

HANLEY: ALL SAINTS

JUDGMENT

- 1) The Ven. Godfrey Stone, Archdeacon of Stoke on Trent, petitions for a faculty pursuant to Section 68(3) of the Mission and Pastoral Measure 2011. The faculty sought is to authorise the grant of a lease of almost the entirety of the church of All Saints, Hanley to the trustees of the Apostolic Faith Mission for a term of fifteen years.
- 2) For the reasons set out below I have concluded that the grant of such a faculty is both lawful under the 2011 Measure and appropriate in the particulars circumstances here. Accordingly, I have directed the grant of the faculty. The Petition is unopposed but given the particular circumstances of this case I propose setting out my reasons fully.

The Church.

- 3) All Saints, Hanley is a Grade II listed church built between 1910 and 1913. In 2008 the Architectural History Practice (acting on the instigation of the Bishop of Lichfield and with sponsorship from the diocese, English Heritage, the City of Stoke, and other denominations) surveyed All Saints and other churches. The report of Peter de Figueiredo based on a visit on 11<sup>th</sup> December 2008 gives a detailed account of the condition and history of the church.
- 4) Mr. de Figueiredo summarised the position thus:

"All Saints is a significant early 20<sup>th</sup> century church by the interesting Arts and Crafts architect, Gerald Horsley. Whilst it was built to a limited budget, and lacks the decorative richness of Horsley's better known church of St. Chad, Longton, it has an impressive interior with lofty proportions, a wide chancel arch and bold simple detailing. The church has been little altered since it was erected and contains good quality furnishings."
- 5) The church is a large building alongside the busy A52 road. The interior furnishings are dignified rather than sumptuous but they do include (again

quoting Mr. de Figueiredo here and below) an *"interesting triptych with paintings by J. Edie Read... created as a First World War Memorial and ... two fine altar frontals."*

- 6) The interior of the church has been well cared for but externally the roofs and rainwater goods are in need of repair. The building is *"cold in winter even with the heating on"*. It lacks disabled access and there are no toilet facilities. The worshipping congregation is loyal but few in numbers. Moreover, *"the costs of heating and insurance alone are unaffordable"*.

### The Proposal.

- 7) As I have already said the proposed lease would be for a term of fifteen years and would be of almost the entirety of the church with only a small store room remaining undemised. The lease would be to the trustees of the Apostolic Faith Mission and the only permitted use would be *"as a church for the purposes of Christian public worship"*. The proposed lease envisages that on occasion weddings and funerals and school services will be conducted in the nave by Anglican clergy and according to the rites and ceremonies of the Church of England. However, the substance of the proposal is that for all practical purposes All Saints would become a church of the Apostolic Faith Mission.
- 8) In supporting the petition Archdeacon Stone has explained that the Parochial Church Council has given repeated thought to closure of the church. A new housing development is underway on the edge of the parish and it is envisaged that a new district or parish will be formed to serve this development. The location of All Saints means that it would not be well-suited to serve that community. The Archdeacon says that *"the PCC is committed to working towards the closure of All Saints exploring instead in the medium term the new 'mission' parish of 'Waterside'"*.
- 9) It is envisaged that the Apostolic Faith Mission would undertake works of repair coupled with the upgrading and modernisation of the facilities in the church. Archdeacon Stone explains that following the execution of the proposed lease the PCC would *"instigate proceedings towards*

*redundancy, closure, and sale*". It is anticipated that if all goes as is hoped there would be closure followed by a sale to the Apostolic Faith Mission.

### **Representations.**

- 10) There have been no objections to the Petition. Although it is brought in the name of the Archdeacon it has the unanimous support of the Parochial Church Council. The proposal has been considered by the Diocesan Advisory Committee which has recommended approval saying "*it warmly supports this initiative to safeguard the future of this listed building.*"

### **The Apostolic Faith Mission.**

- 11) The Apostolic Faith Mission is a Pentecostal church drawing its membership predominantly from those of Zimbabwean or Southern African origins. It is the oldest Pentecostal church in Southern Africa and has links to the start of the modern Pentecostal outpouring. Its style of worship is typical of the Pentecostal Movement.

- 12) The Bishop of Stafford is the Area Bishop responsible for Stoke on Trent. He has helpfully provided me with an assessment of the doctrine and worship of the Apostolic Faith Mission. In short it is his view that if the Apostolic Faith Mission were to be granted the proposed lease the worship in All Saints would be orthodox and compatible with "*mainstream Christian belief*". He is content for the worship taking place in All Saints to be that of the Apostolic Faith Mission.

### **The Lawfulness of the Grant of the Lease.**

- 13) The material parts of **Section 68 (3) of the Mission and Pastoral Measure 2011** provide that:

"... on an application by the incumbent of the benefice comprising or including the parish in which the church is situated ... the court may grant a faculty for a lease to be granted by the incumbent... of part of a church, provided that the court shall ensure that the premises remaining unlet, together with the premises let ... are, taken as a whole, used primarily as a place of worship."

- 14) Two questions arise when considering the faculty petition in the light of that provision. First, is the lease a lease of "*part of a church*"? Second, will the use of All Saints for worship by the Apostolic Faith Mission constitute

use "*primarily as a place of worship*" within the meaning of the Measure? In considering those questions I have been greatly assisted by the reasoning of Chancellor Mark Bishop set out in informal advice given to the Bishop of Lincoln in respect of St. Matthias Lincoln. That advice related to the operation of **Section 56** of the **Pastoral Measure 1983**, as amended by the **Pastoral (Amendment) Measure 2006**, being the predecessor of Section 68 of the 2011 Measure. I am grateful to Chancellor Bishop for making that advice available to me. I have substantially adopted his approach with one qualification as explained below. I have also been assisted by the Guidance Note: "Wider Use of Part or Parts of a Church Building: A Guide to Section 68 of the Mission and Pastoral Measure 2011" which was issued in January 2012 by the Legal Office of the National Institutions of the Church of England. It is to be noted, however, that the authors of that Guidance Note did not address directly the current issue.

- 15) As to whether the proposed lease is a lease of "*part of a church*" the question has to be addressed on the footing that in reality if the faculty were to be granted the trustees of the Apostolic Faith Mission would become the tenants of almost all of the church. There are two potential approaches in this situation. One approach would be for the Court to look at the substance or underlying reality of the proposal and to conclude that in fact a lease such as that proposed here is not a lease of part of the church but is in reality a lease of all the church and as such not permitted by the Measure. The alternative approach is to focus on the wording of the Measure. The Measure does not define "*part of a church*". It does not specify how large or small that part must be nor does it make any provision for a limit on the proportion of a church which might be the subject of a lease. The limitation on the extent of a letting comes not by reference to the physical proportion to be demised but by reference to the test of whether notwithstanding the lease the premises as a whole are still being "*used primarily as a place of worship*". On this view a demise of any proportion of a church is permissible provided that the premises as a whole can properly be said still to be used primarily for worship.

16) I was initially attracted to the former of these approaches. On reflection, however, I have concluded that the Court should apply the words of the Measure as they stand. On that basis the second approach is correct. Provided the undemised portion of the church is more than de minimis there can be a lease of a part of a church where the demised portion is the majority and approaching the totality of the church. It follows that the lease proposed here would be lawful as being a lease of part of the church.

17) If the lease is granted All Saints will no longer be used for Anglican worship. It will be used for worship by the Apostolic Faith Mission. Will such use be use "*primarily as a place of worship*" within the meaning of the Measure?

18) The Measure does not define "*place of worship*". Is that term to be interpreted as implicitly limited to worship in accordance with the rites and ceremonies of the Church of England? Consideration of the Measure makes it clear that such an interpretation would not be correct. In particular this is demonstrated by two provisions where "*place of worship*" is expressly stated to mean worship in accordance with the rites and ceremonies of the Church of England for the purposes of the relevant part of the Measure.

19) Thus **Section 58 (6)** states

"In this section "place of worship" means a building licensed by the bishop for public worship in accordance with the rites and ceremonies of the Church of England, being a building used wholly for the purposes of such worship and purposes ancillary thereto, or partly for those purposes and partly for other ecclesiastical purposes of the parish or purposes ancillary thereto, and includes a building which, pursuant to an agreement under the Sharing of Church Buildings Act 1969, is to be used as a place of worship jointly with another church and is to be owned by the Church of England only or to be jointly owned by that Church and any other Church."

20) Similarly, **Paragraph 4 (2) of Schedule 3** provides that

"In this sub-paragraph "place of worship" means a building or part of a building licensed for public worship according to the rites and ceremonies of the Church of England."

- 21) If "*place of worship*" when not specifically defined meant a place for worship in accordance with the rites and ceremonies of the Church of England then these express provisions would have been unnecessary. The inclusion in the Measure of provisions defining "*place of worship*" for the purposes of those particular sections as a building where there is Anglican worship indicates that those words do not bear that meaning in the absence of express restriction. It follows that where there is not such an express limitation the meaning of "*place of worship*" is not so constrained.
- 22) Chancellor Bishop took the view that the purpose of the requirement that the use should remain primarily that of a place of worship was to ensure retention of the various statutory exemptions from rating and from Listed Building control. Accordingly he concluded that all that was necessary was that the use should be such as to constitute public worship for those purposes. I agree that this is necessary but in my judgement a further element is also needed. This is that the worship taking place in the church should be recognised or capable of being recognised by the Consistory Court as orthodox Christian worship. It follows that it must be compatible with the Church of England's understanding of such worship. Churches are consecrated to the service of God, Father, Son, and Holy Spirit and the requirement that after the grant of a lease the totality of the premises remain "*used primarily as a place of worship*" is to ensure that the purpose of such consecration continues to be fulfilled.
- 23) Here the Bishop of Stafford has expressed his satisfaction that worship by the Apostolic Faith Mission will be orthodox Christian worship and so the grant of the lease would not breach the proviso in Section 68 (3).

#### **The Appropriateness of the Grant of the Lease.**

- 24) Of course the conclusion that a faculty authorising the grant of the proposed lease would be lawful is not the end of the matter. The Court must also be satisfied that it is appropriate to grant the faculty.

25) The position here is that the proposed lease will be of almost all of the church of All Saints and will cause that church to become a church where the worship and mission is conducted by the Apostolic Faith Mission. I have already concluded that such an arrangement is permitted by the wording of the 2011 Measure but it is also to be noted that it is not the type of arrangement primarily envisaged by that Measure. Is it nonetheless appropriate?

26) At paragraph 5.2 of "A Guide to Section 68 of the Mission and Pastoral Measure 2011" the authors say:

"... none of the three alternatives of licence, lease or partial closure should be regarded as a panacea where the struggle facing a diminishing congregation realistically points in the direction of permanent closure of the church building."

27) Comment to the same effect is made elsewhere in the Guidance Note.

The authors are clearly right in saying that a lease of part of a church building should not be seen as enabling a Parochial Church Council to avoid hard decisions about the closure of a church. If closure is the right course then that must be addressed and the appropriate procedures initiated.

28) Accordingly, it would not be appropriate to grant a lease of the kind proposed here if it was being used as a way of avoiding the issue of closure. However, the position at All Saints is the reverse of that. The Parochial Church Council with the support and encouragement of the Archdeacon are taking active steps towards closure. Here the proposed lease is not a device for avoiding the awkward question of closure. Rather it is a means to enable the church to be used for worship while proper and measured consideration is given to closure and to its future use. It also enables the church to be occupied by a body which will be able to fund the necessary repairs and modernisation. The use of a lease of such a large part of the church may well not have been expected by those who drafted the 2011 Measure but it falls within the wording of the Measure and is, in my judgment, an appropriate and proper arrangement.

**The Terms of the Lease and the Conditions to be imposed on the Faculty.**

- 29) The terms of the proposed lease do not directly mirror those contained in the model suggested by the Legal Office in "Wider Use of Part or Parts of a Church Building: A Guide to Section 68 of the Mission and Pastoral Measure 2011". They do, however, achieve substantially the same result. In particular they provide that the only permitted use is as a place of worship and incorporate as a term of the lease the underlying requirement that changes to the buildings shall only be made after a faculty has been obtained. I will impose the conditions set out below. In part these reflect those recommended by the Legal Office. However, I have imposed further conditions to achieve a number of self-evident objectives.
- 30) Thus before the execution of the lease the Trustees of the Apostolic Faith Mission Stoke on Trent shall provide to the Registrar written confirmation of:
- a) Their acknowledgement of this Court's continuing jurisdiction over those parts of the church which are to be subject to the Lease.
  - b) Their intention to cause appropriate representatives of the Apostolic Faith Mission to participate in such training as to the requirements and operation of the faculty jurisdiction of this Court as shall be organised for them by the Archdeacon of Stoke on Trent.
  - c) Their agreement to permit the display on a noticeboard outside the church or in some other suitable location of a notice giving the address of the nearest church of the Church of England together with appropriate contact details in respect of the minister of that church.
  - d) Their agreement to permit the location of the aforesaid notice and the wording of the same to be determined by the Archdeacon of Stoke on Trent.
- 31) The following conditions will apply after the execution of the lease:



- a) Forthwith upon completion of the Lease a copy of the completed counterpart lease shall be lodged in the Registry.
- b) The Lease shall not be varied except with the permission or at the direction of the Court.
- c) The parties to the Lease shall have liberty to apply for the purposes of the foregoing condition.
- d) The faculty does not authorise or permit any extension or renewal of the Lease.
- e) On or before 4.00pm on 19<sup>th</sup> December 2012 the Archdeacon of Stoke on Trent shall supply to the Court a written report setting out proposals in relation to:
  - i) The movement, relocation, or disposal of such of the fixtures of the church and the fittings therein which it is proposed should not be retained in the church.
  - ii) The protection and preservation of such of the fixtures of the church and the fittings therein which it is proposed should be retained in the church.
  - iii) The timing of any faculty petition which will be made in respect of the items at (i) and (ii) hereof.
- f) On or before 4.00pm on 27<sup>th</sup> April 2013 the Archdeacon of Stoke on Trent shall supply to the Court a written report as to the proposed future use of the church and in particular as to the taking of steps with a view to its closure for regular public worship pursuant to the provisions of the Mission and Pastoral Measure 2011.

STEPHEN EYRE  
30<sup>th</sup> September 2012

( )

(