

**IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD**

**CODSALL: ST. NICHOLAS**

**JUDGMENT**

- 1) The church of St. Nicholas, Codsall dates from the Twelfth Century and some parts of the mediaeval structure remain but in its current form the church building derives principally from the substantial restoration and rebuilding of 1848. The church has a grade II\* listing.
- 2) The current petition is brought by the churchwardens together with William Neal who chairs the church's building committee (the petition having been presented at a time when it was known that the Vicar then in post was shortly to be leaving the parish). The Petitioners have the approval and support of the Parochial Church Council (though it is to be noted that one member of the Council abstained on the question of the proposed alterations to the tower). The Petitioners seek a faculty for alterations to the West tower and to the chancel.
- 3) The chancel is no longer used for the administration of Holy Communion but is used for daily prayer and for fortnightly coffee mornings. The works proposed in relation to that part of the church involve the introduction of radiators and of additional carpeting. The objective of those proposed alterations is to make the chancel more comfortable on the occasions when it is used. It is also proposed that there be a movement of the communion rails to a point slightly east of their current position in order to mark off the chancel and to combine with the other alterations making the chancel more suitable for the activities now taking place there.
- 4) The works proposed in respect of the chancel are modest. However, the proposed alteration to the West Tower is significant. It is proposed that a bellringing platform be installed. The bellringers currently stand on the floor of the tower and the purpose of installing a platform is to free up the space at the base of the tower. The Petitioners propose that this space be occupied by an accessible toilet and a servery. Until the 1950's bellringers had operated from a

platform in the tower. In one sense what is proposed is a restoration of that position but it is to be noted that the new platform will be in a different position from the previous one. It will be smaller and will be accessed through a trapdoor rather than a doorway as had been the case in the past.

- 5) It is also proposed that the church clock be electrified but that proposal is wholly uncontentious and I will not dwell on it further.
- 6) The Petitioners contend that the toilet and servery are needed in order for the church building to provide the facilities which are generally regarded as necessary and appropriate in the Twenty-First Century. There is a toilet in the church building but this has to be approached by leaving from the North aisle and going through the vestry. This is not an easy route. It is not clear to me whether it is a route which can be used at all by those with mobility difficulties of any degree of seriousness (the papers suggest it cannot) but at the very least it is a route which is not suitable for those with such difficulties. Moreover, at times the vestry is in use and so access to the toilet can entail interrupting those engaged in other activities. Refreshments are currently provided to those attending services and other functions but this is done by means of serving from a trolley. In addition to Sunday services the church is used daily for prayer services and fortnightly for a coffee and cake event when those attending include residents from local care homes. There are monthly functions for children and young people. The church is also used on occasion for concerts and other community events. The Petitioners' case is that accessible toilet facilities and a servery are needed for such activities.
- 7) The Petitioners accept that the proposed works will impair the view of the West window from the nave. They say that they have sought to minimise the impact on the appearance of the church (and in particular the impact of that view) by proposing a glass balustrade for the ringing platform and by the position at which the platform is to be located. In any event they say that the very real benefits in terms of facilities for the disabled and for the safe provision of refreshments outweigh the limited impact on the church's character.

### **Consultations.**

8) Historic England has confirmed that it has no objection to the principle of what is proposed and that it is content to defer to the views of the Diocesan Advisory Committee in respect of the details of the works. The Victorian Society has been consulted and has stated that it does not wish to comment on the proposals. The Diocesan Advisory Committee certified that the proposed works would be likely to affect the special character of the church but recommended approval. It is noteworthy that the Petitioners involved the Diocesan Advisory Committee at an early stage and also that the Petitioners have modified their initial proposals to take account of comments made by the Diocesan Advisory Committee and Historic England. This demonstrates that the Petitioners are adopting a commendably careful approach to the reordering exercise and also that there is force in their contention that steps have been taken to minimise the impact on the character of the church.

### **Objections.**

9) Two letters of objection have been received. They are from Philip Murphy and Michael Aspey. The objections relate principally to the effect which the movement of the bellringers from the floor of the tower to a platform is likely to have on the bellringers and on bellringing. Neither Mr. Murphy nor Mr. Aspey have chosen to become parties but I have taken account of the points which they have made and will consider their arguments below together with the written response from the Petitioners.

### **The Applicable Test.**

10) I have already said that St. Nicholas has a grade II\* listing and the proposed works would alter the church's appearance. Therefore, the approach laid down in *Duffield: St Alkmund* [2013] 2 WLR 854 as modified in *Re Penshurst: St John the Baptist* (2015) 17 Ecc L J 393 is to be applied and the following questions addressed:

- a) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

- b) If not have the Petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted?
  - c) If there would be harm to the significance of the church as a building of special architectural or historic interest how serious would that harm be?
  - d) How clear and convincing is the justification for carrying out the proposals?
  - e) In the light of the strong presumption against proposals which will adversely affect the special character of a listed building will the benefit outweigh the harm?
- 11) In considering the last question I have to bear in mind that the more serious the harm the greater the level of benefit needed before proposals can be permitted. I also have to bear in mind that serious harm to a church listed as Grade I or Grade II\* should only be permitted in exceptional cases.

#### **The Harm to the Special Character of the Church.**

- 12) There will be an impact on the special character of the church and in particular the view of the West window from inside the church will be impaired. However, the external appearance of the church will not be altered nor (other than the modest movement of the communion rail) will there be any alteration in the interior appearance of the church looking east from the tower. I have already said that the Petitioners contend that the impact on the view of the West window will be minimised by the proposal that the ringing platform have a glass balustrade. In that regard it is to be noted that the West window is of plain glass and so the proposed works would not result in the impairment of the view of an image depicting a person or event.
- 13) I have concluded that the proposed works will harm the special character of the church. However, in the light of the points noted in the preceding paragraph I have also concluded that the harm will be modest. I reach that conclusion against the background of the stance taken by the Diocesan Advisory Committee, the Victorian Society, and Historic England. Each of the latter bodies regards what is proposed as acceptable and has chosen to make no detailed comment. This

indicates that to the extent that there is harm is not seen by them as being serious harm to the special character of this II\* church.

**The Benefits to be derived from the proposed Works.**

14) The Petitioners have set out a clear and convincing justification for the proposed alterations to the West tower. Accessible toilet facilities are necessary if the church is to meet the needs of those attending for worship in the Twenty-First Century. Part of the outreach activity of this church is the provision of events attended by those resident in local care homes and this reinforces the need for such facilities. The provision of refreshments to those attending acts of worship or other functions in the church is an appropriate part of the activity of the church. The installation of a servery to enable this to be done in a safe and seemly way replacing the current use of a trolley is clearly sensible and desirable. Subject to the matters raised by Messrs Murphy and Aspey it is apparent that the benefits to be obtained by and the needs to be met by the proposed works would sufficiently outweigh the modest harm to the special character of this church as to justify the grant of a faculty.

**The Objections and the Petitioners' Response thereto.**

15) Mr. Murphy and Mr. Aspey raise objections which are in similar but not identical terms. They are both bellringers at this church. Mr. Murphy has rung at Codsall for 15 years and for the last 12 years of that period he was the ringing master. Mr. Murphy stood down from that post because of his concerns about the impact which the proposed works would have on the ringers.

16) These gentlemen are both concerned that the installation of a platform with ringers on the platform rather than on the floor at the base of the tower will reduce the space for ringers and that access to the platform through a trapdoor is inappropriate. They make the point that the proposed trapdoor route will prevent or impair access for elderly or disabled bellringers. They have concerns about the safety of the arrangement. In addition Mr. Aspey makes the point that having ringers on the ground floor where they are readily visible by worshippers adds to the atmosphere of the service and enables the bellringers to be fully part of the congregations.

- 17) The Petitioners have responded to these letters. They say that there was consultation with the bellringers and that the majority of the ringers confirmed that they were content with the proposals (after understandably having requested and received assurances about the robustness of the proposed platform).
- 18) The Petitioners say that they would have liked to have installed a larger platform which could have accommodated more bellringers. However, the size and position of the platform now proposed is a result of the consultation with the Diocesan Advisory Committee and Historic England in which suggestions were made by those bodies as to how the impact which the platform would have on the appearance of the church could be minimised. The proposed size and position reflect the adoption of those suggestions.
- 19) The Petitioners' response concludes by regretting the difficulties which will be caused for disabled or elderly bellringers but explaining that there is no other practicable location for an accessible toilet than at the base of the tower. The Petitioners contend that the importance of providing that facility justifies the impact which there will be on bellringers at the church.
- 20) The relative importance to be attached to facilities for the disabled and to arrangements for bellringing in the life of a particular church is very much a matter for the local judgment of the incumbent and the Parochial Church Council of that church. It is the incumbent who has the cure of souls and the wardens and Church Council are the elected representatives of the worshipping community. They are far better placed than the Court to assess the extent to which an adverse impact on bellringing (or any other part of the life of the church) is justified in order to meet a different need. The views of an incumbent and Church Council in that regard are not conclusive and the objections to what is proposed must be considered and weighed by the Court. Nonetheless, such views must carry very considerable weight in the absence of particular or unusual circumstances provided at least that those views are not demonstrably unreasonable or otherwise flawed in some important respect.
- 21) In this case it cannot be said that the Petitioners' assessment of the position is demonstrably unreasonable. Their approach is supported by the Parochial

Church Council. It was legitimate for that Council with the wardens to conclude that the provision of toilet facilities for the disabled and of appropriate refreshment facilities should be given a higher priority than ensuring trouble-free arrangements for bellringing and that conclusion must bear real weight with the Court. In addition, as I have already said there was consultation with the bellringers and the majority of them are content to work with what is proposed.

22) The impact on those engaged in bellringing of what is proposed is to be regretted particularly given that the proposed arrangements are likely to inconvenience most greatly those bellringers who are disabled or elderly. Nonetheless, that impact cannot warrant refusal of permission for proposals which are otherwise justified and which the churchwardens and the Parochial Church Council seek in order to further mission of the church and to provide for those attending the church who are disabled.

23) In those circumstances I authorise the grant of the faculty sought.

STEPHEN EYRE  
HIS HONOUR JUDGE EYRE QC  
CHANCELLOR  
7<sup>th</sup> April 2018