

APPENDIX B

Consistory Court of The Diocese of Bath & Wells [2019] ECC B&W2

Judgement (dated 12th November 2019)

Re: The Church of St Peter and St Paul, Muchelney

Introduction

The Church of St Peter and St Paul is a Grade I listed building which stands on a prominent site in the parish of Muchelney. Since at least 2014 the provision of lavatory facilities has been under active consideration by the Parochial Church Council, such provision being lacking within the curtilage of the Church. Unfortunately the initial proposal, to use the vestry for the purpose, proved to be impracticable because the entrance did not meet the requirements of disabled users.

No other suitable location existed within the church building. In particular the area at the base of the tower was correctly ruled out because an installation there would have involved blockage of the West door and restriction of the liturgical use of the nave. Other indoor locations would have been an unacceptable intrusion into the space used for worship. Accordingly it became necessary to look outside, where there was no conveniently sheltered area within the churchyard and clear views of the building from all directions posed further problems. A plan dated August 9th 2018 with the title “WC Location Options” prepared by the church architect, Mr John Beauchamp, demonstrated with clarity the difficult choices that had to be faced.

The Petition

The outcome was the selection of a site adjacent to the East side of the North porch of the church building, for the location of a freestanding structure designed to meet disability requirements. This option had the unanimous support of the Parochial Church Council, and was recommended by the Diocesan Advisory Committee in its written advice dated July 9th 2019. A petition dated July 12th 2019 was accordingly presented in the names of the Vicar, the Reverend Jane Twitty, a churchwarden Mrs S Nicholas, and the treasurer Dr E Nightingale, for works described as

“Phase I – external works

- *Installation of a external DDA – compliant toilet to the East side of the North porch in freestanding stone & wood building*
- *Connection of mains water supply and appropriate drainage, along pathway*
- *Supply of electrics as required.”*

Objections

Although the petition is formally unopposed, the proposed works are controversial. The advice of the statutory consultees was ambivalent, with the Church Buildings Council supporting the Petitioner’s choice of position and Historic England preferring a site near to the tower. South Somerset District Council’s conservation officer wrote,

“We remain of the view that the side of the North porch is the optimum location but we acknowledge that a case can be made for both locations and do not contest Historic England’s advice.”

Letters of objection were also forthcoming from parishioners. In reaching my decision I have taken account of the communications from Mrs Angela Miller (received on August 9th 2019) from Mr and Mrs du Monceau (dated August 11th 2019) from Mr Alastair Mullineux (dated July 22nd 2019) and from Mr Andrew Slater (dated August 7th 2019). In a further letter dated September 24th 2019 Mrs Nicholas responded on behalf of the Petitioners. I have been impressed by the constructive tone of all of this correspondence. The principal issues raised by the Objectors are evaluated in the following paragraphs.

Need

Mrs Miller and Mr Mullineux challenge the need for the facilities as being “not proven”. Their argument is primarily that the level of church attendance is insufficient to justify the provision sought. Over recent decades, however, a reasonable expectation has developed among worshippers and visitors that parish churches should be warm, safe and with a basic level of comfort including lavatory accommodation. It is entirely appropriate in my judgment that parishes aspire to meet that expectation irrespective of the number of persons for which allowance is made. Ad hoc arrangements at adjacent premises such as those kindly offered by Mr Mullineux, are insufficient; they do not meet the needs of the disabled or the very young while easy access during services is not always practicable.

The Petitioners are in these proposals seeking properly to address a basic human requirement. I am unable to accept the arrangement to the contrary.

Design

The design of the lean-to structure has attracted comparatively little adverse comment, save that Mrs Miller and (at least by implication) Mr Mullineux are critical of the use of timber cladding. In addition, however, to the Diocesan Advisory Committee’s favourable assessment of the Church Buildings Council wrote

“The design is responsive to the site whilst remaining subservient to the building”. (Dr Knight’s letter of May 16th 2019) and South Somerset District Council commended on October 23rd 2018, *“The design of the proposed WC is discreet, with a good quality finish and reversible.”*

I am satisfied on the material before me that the design is appropriate to the setting of a historic church of this importance.

Location

It is the question of location which has emerged as the most controversial feature of the scheme. The advice of the consultees on this issue has already been outlined. The objectors are unanimous in their condemnation of the proposed site beside the North porch, as being

“detrimental to the character of the church and an eyesore in this historic village” (Mr and Mrs du Monceau

and

“...in a prominent location and visible from the road and main entrance path to the Church. It is inappropriate for it to be close to the entrance” (Mrs Miller)

Mr Mullineux and Mr Slater also observe that part of a nave window will be obscured by the line of the slate roof.

Of other conceivable locations which have been under discussion, only that at the West and adjacent to the tower (favoured by Historic England and Mr Mullineux) is a serious competitor. In that position also it will be no less visible, albeit from a different angle. Furthermore, as Mrs Nicholas explained in her letter of September 24th 2019, the West door was the original main entrance. It is still used for weddings and important ceremonies. She writes

“Standing back from the West door, the symmetrical view of the West elevation would be disrupted if a WC were to be built on the North side of the tower.”

The burden of proof rests upon the Petitioners. They have persuaded me that, notwithstanding the disadvantages identified by the Objectors and Historic England, the location to the East of the North porch is the least problematic within this difficult site. The preference expressed for a position beside the tower is unconvincing. My conclusion on this issue is fortified by the advice from the Diocesan Advisory Committee and the Church Buildings Council, as well as the somewhat circumspect assessment given on behalf of the South Somerset District Council.

I am mindful also of the opportunity to screen the structure with planting, as well as the practical benefits of easy access from the North door and the potential for accommodating drainage beneath the pathway.

Drainage

Mr Mullineux draws attention to the need for detailed proposals concerning the drainage system. In this respect he repeats the advice of the Diocesan Advisory Committee; Mrs Nicholas recognises that the design of the drainage remains outstanding. This is not, however a good reason for postponing a decision upon the project, because a faculty may now be granted subject to the condition that a further order is sought for such drainage arrangements as will have received the recommendation of the Diocesan Advisory Committee.

Conclusion

Although the substance of this judgment has been concerned with the contentious aspects of the proposals, my decision is underpinned by the approach commended by the Court of Arches in re. *St Alkmund, Duffield* [2013] Fam 158, at paragraph 87 of the judgment.

In summary, I do not accept the evaluation of Historic England (and, if Mr Mullineux is correct, the Society for the Protection of Ancient Buildings) that significant harm will result from the Petitioner’s proposed location. It is difficult to reconcile the assertion of significant harm arising from the adoption of the Petitioner’s proposal with the apparent absence of harm in a visible site adjacent to the tower. In either instance, the harm, in my judgment, is no more than minor, especially if the already subdued appearance of the relatively small structure is suitably screened. The obvious public benefit in have lavatory facilities accessible to disabled people materially outweighs any harm associated with the chosen site in the curtilage of the church.

Accordingly a faculty will pass the seal for the works as proposed in the petition. Such faculty will be subject to the usual conditions imposed in this Diocese with regard to electrical works, archaeology and the treatment of any disturbed human remains. There will also (as indicated above) be a condition that a further order shall be sought in respect of the drainage scheme.

On reviewing the Registry file it is evident that this project has been subject of protracted delay and uncertainty. In conclusion it is appropriate to recognise the sustained endeavour

of the Parochial Church Council, in the face of various setbacks, to bring the matter to a final decision. Its members have displays commendable perseverance in achieving the present outcome.