Coppini (Church Warden) and Mr Geoffrey Crow (Secretary of the PCC). I understand that Mr Winter has retired since the petition was issued.
3. St Mary's church is Grade II listed. According to the Historic England record, the church dates from the fourteenth century, was remodelled during the seventeenth century and was eventually restored by the Victorians.
4. I have before me not only the standard documents in support of the petition on the Online Faculty System but also witness statements from Mr Mark Carter (Director of Church Buildings in the Diocese of Worcester) and Mr Crow. Save where I indicate otherwise, the factual background to this case is not significantly disputed. Mr Coppini provided a short

statement to the effect that his involvement in the matters set out below was peripheral. Mr Winter has not provided a statement but wrote an explanatory email which I refer to below.

The factual background

5. In December 2016, the Quinquennial Inspection of St Mary's identified movement in the south-west wall of the church. Mr David Arnold, who had been involved in producing the Quinquennial Inspection, was asked by the PCC to investigate further. He recommended that work should take place to stabilise the wall. A similar project had recently been undertaken at the east end of the church.
6. By 2018, further structural movement had been noticed. The situation was becoming more pressing as it appeared that the wall was beginning to lean outwards at the top, along the roof line. Arnold Bartosch Ltd, the firm which had produced the Quinquennial Inspection, advised consulting a structural engineer to investigate what works were necessary.
7. In the spring of 2020, two boreholes were dug by the engineers (apparently without faculty permission) to investigate the situation underground. The engineers recommended using resin injections under the foundations to stabilise the wall. A technical specification was drawn up and a contractor was retained to carry out the work in due course.
8. The procedure of applying for the faculty began using the new online system in late 2021. Mr Crow notes that Ms Pat Every, Assistant Building Officer in the Diocese of Worcester, was especially helpful in progressing it. Mr Crow also says that it was never indicated during the faculty application process that the diocese would require any other professional to be involved before or during the works. His understanding was that as soon as the faculty was issued the works could commence forthwith. That is inconsistent with the fact that, in January 2022, the Diocesan Advisory Committee issued a standard form Notification of Advice which recommended approval of the proposed works, subject to various conditions, including that,

An archaeological watching brief is commissioned to the satisfaction of the DAC Archaeology Advisor.

9. It is also inconsistent with the contents of an email from Ms Christina Emerson, Head of Casework at the Society for the Protection of Ancient Buildings, to Mr Carter (and no doubt in due course shared with the Petitioners) dated January 2022 which, praising the thoroughness of the specification of works, concluded,

The specification/schedule of works states that an archaeologist is to be appointed to maintain a watching brief during the course of works. We would recommend that suitable desk-based and site-based investigations are carried out to establish the potential presence of archaeological artefacts, burials, vaults etc within the areas that will be affected by the foundation remediation works.

10. The petition was formally submitted in May 2022 and I granted a conditional faculty on 16 August 2022. What I shall refer to hereafter as “the Condition” was that,

Before any works commence an archaeological watching brief shall be commissioned to the satisfaction of the Diocesan Advisory Committee Archaeology Advisor.

11. Mr Crow indicates that the PCC at St Mary’s was becoming increasingly alarmed at the worsening state of the west wall, though at no stage did the Petitioners approach the Diocese of Worcester and ask that the petition should be expedited or dealt with on an emergency basis. No variation of the Condition was ever sought.

12. Noting the Condition, Mr Crow wrote to Ms Every on 22 August 2022 asking for details of how to contact the “Archaeology Department” so that he could obtain appropriate guidance. Ms Every replied the same day, providing the contact details of Ms Victoria Bryant, Diocesan Archaeology Advisor, and explaining that while Ms Bryant could not have the watching brief, “she can give you details of local archaeology contractors but cannot recommend any specific one”.

13. Mr Crow contacted Ms Bryant by email on 23 August 2022. His message is rather unclear, on one reading suggesting that Ms Bryant should have a watching brief over the works. In any event, Mr Crow asked for guidance “on where to go next”. He asked for rapid progress because of the risk of the ground becoming wet again as the summer came to an end. Ms Bryant replied

the same day saying that she would contact Mr Carter “to check out some things” before sending a more formal reply. She concluded her email,

... you will need an archaeological company to undertake a watching brief on nave floor and any excavation around the external wall of the nave. This will not take long to arrange and I will provide you with the information you need to do this once I hear back from Mark.

14. Mr Crow never heard from Ms Bryant again. Attached to Mr Carter’s statement is an email from Ms Bryant to Mr Carter dated 24 August 2022 in which she notes Mr Crow’s enquiry but explains that she is unaware of the depth of the proposed excavations, having not been at the relevant Diocesan Advisory Committee meeting. She asked Mr Carter for more information, and he replied with the application details some 20 minutes later. On the basis of the evidence before me, I find as a fact that Ms Bryant, for whatever reason, never replied to Mr Crow with the information which she had said she would send, or at all.
15. Mr Carter’s assessment, in his statement, is that there was simply a breakdown in communications at this stage. Mr Crow says that while he appreciated the need to arrange the watching brief, he did not consider it reasonable or fair to expect the Petitioners to set this up “without any support at all from the Diocese”.
16. In his statement, Mr Crow does not provide evidence of any further attempts to contact Ms Bryant or Mr Carter after the emails set out above (which, it should be recalled, span a period of a few days only, shortly after the faculty was granted). Neither did he contact any archaeologists directly to ask for advice. He says instead that, with mounting concerns about the structure of the building and the prospect of wet weather returning, he decided that the works were quite urgent and that they should proceed.
17. Mr Crow says that during the works a trench approximately 350mm wide and 700mm deep was dug outside the west wall. Mr Crow says that nothing was dug up during the works which seemed to him to be of archaeological interest, so he considers that there were no adverse consequences.

18. The failure to comply with the Condition came to light in 2024 when the parish was chased about the status of the project. It was then that I directed the production of statements on behalf of the Diocesan Advisory Committee and the Petitioners.
19. Mr Crow says, and I do not doubt, that he genuinely believed that he was acting in the best interests of the building and those who used it. He accepts, with hindsight, that “more time should have been taken to pursue the Diocese for details of archaeologists on its panel to comply with the Faculty, but I did not feel that I had the luxury of that time”. He expressly apologises for what he says was an oversight.
20. I also note an email from Mr Winter sent in July 2024. It will be recalled that Mr Winter was rector of St Mary’s and one of the Petitioners. The email was sent in response to the Diocesan Registrar’s attempts in July 2024 to get to the bottom of what had gone on as regards the Condition. In the email, Mr Winter notes how he trusted Mr Crow’s judgment in matters of building projects and that there was a concern that further delay might cause the contractors to walk away from the job. He concluded,

[carrying out the work without complying with the Condition] was not in keeping with the strict letter of the faculty conditions but I think that the fact that the church building has been secured for many years to come is of more importance than this. After all, the archaeologist was given plenty of opportunity to visit the site before the works began and did not take it.

21. For the record, Mr Crow’s statement does not refer to any attempts to get “the archaeologist”, whoever that might have been, to “visit the site”, and this statement suggests that the Petitioners, or at least some of them, might have been labouring under a misapprehension that it was for the diocese, and not them, to write the brief. That is not what the Condition said.

Analysis

22. Orders of the Consistory Court, like the orders of any court of law, are to be complied with unless set aside or varied by the court itself or on appeal. Any failure to comply with the terms of an order, especially a deliberate failure, is a serious matter which will have consequences for those involved. In the most serious of cases, those who are in contempt of the Consistory Court may

be referred by that court to the High Court, which may investigate and punish those breaches as if they were a contempt of the High Court, which can result in a fine or imprisonment.

23. While much of the faculty system is conducted with admirable informality, orders of the court are not relaxed guides as to what should happen next. They mandate steps which are designed to protect, according to the requirements of the law, the peculiar cultural and spiritual treasure which is the estate of places of worship in the Church of England.
24. In particular, the Consistory Court has had entrusted to it the regulation of what is known as the “ecclesiastical exemption”, contained in s. 60 Planning (Listed Building and Conservation Areas) Act 1990. The ecclesiastical exemption exempts listed ecclesiastical buildings from the standard secular listed buildings consent system, an exemption which affords particular advantages to those places of worship, recognising their special function. If the Consistory Court were to fail to take breaches of its orders seriously, there is a risk that the ecclesiastical exemption might be removed, given that its existence is predicated on there being an equally rigorous system to regulate the alteration of affected buildings as exists for secular buildings.
25. Other sanctions which the Consistory Court has at its disposal include injunctions requiring unauthorised work to be undone, making costs orders against relevant parties and non-parties and removing List B privileges from churches which have disregarded the requirements of the faculty system. Clergy are also subject to the disciplinary system of the Church of England and there is no reason as far as I can see why that would not encompass ignoring the orders of a Consistory Court.
26. Turning to the present case, it is not disputed that the Condition attached to my order was ignored and so I must consider what consequences should flow from that.
27. I regard the following as aggravating features of the failure to comply with the Condition:
 - a. The failure to comply was deliberate (and not an “oversight” as Mr Crow says at one point);
 - b. No further attempts to contact the diocese for assistance were made (at least as far as proved in evidence) after the email of 23 August 2022 to Ms Bryant;

- c. No application was made to the court after grant of the faculty to suggest that the Condition should be varied or waived because of the supposed urgency of the situation;
- d. The failure is irremediable in that it is impossible to know whether the excavations which took place were of archaeological interest: Mr Crow's assessment on this point is irrelevant as he has no archaeological expertise;
- e. When the Diocese of Worcester contacted the rector, Mr Winter, to investigate the failure to comply with the Condition, his email response was dismissive in tone (a highly generous interpretation would be that he was trying to protect his PCC member).

28. On the other hand, I regard the following as mitigating features of the failure:

- a. Ms Bryant failed to send the information which Mr Crow had asked for and which Ms Bryant herself promised she would send: this was a failure on the part of the diocese to assist a petitioner who had done the right thing by promptly asking for help on learning of the Condition;
- b. Mr Crow had persuaded himself that he was acting in the best interests of the church;
- c. The Petitioners had generally followed the requirements of the faculty process until the imposition of the Condition;
- d. Mr Crow was shouldering a lot of the burden himself in the context of an increasingly anxious congregation;
- e. It is reasonable to suppose that movement in the wall was worsening with the passage of time (though the urgency pleaded in 2022 as justification for ignoring the Condition is to be contrasted with a slow initial response between 2016 and 2020);
- f. Mr Crow has apologised to the Court for failing to comply with the Condition;
- g. Mr Crow has a long record of voluntary service on PCCs and the dominant impression, save for the decision to ignore the Condition, is that he was doing his best in difficult circumstances.

29. Taking these factors in the round, I conclude that the appropriate order is that the Petitioners should pay 50% of the costs of this judgment and the diocese the other 50%. This order reflects the deliberate disregard of the Condition by the Petitioners but also the mitigating factors cited above, in particular that the failure of the diocese to provide promised information was the point at which matters began to go wrong. I have given significant weight to Mr Crow's good

faith, his extended explanation and his apology: Mr Coppini and Mr Winter owe Mr Crow a debt of gratitude.

30. I have determined that the Petitioners deliberately did not comply with the Condition. One of them, Mr Winter, is an ordained priest. I therefore consider I should direct that a copy of this judgment be sent to the local archdeacon for consideration. What disciplinary steps, if any, should follow, is entirely a matter for the diocesan authorities to consider.

John Summers

Deputy Chancellor of the Diocese of Worcester

11 March 2025

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ORDER

BEFORE The Worshipful John Summers, Deputy Chancellor of the Diocese of Worcester

UPON considering the petition, faculty and associated documents on the online faculty system and witness statements made by Mr Coppini, Mr Crow and Mr Carter

IT IS ORDERED THAT:

1. (i) The Petitioners and (ii) the Diocese of Worcester shall each pay 50% of the costs of preparing this judgment, to be assessed in default of agreement by the Registrar under Faculty Jurisdiction Rules 2015, r. 19.2.
2. This costs order shall come into force one month after the date on which it is made, unless, during that time and in accordance with r. 19.1(2) and (3), the Petitioners and/or the Diocese of Worcester make submissions to the court on why they consider the order should not have been made.
3. A copy of this judgment shall be given to the archdeacon local to St Mary's church, Doverdale.