

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

C079/2002

C026/2013

BISHOP'S TACHBROOK: ST. CHAD

JUDGMENT

- 1) St. Chad's, Bishop Tachbrook is a medieval church and has a Grade I listing. It is surrounded by a churchyard which remains open for burials and which also contains a Garden of Remembrance for the interment of cremated remains. To the north of the west end of the church building there is land which was given to the church in 1965 ("the 1965 Land") and which was consecrated on Easter Day 1972. That land is not separated from the remainder of the churchyard and simply forms part of the grassed area surrounding the church building. The area available for burials was extended by a further donation of land from the same benefactor and lying to the east of the 1965 Land. The Petitioners (the priest in charge and the churchwardens) have presented two petitions. One is for the construction of a church centre on part of the 1965 Land and the other is for permission to grant a lease of the Church Centre site to The St. Chad's Centre Trust Company (a company yet to be formed) with a view to the construction and operation of the church centre. On 1st June 2013 I directed that the two petitions be heard together.
- 2) On 4th May 2010 a faculty had been granted on my direction for the construction of a church centre on this site. That faculty was granted in response to a petition which had stated that the land in question was not consecrated and that it had not been used for burials. It then came to light that not only was the land consecrated but that it had been used for burials in the circumstances set out below. Moreover, although there had been no objections to that petition it became apparent that there was a real degree of local concern about the proposed works. Having received that information I revoked the former faculty by an order made on 21st August 2010 and the two current petitions have resulted.
- 3) The proposal is for the construction of a church centre consisting of a hall, meeting rooms, and ancillary facilities. The centre would lie to the north of the

west end of the church building. It would be to the east of the modern interments in the 1965 Land and to the west of the older gravestones to which I will refer below. The construction of the centre will entail the removal of two mature lime trees. The proposed lease would be for 99 years. I have been provided with the Articles to be adopted by the proposed company. The Articles provide for that company to be a charity and to be controlled by a board on which the Parochial Church Council and the Parish Council shall have equal representation. The proposed lease specifies that the church centre is to be for community use and provides for there to be a "Reserved Use" in favour of the incumbent and the Parochial Church Council. The Reserved Use provision is intended to ensure that the church centre is used as an adjunct to worship on Sundays and provides for use on other occasions free of charge for worship, use of office space, and storage. The intention is that the centre should be available for use by the church but should also seek to operate as a facility for the local community.

- 4) In 2007 planning permission was granted for the erection of the church centre and the grant of permission was renewed in 2011.
- 5) I concluded that the matter was appropriate for determination by way of written representations and the Petitioners consented to this. I made a site visit on 8th November 2013 accompanied by the Registrar. On that occasion the Petitioners were present and they helpfully pointed out sundry physical features but did not make any representations. I was informed that in the last three years there have only been three burials in the churchyard although there have been rather more interments of cremated remains in the Garden of Remembrance.
- 6) There were a number of letters of objection and I have taken account of those in my consideration of the matter. However, none of those who wrote objecting to the petitions chose to become parties to the proceedings.
- 7) On 12th November 2013 I directed that the faculties as sought be granted and this judgment sets out the reasons for that direction.

Burials on the 1965 Land.

- 8) There are fourteen graves on the 1965 Land just to the west of the proposed church centre. These contain a total of twenty-five interments. It has been the longstanding aspiration of successive parochial church councils to build a church hall or equivalent facility on the 1965 Land. In the light of that aspiration the Parochial Church Council resolved on 4th September 1989 that there should be no further burials in the 1965 Land. This was subject to an exception for those to whom the church was felt to have an obligation to permit burial on this land. Such obligations were regarded as arising in cases where the remains of one spouse were already interred in a grave in the 1965 Land and where on the surviving spouse's death it was proposed to inter him or her in the same grave. The majority of the interments were in the 1970's and 1980's but there have been a few more recently. There have been five interments this century and the most recent of those was in 2010.

- 9) At the other side of the site of the proposed church centre and just outside the 1965 Land there are three gravestones two of which were erected in 1917 and the other in 1928. The Petitioners propose that during the course of the works these gravestones should be protected though they anticipate that it might be necessary for the gravestones to be moved temporarily.

The Petitioners' Contentions.

- 10) The Petitioners contend that the church centre will provide much-needed facilities for the church and for the local community. In terms of the mission, life, and witness of the church it is said that the church centre will provide a space for the holding of a Sunday Club for children together with space for "Messy Church" and similar activities. Currently the Sunday Club meets in the Tower Room. This is a room at the base of the tower at the west end of the church. It measures approximately 12' by 9' and is separated by a glass door from the nave with a door at the other end of the room opening directly on to the churchyard. The Petitioners say that the Tower Room is inadequate for the Sunday Club. In addition the church centre would provide enhanced catering facilities and rooms for meetings and the Petitioners point out that the Tower Room is too small to accommodate meetings of the Parochial Church

Council which are held in the body of the church. Thus, the Petitioners say, the church centre would enhance the life of the church by enabling activities which cannot currently be carried on in the church to take place and by providing better facilities for those activities which take place currently in the Tower Room or in the church. They add that the church centre would be a facility for the local community by providing a venue at which community activities could take place.

11) As to the appearance and impact of the church centre the Petitioners explain that it has been designed to be lower than the church and the nearby houses. Although the loss of two mature trees is regretted the Petitioners have already planted two new saplings. The Petitioners say that there will be no material increase in traffic volume.

12) There have been a number of letters in support of the Petition. These include letters from community and church groups asserting the inadequacy of the current arrangements and emphasising the benefits which it is believed will flow from the enhanced facilities.

The Objectors' Concerns.

13) There have been a substantial number of letters of objection. Some of these letters are from active and committed members of the congregation. It is apparent that there is a division of opinion amongst the members of the congregation and that this extends to the members of the Parochial Church Council. It is clear that there is majority support in both bodies for the proposals but also clear that there is opposition from those actively involved in the life of St. Chad's. The points made variously by those who wrote objecting to the proposed church centre are, in summary, as follows:

a) It is said to be inappropriate for there to be a building on land which was consecrated for burials and where there are a number of graves including some which are close to the proposed building. For some of the objectors it is the fact of a building on that land which is the cause for concern but for others it is the nature of the building and its potential use for private

functions. They feel that the use of the building for “*music and merriment*” is inappropriate in a churchyard containing graves.

- b) The foregoing point is coupled with concerns about the impact which the church centre will have on the appearance of the churchyard and of the church involving, as it does, the loss of mature trees.
- c) The building of the church centre will reduce the space available for future burials.
- d) Concern has been expressed about the potential for an increase in traffic and for increased pressure on the already limited parking facilities in the centre of Bishop’s Tachbrook.
- e) Some of the objectors question the need for the additional facilities. It is said that the Tower Room is adequate for the needs of the church. It is also said that there are adequate community facilities in the village and that the creation of a church centre which will compete with the existing facilities will harm rather than enhance the life of the village (by diverting activities and functions from the existing facilities). In related comments a challenge is made to the wisdom of using St. Chad’s resources for such a venture. It is said that the church cannot afford the cost of building the church centre and that the work to be done on the church centre will draw funds and energy from other activities of the church.
- f) Reference is made to the parish poll held in 2010. At that time the (civil) Parish Council held a poll on the question of whether it should make a contribution to the cost of building the church centre. The poll resulted in a vote against making such a contribution by a majority of 240 against 171 on a turnout of 24%. The poll was advisory only and the Parish Council went ahead with the proposal to make a contribution to the cost of the works. I will say at this juncture that I cannot regard the poll as anything other than a very limited indication of local views. The issue was not that of whether it was appropriate for the church centre to be built but whether a contribution should be made to the cost of doing so. Moreover, it is

noteworthy that the elected Parish Council proceeded to agree to make a contribution notwithstanding the parish poll.

Representations from other Bodies.

- 14) The appropriateness or otherwise of the proposed church centre has been considered by the Local Planning Authority on two occasions. Planning permission was given in 2007 and renewed in 2011. On each occasion the Council considered detailed objections making similar points to those summarised above and set out in the correspondence which I have considered. The Council accepted that the presence of the church centre would have a significant impact on the view of the church from the north. However, it concluded that because of the proposed low level of the church centre the church building itself would remain the dominant feature and that the impact of the church centre was not unacceptable. Moreover, the Council took the view that to the extent that there would be an adverse impact this could be ameliorated by the conditions which were attached to the planning permission. It concluded that the benefits to the local community of having the facility of the church centre would outweigh such adverse impacts as remained after that amelioration. A number of the matters put forward by those who have written objecting to the Petition were considered by the Local Planning Authority and fall principally within the expertise of that body. Thus the potential traffic impact is a matter which I can take into account but in doing so I will have regard to the facts that assessment of such an impact falls principally within the Council's expertise and that the Council did not regard that impact as such as to justify a refusal of planning permission.
- 15) English Heritage was consulted both during the planning process and in connexion with the Petition. The planning permission documents show that English Heritage had some reservations about the initial draft proposals. However, those proposals were revised and English Heritage has stated both to the Local Planning Authority and to this Court that it is content with the current proposals.
- 16) The Diocesan Advisory Committee has certified that the proposed works are not likely to affect either the character of the church as a building of special

architectural or historic interest or its archaeological importance or archaeological remains within its curtilage. The Committee has recommended approval of the proposed works. It requested to be supplied with details of the proposed tiling and stonework. Those details have been supplied and the Diocesan Advisory Committee has confirmed that it is content with them.

17) Warwickshire Archaeology conducted an archaeological evaluation of the site of the church centre involving the digging of trial trenches and reported in respect of the same in May 2005. The evaluation found some burials one of which contained thirteenth century pottery. The conclusion of the evaluation was that either the churchyard was larger in medieval times than in the modern period or, and this seems to me the more likely explanation, that the site had been just outside the churchyard and had been used for burials which could not take place in consecrated ground. Warwickshire Archaeology has provided a scheme of investigation to be followed during the course of the works. The scheme provides for archaeological supervision with excavation and recording during the course of the works and for proper treatment of human remains if the same come to light during the works.

Is the Site a Disused Burial Ground?

18) The first question which arises is whether the restrictions imposed by the **Disused Burial Grounds Act 1884** are applicable here. Those restrictions apply where there is a burial ground which is no longer used for interments. It is right to say that the particular site on which it is proposed to build the church centre is no longer used for interments. This is because of the policy adopted in 1989 of restricting interments to other parts of the churchyard. Indeed the actual footprint of the church centre has not been used for interments save for those which appear to have taken place in the medieval period. However, this does not of itself determine whether the Act is applicable. The Act only applies if the “burial ground” in question is no longer used for interments. Is the site of the proposed church centre a burial ground for the purposes of the Act? In Section 1 “burial ground” is defined as including “*any churchyard, cemetery or other ground, whether consecrated or not, which has been at any time set apart for the purpose of interment*”. It is

apparent that the reference is to the churchyard as a whole and not to a portion of it which is not otherwise differentiated from the remainder. Thus the burial ground to be considered here is the entire churchyard of St. Chad's. Neither the footprint of the proposed church centre nor even the 1965 Land are to be seen as themselves constituting burial grounds. The burial ground consisting of the entire churchyard of St. Chad's is still being used for interments albeit those interments are taking place in a different portion of that churchyard. Accordingly, the restrictions imposed by the 1884 Act do not apply.

The Approach to be taken to Petitions proposing Buildings in Churchyards which are in use for Burial.

- 19) The proposed church centre is to be built in a consecrated churchyard where burials have taken place and are continuing to occur. Moreover, the site in question forms part of the 1965 Land which was originally intended as a burial ground being given to the church for that purpose and consecrated with that end in view. However, as explained above since 1989 the use of the 1965 Land for burials has been limited.
- 20) At paragraph 7.93 of **Hill: Ecclesiastical Law** (Third Edition) it is said “*so long as the churchyard remains ‘open’, ie it is possible in practical terms to carry out further burials, nothing may be authorized in any part of it which will prevent that part being used for burials.*” Clearly, the building of the church centre will prevent that part of the churchyard on which it is built from being used for burials. If the learned author of Hill is correct then this is a complete answer requiring rejection of the Petition. However, I have concluded that the proposition in the form stated is not a correct summary of the applicable law.
- 21) The authority cited for this proposition in Hill is the decision of Coningsby Ch in *Re St Martin le Grand, York* [1990] Fam 63. However, in that case Coningsby Ch was considering whether to allow a secular use (in that instance use as a right of way) over part of a consecrated churchyard. In so doing he followed the approach propounded in *Re St John's, Chelsea* [1962] 1 WLR 850 namely that a secular use was permissible if the purpose for which the land had been consecrated could no longer be carried out. It was in

that context that it became relevant for Coningsby Ch to note that the land in question had been originally consecrated for burials and that such purpose could no longer be carried out because the churchyard had been closed for burials. The learned chancellor was concerned with the question of secular use and was applying the test laid down in *Re St John's, Chelsea* as to such use. He was neither expressing nor applying the proposition that the Court should not permit in an open churchyard a building which would preclude the use of part of that churchyard for burials.

22) The proposition set out in Hill is, in the terms it is stated, inconsistent with other authorities. Thus in *Re St John's, Chelsea* itself Newsom Dep Ch saw no difficulty in the prospect of a building being constructed in a churchyard provided that the building was for an ecclesiastical use. It is noteworthy that Newsom Dep Ch referred to the decision of Dr. Lushington in the case of *Campbell v Paddington (Parishioners)* (1852) 2 Robb Eccl 558. In that case the construction on consecrated land of a room for vestry and parochial meetings was permitted. The description of the land in question was that it “*was originally intended for an additional burial ground but ... no bodies had been interred therein and it was not intended to be used as an additional burial ground.*” It is also to be noted that Dr. Lushington took the view that the vestry room would be used for both ecclesiastical and secular purposes and that the former element meant that permission could be given notwithstanding that there would also be secular use of the room. There are striking similarities to the current case both in terms of the approach taken by the church to the land in question and as to the mixed use which was to be permitted. Similarly, in *Morley BC v St. Mary the Virgin, Woodkirk* [1969] 1 WLR 1867 the Chancery Court of York allowed part of a churchyard to be used as a road even though the churchyard in question was still being used for burials.

23) It is also to be noted that there appear to have been numerous instances of ecclesiastical buildings being erected in open churchyards whether as free-standing buildings or as extension of church buildings. The proposition stated in Hill does not appear to have been regarded as being a constraint in such

cases. Similarly at paragraph 839 of **Halsbury's Laws of England Vol 34 Ecclesiastical Law** (Fifth Edition) the learned editors of that work point out that building in churchyards is frequently allowed. The learned editors do not confine this approach to closed churchyard though they do suggest that appropriation of a portion of a churchyard for use as part of the highway may only be appropriate in the case of closed churchyards.

- 24) It is my judgment that the fact that a churchyard is still in use for burials and that a proposed building will take up space which could otherwise be used for burials is a relevant factor when the Court is considering whether to allow a building on part of the churchyard. It is not, however, necessarily and automatically determinative of the matter. Instead the impact of the building on the future use of the churchyard for burials is one among a number of relevant factors and, in an appropriate case, permission can be given for such a building even if it reduces the space available for burials.
- 25) As I have already stated in *Re St John's, Chelsea* the Court said that secular use of consecrated land would only be permitted if the purpose for which the land had been consecrated could no longer be carried out. In that regard I agree with the conclusion reached by Petchey Ch in *Re St Barnabas Downham* (Southwark 2011) to the effect that the law has developed since the decision in *Re St John's, Chelsea*. There is now a greater flexibility as to permitting the secular use of consecrated land. This conclusion is reflected in paragraph 839 of Halsbury's Laws as set out above. It is not every secular use which will be permissible. The decision whether to permit such use will be a matter of fact and degree with the nature, extent, and permanence of the proposed secular use all being relevant.
- 26) What, then, is the approach which the Court should take in considering applications such as this? 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. The question to be addressed in each case is one of fact as to whether the building and its proposed use is appropriate for the particular churchyard in the light of the churchyard's consecrated status and the preceding functions. In my assessment the effect of this means that in considering whether a building can be erected in a churchyard account has to be taken of:

- a) The consistency between the building's use and the consecrated status of the churchyard bearing in mind the flexible approach referred to above and taking account of the nature, extent, and permanence of any proposed secular use.
- b) The likely impact of the building on the setting of the church in question. Where the church is a listed building particular caution must be exercised in permitting changes which will impact on its special character. The guidelines laid down by the Court of Arches in *Re Duffield: St Alkmund* [2013] 2 WLR 854 will be relevant.
- c) Whether the presence of the building is likely to cause the churchyard no longer to be a fitting resting place for the remains of those interred therein.
- d) The impact which the building's presence will have on the use of the churchyard for future burials. This will involve consideration of the extent of the land which will remain available for burials after the construction of the building and also of the ability of that remaining land to provide adequate capacity for future burials.

Analysis.

- 27) I am satisfied that if the construction and proposed use of the church centre are otherwise appropriate then the terms of the proposed Lease are permissible. The Lease provides for a demise to a charitable company on the Board of which the Parochial Church Council will have very substantial representation; where the building is to be used for the purposes of the local community; and where the "Reserved Use" provision ensures the facilities of the church centre will be available for the purposes of the church when needed.

28) The Petitioners have established that there is a real need for further facilities for the work of St. Chad's. I took careful note of the extent and position of the Tower Room on my site visit. I have no doubt that it is inadequate as a venue for meetings and also that it is not a suitable setting for activities with children and young people. Similarly there are only very limited catering facilities in the body of the church. The facilities provided by the proposed church centre will have the potential markedly to improve the work of St. Chad's. In addition by removing from the body of the church building activities for which that building is unsuitable and which are not directly linked to worship the building of the church centre has the potential to enhance the appearance of the church and to reinforce the focus on worship in the church building.

29) I have to consider whether the uses to which the church centre will be put are consistent with the consecrated status of the churchyard. The church centre will be used to provide facilities for the local community and for activities more directly related to the work and life of the church. I am satisfied that these uses are consistent with the consecrated status of the churchyard. 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. This wider mission activity will be linked with more narrowly ecclesiastical uses. I have already noted the similarity with the facts of *Campbell v Paddington (Parishioners)*. Just as in that case the building of the vestry room was permissible even though some of the meetings held in it would be purely secular in nature, so the church centre here is permissible even though it will host purely secular functions and activities. 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. I am satisfied that the terms

of the Lease and the right of the Parochial Church Council to be involved in the governance of the lessee company are sufficient protection against the church centre being used for activities which would be unseemly in a churchyard.

- 30) It is right to note that the church centre building will be in close proximity to the graves of those who were buried in the 1965 Land since its acquisition and in close proximity to the graves which are outside the 1965 Land and which were the sites of interment in the early years of the Twentieth Century. I do not regard that as being a bar to the construction of the church centre. There are many instances where graves and memorials are close to church buildings or to other buildings in churchyards without such buildings detracting from the settings of the graves or vice versa.
- 31) I have considered the possibility that there will have been burials under the actual site of the church centre. Such burials will not have happened in modern times and may well have been made outside the boundary of the churchyard as it was at the time of the burial. I have concluded that the potential presence of such burials does not preclude the construction of the church centre. This is particularly as the archaeological watching brief makes appropriate provision for such human remains as come to light in the course of the works to be dealt with in a proper and seemly manner.
- 32) It is correct that the presence of the church centre will reduce the area available for future burials in the churchyard. This is a relevant factor as I have explained above but it is not determinative. I have set out above the information I was given about the small number of burials in recent years. The churchyard is substantial and a sizeable area will remain even after the church centre is built. There is every prospect that there will be ample space for burials for the foreseeable future and this is without even giving consideration to the reuse of the sites of former graves. Accordingly I am able to conclude that the risk of prejudice to the rights of current and future parishioners to be buried in the churchyard is minimal and not such as to outweigh the benefits to be gained by the building of the church centre.

- 33) St. Chad's is a Grade I listed church and the church centre will be built in close proximity to it. There will be an inevitable impact on the appearance of the church in that part of the churchyard which is now open space will be taken up by a building and the view of the church building from the north will be partially impaired by the presence of the church centre. In this regard the assessments made by the Local Planning Authority, English Heritage, and the Diocesan Advisory Committee as set out above are significant. Each of those bodies has considered the impact which the church centre will have and has concluded that the impact is not such as to cause it to oppose the building. In the light of those views I am able to conclude that appropriate steps have been taken to minimise the impact which the church centre will have and that the benefits which will come are sufficient to outweigh the very limited detriment of the impact which will remain.
- 34) Similarly, the concerns which have been raised as to traffic and the impact on parking facilities have already been considered by the Local Planning Authority. That body is best placed to determine the effect of the church centre on such matters. It concluded that such effect did not justify a refusal of planning permission. No new material has been put before me in that regard and I see no reason taking a different view from that of the Local Planning Authority.
- 35) Some of those seeking to resist the building of the church centre questioned whether the church could afford the project and contended that the funds and efforts which will be put into the project would be better spent and directed elsewhere. The members of the Parochial Church Council are the elected representatives of the parishioners. They have the primary responsibility for making decisions as to how the financial resources of St. Chad's should be used. It is only in the very clearest of cases that the Consistory Court can regard the financial unsuitability or undesirability of a proposed project as a factor operating against the grant of a faculty. This is nowhere near being such a case. Although others might take a different view it is entirely proper and legitimate for the members of the Parochial Church Council to decide that

the building of the church centre is project worthy to receive their efforts and the funds of the church.

36) In short the building of the proposed church centre and its letting to The St. Chad's Centre Trust Company with consequent mixed community and church use of the facilities are suitable and fitting activities to take place in a consecrated churchyard. There are real benefits to be obtained in meeting the needs both of the worshipping community of St. Chad's and those of the wider community. Those benefits outweigh the modest impact on the setting of the church and on the churchyard.

STEPHEN EYRE
CHANCELLOR
9th January 2014