

**In the Consistory Court of the Diocese of Lichfield**

**Re St Saviour's, Aston-by-Stone**

**Judgment**

1. By a petition dated 2<sup>nd</sup> September 2009, the Rector and the Churchwardens of St Saviour's, Aston-by-Stone seek a faculty for the provision of toilet facilities in the north-west corner of the building, the removal of the choir stalls on both the north and south sides of the church to facilitate the repositioning of the font and the use of chairs in the new baptistry area, the movement of the font from its present position to the front of the nave on the south side, the removal of three rows of pews at the rear of the church, the installation of a balcony with stair access at the west end of the church, the provision of a separate meeting area under the balcony, the provision of a refreshment bar, the installation of a wooden and glass screen to divide the worship area from the meeting area, the replacement of the wooden main entrance door with glass doors and drainage to the septic tank sited in the north-west corner of the driveway around the church.
2. I apologise to all those affected by this petition for the delay that there has been in my dealing with it. The papers were sent to me in December 2011, immediately before a period of leave over Christmas. Since my return to work in the New Year, as I have advised the registry, my work commitments have been considerable as a result of the ill health of colleagues and I have not been able to devote the necessary time to this matter until now, when I have given it priority on the first of a few days leave.
3. St Saviour's is a grade 11 listed building. The petitioners have engaged Andrew Capper of Wood, Goldstraw and Yorath, an experienced ecclesiastical architect, to draw up its proposals, which comply with all the appropriate regulations, and have drafted a detailed Statement of Significance and Statement of Needs.
4. The proposals have been subject to statutory scrutiny in the usual way:
  - i) consultation with the Diocesan Advisory Committee (DAC) led to a certificate of recommendation dated 16th December 2010;
  - ii) by a letter dated 7<sup>th</sup> May 2010 and an e-mail dated 18<sup>th</sup> February 2011, the Church Buildings Council made some comments but indicated that it was

- content to defer the detailing of the final scheme to the satisfactory resolution by the DAC;
- iii) by an e-mail dated 31<sup>st</sup> May 2011, the Victorian Society stated that it had no comments to make on the proposals;
  - iv) by an e-mail dated 11<sup>th</sup> July 2011, English Heritage indicated that it had no objection to the amended plans, it having earlier, in a letter dated 28<sup>th</sup> September 2009, sought clarification in respect of the proposals; and
  - v) by a letter dated 25<sup>th</sup> January 2011, Stafford Borough Council indicated that it would not be making any observations in this case.
5. The Parish held an open meeting in the church on 23<sup>rd</sup> February 2009 at which 40 people attended: at this meeting there was detailed discussion and whilst some reservations were expressed there was general agreement that work needs to be done to make the church fit for the twenty-first century. Following that meeting a letter was received from Jim Davies, dated 23<sup>rd</sup> February 2009, in support of the proposals.
  6. In response to the public notice of these proposals two letters of objection were received at the registry: these were from Mr A.D. and Mrs B.H. Hewitt and Mrs Helen Holmes. The writers of these letters were each informed in a pro-forma notice from the registry, sent pursuant to rule 16(3) of the Faculty Jurisdiction Rules 2000, that they may either leave the court to take their letter into account when determining the petition or become a party to the proceedings by serving written particulars of objection in Form 4.
  7. Mrs Helen Holmes set out her particulars of objection in Form 4: this is dated 28<sup>th</sup> February 2011. As Mrs Holmes is neither resident in the parish nor on the electoral roll, I considered her position and found on 23<sup>rd</sup> July 2011 that she is an “interested person” on the basis that she is a person appearing to have a sufficient interest in the subject matter of the petition (rule 16(2)(g) of the Faculty Jurisdiction Rules 2000).
  8. Mrs Holmes made it clear, in a letter dated 20<sup>th</sup> September 2011, that she consents to the matter being determined on written representations. The petitioners are also content that the matter is dealt with in this way, as they confirmed in a letter dated 19<sup>th</sup> September 2011.
  9. I note that in a letter dated 2<sup>nd</sup> November 2011 Mrs Holmes stated: “I do not wish to hear anything further about the progress, or otherwise, about the reordering and petition for a faculty at St Saviour’s”. Despite this, she has been sent copies of the documentation which post dates her letter and I direct that she is to be sent a copy of this Judgment: I apologise to her if this is contrary to her wishes.
  10. Mr and Mrs Hewitt did not respond to the pro-forma notice from the registry, but they were informed by a letter dated 16<sup>th</sup> September 2011 that their comments will be taken into account. The content of their letter has been fully considered by me in reaching my decision, in accordance with rule 16 of the Rules. It is their view that moving the font would be “a very sad move” as they consider that people can see perfectly well at baptisms at present and

“tradition should prevail”, that building the proposed balcony seems “an extreme folly”, as it would mean the “near obliteration of the beautiful, dedicated stained glass west window”, that the need for a lavatory could be dealt with by providing a “Portaloo” and that the removal of the pews and building the balcony would mean the loss of 10 pews (minimum 40 people) and that climbing stairs is not a matter that would appeal to most of the elderly congregation. In essence, it is their contention that: “St Saviour’s is a beautiful church and well patronised” and that it would “be spoilt should this project be allowed to proceed”.

11. I have carefully considered all the material which relates to this faculty application including a CD of photographs which together with the architect’s drawings have assisted me in evaluating the proposals and the objections. There is no issue that there is a need for the church to have modern facilities, and in particular a lavatory and an area for refreshments, but objection is taken by Mrs Holmes to the “blocking off of a stained glass window of some merit as an artistic feature of the church, but also of some special historical significance”.

#### **The Petitioners’ Case:**

12. The petitioners rely upon a Statement of Significance, a Statement of Need and upon subsequent statements submitted in response to the objections. There are 81 members on the electoral roll with an average weekly attendance of 39, the majority of whom are over 50 years of age. In addition to the regular Sunday services there are a significant number of baptisms, weddings and funerals and there is a very active social committee, which organises events which are supported by the regular congregation and by people from the wider community.
13. In the Statement of Need it is set out that the Parochial Church Council has, since the Parish Review conducted in 1991, considered the provision of a meeting room, with kitchen and lavatory facilities. Areas of concern for this church are the outreach to children and young families, the need to develop the social and fellowship life of the Church and the need to make the building “fit for purpose”. There has recently been a small increase in the number of younger people regularly attending the Sunday morning service and it is felt that there is a need to improve facilities to cater for their needs and to encourage them in their journey of faith. A number of options have been discussed since 1991 including a new building containing a meeting room, kitchen and lavatory: this is not, however, a possibility owing to resistance from objectors and the planning authority and the prohibitive cost. This has led the PCC to consider, instead of a separate or additional building, how to provide these facilities within the existing church building.
14. Careful consideration has been given to the best place for the installation of a lavatory with disabled facilities. The suggestion of a “Portaloo”, which would require people of all ages to go outside, whatever the weather, is not thought to be a reasonable way of providing these facilities in the twenty-first century or

to be welcoming to visitors particularly those with disabilities. Consideration was given to installing a lavatory in the tower, adjacent to the main body of the church, but there is insufficient space to allow the installation of a lavatory with disabled facilities and retain access to the stairs in the tower. As the church is a single aisle building there are no corners or side aisles that could be used to site the lavatory.

15. The best place for the installation of the lavatory within the church is where the font is currently situated. After much consideration, the PCC agreed that the font should be moved to the front of the nave on the south side: it was felt that this was a particularly appropriate position as the window above bears the words: "Suffer little children to come unto me". As baptism parties now tend to be large ones, frequently in the region of 100, the present position of the font has proved awkward for many of those attending to be able to see comfortably and as a result of this, quite frequently, a portable font is currently used. This is not regarded as an ideal solution. The proposal of moving the font would mean that it could be used for all baptisms and the use of chairs, in place of the choir stalls, would provide more space for relatives and friends around the font and also allow greater flexibility of seating for other services and better accommodation for wheelchair users. As far as the choir stalls are concerned these are only currently used at the Christmas Carol Service and very occasionally at Easter: they are described by the Church Buildings Council as of "limited significance".
16. The installation of a balcony with stair access at the west end of the church would provide additional seating to replace that lost by removing the 6 pews in the church, which the proposals would require. For the current regular Sunday congregation there will still be sufficient seating in the main body of the Church and therefore the older members of the congregation would not need to use the balcony. Careful consideration has been given to the design of the balcony to ensure that it is in keeping with the church itself and blocks the stained glass window as little as possible: the plans will bring people closer to the detail of the west window and it will still be able to be seen from the east end of the church. The proposed separate meeting area is to be in the west end of the church, under the balcony and will be screened from the worship area by a wooden and glass partition: this space would be used as a welcome area and for small gatherings, as well as being an area where children's activities could take place.
17. The refreshment bar has been designed to be practical and as inconspicuous as possible.
18. The Statement of Need concludes: "We feel that these facilities will improve our provision for all visitors to the church and particularly for children. It will give us a meeting place and will enable the church to engage more fully with the wider community. The addition of a kitchenette and a lavatory for the disabled will mean that the church can be used for concerts and other events that at present some people feel prevented from attending due to our lack of basic facilities".

19. The PCC has carefully considered the cost of these proposals and is well aware that there will never be “a good time” to proceed with church alterations, as there will always be people in need of support, but it is the case that without a formal fundraising campaign the church has already raised approximately £50,000 towards this work and it is confident that it will be able to raise the remainder based on its success in previous fundraising.

### **The Views of the Objectors:**

20. I have already set out the matters which Mr and Mrs Hewitt ask that I should take into account in relation to the petitioners’ proposals.

21. Mrs Holmes, in her written submissions, sets out that she does not feel that the DAC should be advising the blocking off of a stained glass window of some merit as an artistic feature of the church and also of some special historical significance. In one of her earliest letters, dated 17<sup>th</sup> February 2011, she expressed her hope that the members of the DAC, English Heritage and the Victorian Society would share her views.

22. She describes the west window, which she submits should not be obstructed by a balcony and a staircase, as “the work of one of the foremost manufacturers of stained glass in the nineteenth century, Clayton and Bell, and as such is a treasure to be preserved” and “an important example of the munificence of the Parker-Jervis family”.

23. In dealing with the church’s wish to have modern facilities, such as a lavatory and an area for refreshments, Mrs Holmes states that she thinks that these aims could have been achieved without blocking off an important feature of the church’s heritage and queries whether a more sympathetic solution could not have been found.

24. In summary, therefore, Mrs Holmes objects to the proposals on the basis that the balcony will obstruct the west window.

### **The Petitioners’ Response:**

25. In response to Mrs Holmes’s objections, the petitioners stress that whilst she freely admits that she believes that their responsibilities to the past are more important than the needs of the present, they have had to balance these two factors, that they have tried desperately to accommodate the church’s heritage, that these plans are the fruit of 20 years of work and that the only option is to alter the inside of the building. It is stressed that to minimise the impact of the changes the petitioners have met with the heritage bodies, none of whom objects to these proposals, as they see that they are the only realistic option to accommodate the needs of this church in the twenty-first century and to conserve the church’s character.

26. The petitioners recognise that a great debt is owed to the Parker -Jervis family. However, no member of the family has displayed any significant interest in the church for many years and the responsibility for the upkeep and maintenance now lies with the PCC.
27. The petitioners have continued to look at ways of making the church building a better tool for mission and more accessible to a greater number of people. In their written responses they indicate that they have considered every other alternative to the proposals and have liaised with the architect and with the Diocesan Advisory Committee in discussing alternatives. A meeting was held on 10th November 2010 at the church, at which the Archdeacon, the architect, and representatives from the DAC and the church attended and since then the plans have been reflected upon and modified to improve the view of the west window from the church. The integrity of the window will not be compromised by the proposed reordering. The point is made that whilst the proposed alterations will alter the view of the west window, they will not totally obscure it: it will be able to be seen from the east end of the church and will be able to be viewed in full from the balcony. The conclusion of the petitioners, having given the matter considerable thought and consulted widely, is that their proposals are the only viable way in which the needs of the church can be accommodated.

### **The Balancing Exercise:**

28. This petition, in common with all petitions concerning significant alterations to listed churches, must be evaluated in the context of a heavy presumption against change. The onus of proof lies with the proponents of change. The burden is not readily discharged. The practice of the consistory court is to follow the so-called *Bishopsgate* questions as expressly approved by the Court of Arches in *Re St Luke the Evangelist, Maidstone [1995] Fam 1*.
- (1) Have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of the parish or for some other compelling reason?**
29. Necessity is a broad concept. It embraces more than merely unavoidable repair work and includes works “necessary for...pastoral well-being ...or for some other compelling reason” (*Re St Helen, Bishopgate (1993) 3 Ecc.LJ 256*). In *Re St John the Evangelist, Blackheath (1998) 5 Ecc.LJ 217*, *Southwark Consistory Court*, Chancellor George QC (as he then was) ventured that ‘necessity’ and ‘necessary’ in the context of the *Bishopsgate* questions meant ‘something less than essential, but more than merely desirable or convenient; in other words something that is requisite or reasonably necessary’.
30. The word ‘necessity’ should not be taken in isolation as an abstract concept, rather it should be read in its clear context which imports the wider concept of pastoral well-being or some other compelling reason. Seen in this way, the meaning and effect of the *Bishopsgate* approach is readily comprehensible, continuing to impose a high standard of proof on those who seek to discharge

the presumption against change applicable in the case of all listed buildings, yet admitting of factors concerning the role of the church as a local centre of worship and mission. This is central to the operation of the faculty jurisdiction in consequence of the overriding consideration set out in section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

31. In relation to the first question there is no doubt in my mind that the petitioners have made out a case of necessity. The content of the Mission Action Plan and legislation for the provision of facilities for the disabled weigh heavily in making churches fit for purpose in the twenty-first century. I have been impressed by the way in which the petitioners have set out the need to provide appropriate and flexible facilities for the mission and witness of the church community, having particular regard to the needs of young people and families and of the disabled. I am also satisfied that the proposals - for the provision of a lavatory and drainage to the septic tank, the removal of the choir stalls, the removal of three rows of pews, the installation of the balcony with the meeting room underneath and a screen to divide that from the worship area, and a refreshment bar - have been formulated in the light of a holistic evaluation of the use of the entire church building in the course of which other alternatives have been given such consideration as they deserve.
32. I do not regard a “Portaloos”, as suggested by Mr and Mrs Hewitt, as being an appropriate way of providing facilities for those who attend or visit the church, including the disabled, on other than a temporary basis, if a better solution is available, as I find it is here.
33. The proposed new doors are shown clearly on the architect's drawings. This proposal has been carefully considered by the DAC and by all those consulted and there is no objection to them.
34. In their letter Mr and Mrs Hewitt rightly drew attention to the significance of moving the font. As long ago as 2<sup>nd</sup> March 2010 the DAC was persuaded that to enable the reordering of the west end of the church to take place, the font would have to be moved and that there is no other suitable place for it other than that which is proposed. In its letter dated 7th May 2010 the Church Buildings Council recognised that the only way to accommodate the desired new facilities is to relocate the font. Neither English Heritage nor the Victorian Society made any comment in respect of this matter. Jim Davies, in his letter dated 23rd February 2009, described moving the font as a “particular improvement”.
35. Every church at which baptism is to be administered must have a font, sited as close to the principal entrance as is possible and in as spacious and well-ordered surroundings as possible, unless there is a custom to the contrary or where the Ordinary otherwise directs (Canon F1, paragraphs 1-3). The Ordinary in this instance is the Chancellor (or Deputy Chancellor) exercising the jurisdiction of the diocesan bishop in the consistory court. The strict rigour of the canon may be regarded as slightly tempered by statements made by the House of Bishops regarding the liturgical appropriateness of the position of fonts. In *Re St James, Shirley [1994] Fam 134, Winchester Consistory Court*,

the judgment relied upon the *Response by the House of Bishops to Questions Raised by Diocesan Chancellors* (June 1992), that is that there was no absolute legal, liturgical or theological bar to locating a font elsewhere in a church, such as in the centre of a church or close to the altar: the position of a font could be determined by what view the worshipping congregation had with regard to baptism. It is clear that it would only rarely be appropriate to move a font from a position it has occupied for centuries (not a consideration which arises here as this church was consecrated in 1846). In many instances fonts have been moved so as to facilitate the convenience of the congregation, since a position by the principal door often means that the congregation will have to turn around to take their part in a baptism (see for example, *Re the Church of the Blessed Virgin Mary, Hambleton* (2009) 11ELJ 359).

36. As the DAC and the Church Buildings Council recognised at an early stage of this application, without the movement of the font the whole of this project would have to be rejected. The proposed new position of the font in the nave, close to the chancel, is in an area at the front of the church where it would be fully visible albeit a long way from the principal door. The petitioners have clearly given careful consideration to this matter. The present position of the font means that the congregation has to turn around to take their part in a baptism and that, together with the current size of baptism parties, has led to the frequent use of a portable font, which is not ideal. The proposed position of the font does seem to be particularly appropriate as the window above bears the words “Suffer little children to come unto me”.
37. Having considered all these matters I am satisfied that the movement of the font is necessary to enable all the other carefully thought through aspects of this project to come to fruition. Once moved the font will be in the most convenient place left within the building, in an appropriate setting and one which is consistent with the current practice in this church in relation to baptism.
38. Mrs Holmes, in making her objections to the proposed balcony, recognised the need for modern facilities and in a letter dated 2<sup>nd</sup> November 2011 enclosed a photograph taken in a church in the Diocese of Bangor which showed the way in which that church dealt with “the problem of trying to have a meeting room/café as well as to provide toilet facilities”. I agree with the petitioners that, whilst it is difficult to judge the appearance of those alterations from a photograph, it does not appear that such a scheme would be a sympathetic alteration to St Saviour’s nor would it be a possible one as far as the lavatory is concerned as in that scheme that was built on to the exterior of the church (which is not a possibility at St Saviour’s) and it would also involve a reduction in the seating capacity which the petitioners are rightly anxious to avoid.
39. Whilst Mrs Holmes refers to the historical and artistic significance of the window there is no evidence of that beyond her assertion. The DAC in September 2009 referred to it as the “rather nice west window” but none of those consulted has drawn attention to any particular significance. The DAC considered with the architect how the scheme could be improved, by making

the gallery front and the balustrade “clear and light”, in order that the window was obscured as little as possible: it was satisfied by the architect's final drawings. The window was a matter to which English Heritage drew particular attention in its original letter, dated 28 September 2009, but its concerns were satisfied by the amended plans, as is made clear in its letter dated 11<sup>th</sup> July 2011.

40. I am satisfied that the DAC and the other bodies which were consulted took the effect of the proposals on this window fully and properly into account. I particularly note that, like English Heritage, the DAC required answers to a number of questions and the preparation of more detailed drawings by the architect and that when the proposals were considered at its meeting on 7<sup>th</sup> December 2010 it was agreed that “the west window would be accessible with an appropriate balustrade in front of it”.

**(2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?**

41. The answer to this second question is self-evidently in the affirmative.

**(3) Is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?**

42. It is clear that, apart from the new doors, all the other components of these proposals are interdependent, and that unless I grant a faculty for them all none of the proposed changes could be introduced. Having reflected on the considerable material before me, I am satisfied that the proven necessity is such as to outweigh the adverse effect and that a faculty should be granted. In doing so, I am fortified by the careful assessment given to the proposals by the DAC, the Victorian Society and English Heritage all of whom support the proposals and none of whom have raised any issue in relation to the movement of the font or the west window. It is clear that “the historical and artistic significance of the window”, as Mrs Holmes describes it, has been her quite natural consideration and that of Mr and Mrs Hewitt, rather than the practical considerations for the church in the twenty-first century. I have considered the photograph submitted by Mrs Holmes, which shows the way in which another church has dealt with a similar problem, but as I have indicated I share the petitioners' view in relation to such an alternative scheme.

**Conclusion:**

43. It therefore follows that a faculty will pass the seal. It will be subject to the conditions:

- i) that the Archdeacon is to be satisfied in relation to the funding of the work, before any of it commences;

- ii) that careful consideration is to be given to the retention of the carved ends of the pews which are removed and to them being used, if an appropriate place for them can be found; and
- iii) that advice is to be taken from the Archdeacon as to the sale of the choir stalls and the pews.

Her Honour Judge Sybil Thomas  
Deputy Chancellor of the Diocese of Lichfield  
February 13<sup>th</sup>, 2012.