Neutral Citation Number: [2016] ECC Lic 6

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

4284

ST GEORGE'S (TELFORD): ST GEORGE

JUDGMENT

1) The church of St. George is at the heart of the Telford district of St. George's. The Priest in Charge, Revd Kevin Evans, and a churchwarden petition with the unanimous support of the Parochial Church Council for a faculty to authorise works in the churchyard. The proposed works are:

   a) The laying of a pipe to make a foul water connexion from the church to the public sewer (with a view in due course to installing a toilet in the church).

   b) Reinstatement of the pathways and the driveway in the churchyard "*to provide safer footing for pedestrians and a more durable wearing surface for vehicles using the main path and driveway*".

   c) Works to the portion of the churchyard lying alongside the north wall of the church. The works proposed works are the levelling of this area and the movement of seven monuments currently standing in this part of churchyard.

2) It is the last of these elements which is the most controversial. The proposal was triggered by the Telford and Wrekin Borough Council's "Pride in your High Street" initiative. The Council is prepared to provide funding for these works. The Statement of Need explains that the purpose of these works is to create "*a safer and more attractive open space for community use and enjoyment rather than remaining a mown 'green desert'. "* It goes on to say that "*The creation of a 'Village Green' area behind the church would allow for the community to gather together for fetes and community celebrations whilst, with the provision of outdoor furniture provide a green space for family picnics and individual quiet time."* As I will explain below the Petitioners see the proposed open space as a way of serving the needs of the local community and also as part of the church's mission.

The Procedural History.

3) The Diocesan Advisory Committee have recommended approval of the Petition and certified that the proposed works were not likely to affect the church's character as a building of special architectural and historic interest; the archaeological importance of the building; or archaeological remains within the curtilage of the church. Having been contacted by one of the objectors Historic England initially questioned whether it should be consulted formally in respect of these works. However, the Diocesan Advisory Committee explained that the proposed pipe laying would be under a path in an area which has been disturbed in the past. That was the basis for the Committee's conclusion that there was unlikely to be an impact on archaeological remains. That assessment was accepted by Historic England. I agree with the Diocesan Advisory Committee's certification.

4) There have been seven letters of objection. None of the objectors wished to become a party to the proceedings but I have taken account of the points raised in their letters. In addition Lucy Allan MP has reported the concerns which a number of constituents have raised with her about the proposed works.

5) I concluded that it would be expedient to determine this matter on the basis of written representations. The Petitioners consented to that course and Mr. Evans provided short submissions addressing the points made by the various objectors. I have considered those and have made an unaccompanied site visit.

6) The seven memorials which the Petitioners seek permission to move are owned by the heirs at law of those commemorated by the memorials. Each memorial relates to an interment which took place at least one hundred years ago. Some of them relate to interments rather longer ago than that. I am satisfied that the Petitioners have taken proper steps to bring the Petition to the attention of the owners of the memorials but no one has come forward. In addition to giving public notice of the Petition the Petitioners have caused notices to be attached to the memorials. Those notices have been in place for several months. In addition the proposals have attracted considerable local publicity over a number of months with articles in the Shropshire Star and exchanges on Radio Shropshire. There has also been a high volume of social media interest. One of the objectors,

Mr. Martin James, is a professional genealogist and he argues that more could have been done to find the owners of the memorials. However, I note that he accepts that the researches he has himself done although tracing one potential descendent of one of those commemorated have not led to anyone coming forward to join the objectors or to express a view in relation to any particular memorial. In those circumstances I will have to proceed without any input from the owners of the memorials.

The Church and Churchyard.

7) The church was built in 1851 and has a Grade II listing. The churchyard is closed but there is an extension lying just beyond the original churchyard which is open for interments and there is a separate Area for the Burial of Cremated Remains.

8) The impression I formed on my site visit was that most of the churchyard looks like a very traditional, if somewhat crowded, churchyard with a large number of monuments of varying styles several of which were of considerable age. Parts of the churchyard are somewhat overgrown and the paths were in a mixed condition. However, it was readily apparent that efforts were being made to improve the appearance of the churchyard with undergrowth being cut back and the clearing of the area around memorials.

9) The area immediately to the north of the church building is much more open than the rest of the churchyard. There are markedly fewer monuments and these are more widely spaced across an area of open grass. That area is on a slope and there is a dip in the course of the slope.

The Petitioners' Contentions.

10) The Petitioners explain that the purpose of the proposed alterations to the churchyard is to bring the church more into the life of the local community by providing an open area which can be used by members of that community. They see this as part of the church's rôle in serving local people. The Petitioners say that this is also consistent with their mission objectives because it is a way of bringing members of that local community into closer contact with the Church (both as a building and as an institution). In his written submissions Mr. Evans explains what is intended and points to local examples indicating the kind of use

which the Petitioners have in mind. He says "*Our ambition to see the churchyard sensitively and carefully developed as a community resource accords with the general ambition and attitude of the church. Indeed there are local examples. The churchyard of All Saints Wellington is a valued public space where many enjoy a quiet sandwich lunch. At St. Andrews, Shifnal, the Millennium Sensory Garden seems to have been developed close to or even within the churchyard and is part paved with fragments of memorials, inscription side up* " Mr. Evans goes on to say that "*There is no intention of holding dances or any other large scale entertainment in the churchyard*." Some of the objectors have raised the issue of a Mad Hatter's Tea Party which they believe had been suggested as an event which could be held to mark the opening of the new area for community use. Mr. Evans explains that this was indeed a suggestion which had been made as a way of marking the restoration to working order of the clock on the church tower but emphasises that it is not a fixed plan.

The Arguments of the Objectors.

11) The seven letters of objection are in different terms and not all of those objecting take issue with every aspect of what is proposed. Although I will not quote all the letters at length I have considered them all. I am satisfied that each objector is motivated by a genuine and proper concern for maintaining the churchyard as an appropriate setting for the remains of those interred there.

12) It is in relation to the proposed movement of the monuments that there is unanimity amongst the objectors. All contend that this is an inappropriate course. They say that it is unseemly and disrespectful to those commemorated by the monuments for those monuments to be moved. They contend that the monuments should remain at the site of interment. In addition, Mr. James takes issue with the proposal for the monuments to be laid alongside the north wall of the churchyard contending that this is not a suitable location.

13) There is also unanimity amongst the objectors in resisting the levelling of that part of the churchyard immediately next to the north wall of the church. The objection is not to the levelling as such but rather to the proposed community use which the levelling is intended to enable. The objectors express in differing ways the view that such activities are not fitting in a churchyard and/or that they are not

suitable in this location. They contend that the proposed activities will show a lack of respect to the setting of the church and to the memory of those who are interred in the churchyard. The following extracts are representative of the concerns expressed by all the objectors.

a) Thus Mr. Martin James says that those whose remains were interred in the churchyard were left to "*rest in peace"* and on behalf of their families as well as himself he expresses anger at the thought that "*their loved ones graves will be walked, run and danced on over a 100 years later."* He adds that the area proposed for community use is out of public view being hidden from the road by the church building. Mr. James fears that "*it could attract an undesirable element and increase vandalism and potential damage to the church itself."* Miss. Sharon Bradburn expresses concern that the movement of the memorials will mean that "*people will be walking and maybe dancing over the resting places of the dead."*

b) Mr. Stephen Handley contends that there are other places in the local area where community events can be held. He says that the churchyard should remain a place where people can "*enjoy the tranquillity of a peaceful place to remember their beloved ones not to rock the night away dancing on people's final resting place."*

c) Miss. Sharon Bardburn believes that the use of this part of the churchyard as a village green will "*attract anti-social behaviour, like drinking alcohol, which in turn may mean urinating in the churchyard*."

14) Mr. James expresses concerns about the proposed installation of a foul drain running from the church to the public sewer. His concern is as to the impact of this on either human remains or items of archaeological importance lying under the surface of the churchyard.

15) Mr. James also expresses concern about the proposed upgrading of the paths. In particular he is concerned about the proposal for restoration of the driveway. Mr. James believes that this could lead to increased vehicular entry into the churchyard and that this, in turn, carries the risk of damage to the memorials already there.

The Approach to be followed in general Terms.

16) I will set out below particular considerations relating to particular aspects of the works but I remind myself that the starting point is that the burden is on the Petitioners to show a good reason for allowing the proposed works. The works will not adversely affect the special character of the church but I must nonetheless be satisfied that the benefits to come from what is proposed outweigh such adverse consequences as will also follow.

The Installation of a Connexion to the Public Sewer.

17) The provision of toilet facilities is highly desirable if not essential if churches are to be fit for purpose in the Twenty-First Century. This is particularly important in respect of a church such as St. George which is a large building and where the Parochial Church Council seeks to promote mission and serve the local community by allowing the church to be used for events of various kinds. Thus, by way of a random example, on the day of my site visit the church was hosting a concert of organ and choral music. The Statement of Need sets out the aspiration that the church should become a Civic Church for the local area. By that is meant the intention that St George's church should be the place to which the members of the local community turn when seeking for God or when seeking collectively to give thanks and to engage publicly in worship. That commendable aspiration will be jeopardised if there are no toilet facilities in the church. An application has not yet been made for the installation of such facilities and in due course there will need to be careful consideration of how to install them. Nonetheless, it is clearly appropriate for a connexion to the public sewer to be made so as to open up the possibility of having such facilities in the church.

18) If the making of such a connexion is appropriate in principle is there any reason why the route which it is proposed the drain will take is not appropriate in the particular circumstances? Mr. James has expressed concern as to the disturbance of human remains or items of archaeological significance. In that regard I accept the assessment of the Diocesan Advisory Committee that such risk is markedly reduced where, as here, the drain will be laid under a path where there has already been disturbance of the ground. Moreover, and to the extent that there is a risk of interference with human remains or the disturbance of

archaeologically important items then that risk can be adequately addressed by the imposition of conditions as to the steps to be taken if such items are encountered. Accordingly, this aspect of the proposals is to be approved.

Considerations governing the Moving of Monuments.

19) The Court does have power to permit the moving of a memorial but in exercising that power I have to be conscious of the desirability of a memorial remaining in place at the site of interment. It follows that movement of a monument should only permitted if there is a good reason which not only makes such movement desirable but which also outweighs the disadvantages inherent in moving a monument from the point of interment. In my assessment the need for caution is well-expressed by the editors of The Churchyards Handbook saying "*Monuments should be moved only when it is necessary … not only because of the expense, resentment, and worry that can be provoked but also because their full meaning can only be understood in their original context"* (4th edition p.47).

20) The proposal to move the seven monuments in question is dependent on the Petitioners' proposals for this part of the churchyard. If the levelling and reorganisation to enable community use is not permitted then there will be no need for the movement of these monuments. In my assessment the approach which I should take in these circumstances is to assess the case for and against the reorganisation of this part of the churchyard and consider whether a sufficiently strong case has been made out to justify the serious step of authorising the movement of the monuments from their current positions. So I will now turn to consider the proposed alteration in its more general aspects.

The Proposal for Alteration of Part of the Churchyard.

21) Regardless of the use to which the area to the north of the church building is put it is clearly desirable that the footpaths through the churchyard should be in a safe condition. I have no doubt that the works proposed in respect of the footpaths are appropriate and that they should be authorised.

22) As I have explained above Mr. James takes issue with the proposed works on the driveway. He says that this will lead to an increase in vehicular traffic in the churchyard and that this will cause damage and in particular damage to existing

memorials in the churchyard. Mr. James cites instances where such damage has occurred in the past. It was apparent on my site visit that the driveway is in a poor state. It was also apparent that it was the only point not only for general vehicular access to the churchyard but also for disabled access by those in mobility scooters, wheelchairs, and the like. Such access is necessary and appropriate. If there is to be such access – as there must be- then the surface over which such access is effected needs to be a good condition. The answer to the problem of damage being caused by vehicles is for Priest in Charge and churchwardens to work to ensure that vehicles entering the churchyard proceed with caution. I am confident that having been made aware of the problem they will do so. The fact that some vehicles may not be driven with proper care does not mean that there should not be a proper surface at the point of vehicular entry.

23) Mr. James questions the suitability of the point at which the driveway currently joins the highway. However, the suitability or otherwise of entry onto the highway at this point does not mean that there should not be proper maintenance of the surface of the driveway. There must be provision for vehicular and disabled access and the current entrance is the only one available.

24) I turn to the question of the levelling and reorganisation of the area to the north of the church building. It is important to keep in mind the fact that the Court is not being asked to authorise any particular activity in that area. The Court is being asked to authorise particular works of landscaping. However, the purpose of those works is to enable certain activities, namely greater public and community use, to take place. Accordingly, I have to consider whether such activities would be appropriate in a churchyard. If they would not be appropriate or permissible in a churchyard then landscaping alterations with the objective of enabling them to take place would not be permitted. There would be no point in authorising alterations if the activities which those alterations are designed to facilitate could not take place. I also have to consider if the proposed activities are desirable and if they are likely to bring benefits of a sufficient importance to justify the serious step of authorising the movement of monuments and the separation of those monuments from the point of interment of the remains of those being commemorated.

25) My judgment in the case of *Re St Chad's Churchyard, Bishop's Tachbrook* [2014] Fam 188 (sitting in the Coventry Consistory Court) set out my analysis of the purposes of a churchyard and of the factors which are to be taken into account when the Court is considering whether to permit in a churchyard the erection of a building which will be used for secular as well as religious purposes.

26) As I explained at [26] in that judgment:

> "Churchyards are consecrated to God, Father, Son, and Holy Spirit and proposed alterations have to be considered in the light of that consecrated status. Churchyards fulfil three principal functions. They operate to provide a suitable setting for the church in question; they provide a fitting resting place for the mortal remains of those already buried in the churchyard; and they provide a resting place for the remains of those to be buried in the future."

27) In the light of that assessment of the consecrated nature of churchyards and the functions which they fulfil I went on to identify the factors which are relevant when the Court is considering permitting a building to be erected in a churchyard. Some of the factors which are relevant when considering the proposed erection of a building in a churchyard are not relevant when the question is the appropriateness of a proposed activity which will take place outside a building. Nonetheless it remains relevant to consider the consistency (or lack of it) between the activity and the consecrated status of the churchyard and whether the activity means that the churchyard will no longer be a fitting resting place for the remains of those interred there.

28) In considering whether the activities which it is proposed will take place in the altered churchyard are consistent with that churchyard's consecrated status and whether they will affect its suitability as a resting place for those interred there it is important to remember the obligations placed on the Priest in Charge and churchwarden by the Canons. Thus Canon F 15 (3) requires the churchwardens to "*take care to restrain"* any person "*guilty of riotous, violent, or indecent behaviour in any … churchyard, whether in any time of divine service or not".* Similarly Canon F 13 (2) requires the churchyards "*be kept in such an orderly and decent manner as becomes consecrated ground."* The latter requirement is focused on the maintenance of the churchyard but it serves to highlight the duty of the Priest in Charge and churchwardens to prevent activities in the churchyard which are inconsistent with its consecrated status.

29) It is also important to remember that the consecrated status of a churchyard does not mean that no secular activity can take place in the churchyard. In addition that activity can take the form of music and merriment. As I said in *Re St Chad's Churchyard, Bishop's Tachbrook* at [29]:

> "I am unable to accept the contention by some of those who have written in opposition saying that *"music and merriment"* are inappropriate in a building in a churchyard. It will be a matter of degree and not every facility for music and merriment will be suitable for installation in a churchyard. Similarly, not every type of function which could take place in a hall of this type will be appropriate in a consecrated churchyard. However, activities involving music and merriment are not intrinsically inappropriate on consecrated ground. The respect owed to those whose remains are buried in the churchyard does not preclude occasions of fun and relaxation in a building in the churchyard."

30) In that case I was addressing the question of activities taking place in a building in a churchyard. Rather more care and restraint will be needed in respect of activities which are to take place in the churchyard itself and which will not be enclosed in a building. Nonetheless, the facts that the activity which may take place in a churchyard is not strictly speaking religious in character and that such activity may involve those participating in relaxing and enjoying themselves does not mean that the activity in question is necessarily inappropriate in a churchyard. To quote *Re St Chad's Churchyard, Bishop's Tachbrook* at [29] again:

> "Providing facilities for the local community can legitimately be seen as part of the mission of the church and so as an appropriate use of consecrated land."

31) In considering whether the activity which will take place on the area next to the church will be appropriate for a churchyard I will proceed on the basis that the Priest in Charge and the churchwardens will be mindful of the obligations imposed on them by the Canons and that they will prevent inappropriate activity. In the absence of strong evidence to the contrary I am bound to assume that those involved will carry out their obligations properly. I make it clear that in this case I have no reason to doubt that Revd Kevin Evans and the wardens of St. George's will act with care to ensure that the activities which take place in the churchyard are appropriate and consistent with its consecrated status.

32) While addressing the proposed activities and the approach which will be taken to them by Mr. Evans and his churchwardens I must deal with a suggestion made by Mr. Handley in his letter of objection criticising the good faith of Revd Kevin

Evans. The proposals have generated a fair degree of publicity and media interest. In an attempt to explain what is intended Mr. Evans has spoken on local radio and has said that there is no intention to hold dances or similar activities. In his letter of objection Mr. Handley said this "*When Kevin is interviewed he talks about picnics, seating, nothing about the reality of what is going on … dancing, music and parties etc all on resting places of deceased relatives."* I appreciate that Mr. Handley feels strongly about this matter and I entirely accept that he is motivated by concern that the churchyard should be used in an appropriate way. Nonetheless, I must make it clear that I reject any suggestion that Revd Kevin Evans has deliberately sought to mislead either this Court or the public. I have no hesitation in accepting as genuine his explanations as to what is intended. There is no justification for the suggestion that the Petitioners are saying in public that certain kinds of activity are envisaged while secretly plotting to allow different and less appropriate activities.

33) It appears to me that there has been a very regrettable misunderstanding of what is envisaged. In the Statement of Need the Petitioners refer to wishing to create a "Village Green" and that term appears to have been used at earlier stages when Mr. Evans and others have said what is proposed. There was also a suggestion of a "Mad Hatter's Tea Party". Having read the papers as a whole and having come to the matter with fresh eyes I have no doubt that what is envisaged is an area to which members of the public can resort for relaxation, refreshment, and reflection. What is intended is a place where they can go to sit in good weather enjoying peace and quiet and open air; a place where they can go to eat sandwiches and the like; and a place where parents can sit with young children playing around them. The more organised activities which the Petitioners contemplate are children's parties, village fetes, and similar events. I have no hesitation in saying that such activities are appropriate in a churchyard if properly organised and controlled as I have no doubt they would be. Part of the problem comes from the use of the term "Village Green". Mr. Evans intends by that to convey an area of peace and quiet. Unfortunately that term appears to have conjured up a rather different image in the minds of the objectors. They have come to fear some kind of "Merrie England" caricature involving heavy drinking and wild dancing. I am satisfied that is not what the Petitioners intend. The

closest to such events which the Petitioners contemplate happening are the markedly more restrained activities of a church or village fete. Similarly alarm was raised by the suggestion that there might be a “Mad Hatter’s Tea Party”. This again appears to have been a misunderstanding. I anticipate that to those proposing such an activity the words suggested a tea party probably directed at children and families with the emphasis on characters from children’s literature. The objectors came to fear that the emphasis would be on “Mad” and “Party”. I am satisfied that no wild party was intended. The misunderstanding extends to the reason why the Petitioners seek the moving of the memorials. The objectors see this as an indication of a lack of respect towards those commemorated by the memorials. I am satisfied that the Petitioners saw it as a way of avoiding the memorials being in the midst of an area of community use with the potential for that being an unseemly setting for them.

34) I return to the question of whether those activities which are actually intended and envisaged by the Petitioners are appropriate in this churchyard.

35) There are many instances where churchyards have been reordered so as to create areas which can be used by the public for relaxation; for eating lunches; and for sitting with friends. Thus in February 2014 I authorised works to the area around Shrewsbury Abbey so as to facilitate access thereto by members of the public generally. A further recent example is that of *Re Holy Trinity, Hull* (York Consistory Court 2015) where Collier Ch authorised the removal of a wall around a churchyard together with related works so as to create a piazza which would operate as an extension of the adjoining public square and thereby facilitate use of that area by those spending time in the public square.

36) In the current case a serious assessment of the needs of the local community has been made by the Priest in Charge and the Parochial Church Council. They have also made an assessment of the rôle the church should play in meeting those needs. It is to be noted that their assessment is clearly shared by the local Council because that Council is prepared to provide grant funding for the works. It is a significant feature of this case that the elected representatives of the local community welcome and support the proposed use of the churchyard. This is a strong indication that the need identified by the Petitioners exists; that the

proposed way of addressing that need is welcomed by those representing local people; and also that the elected representatives of the local community do not share the concerns of the objectors that the remodelled churchyard will operate as a base for those engaged in anti-social activities.

37) Meeting the needs of the local community is an important part of the mission of the church of St. George and of the wider Church. In addition I am satisfied that the Petitioners have given careful thought as to how the proposed arrangements will contribute to mission in the sense of drawing people to the Church. They seek to work to increase the involvement of the church in the life of the local community and to create more connexions between that community and the church. The Statement of Need talks of the Petitioners' desire that the church and its surroundings "*move back into the heart of the St Georges' community".* Those are desirable and legitimate objectives.

38) It follows that the activities envisaged are consistent with the churchyard's consecrated status and with its rôle as a fitting resting place for the remains of local people. Those activities and the provision of a place for them will meet a need of the local community. Meeting that need in this way will further the mission of the church. Those are real and substantial benefits. Accordingly, in the circumstances of this case I am satisfied that there is a good reason for the proposal and that the benefits of what is proposed justify the serious step of moving the memorials.

39) I, therefore, direct that a faculty issue authorising the proposed works and subject to the conditions set out in the draft faculty.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
21st November 2016