

IN THE CONSISTORY COURT  
OF THE DIOCESE OF MANCHESTER

RE AN APPLICATION FOR A FACULTY BY  
REVEREND DAVID ANTHONY DAVIES,  
MISS GERALDINE MARY GREENHALGH  
AND MISS ELSIE HOLLINRAKE

AND

RE ST AUGUSTINE TONGE MOOR BOLTON

JUDGMENT  
delivered on 1 May 2012

*Introduction*

1. St Augustine Tonge Moor Bolton was built in 1886 and is a Grade II listed Church.
2. By their Petition dated 18 October 2011 Reverend David Anthony Davies [‘the Incumbent’], and Miss Geraldine Mary Greenhalgh and Miss Elsie Hollinrake [‘the Churchwardens’], [together described as ‘the Petitioners’] seek a faculty to install :
  - [i] one internal and four external CCTV cameras to the building as detailed in the quotation from Messrs TAS Electrical and Security and in the documentation provided by the parish.
  - [ii] an overhead projector in the undercroft (the crypt) together with a pull down screen as detailed in the estimate provided by Service Solutions NW Ltd.
  - [iii] two sets of railings to the south side of the Church with a 1m wide gate at each end, to prevent unauthorised entry and for security purposes as detailed in the quotation provided by Messrs Connaught Security dated 18 May 2011.
3. The total cost of the proposed works is £ 5280 which it is proposed shall be met out of the current balance of general funds of the Parochial Church Council [‘the PCC’].
4. As hereinafter appears some of the works [the CCTV cameras and the overhead projector] are uncontroversial in the sense that the only caveats expressed as to whether such works should proceed relate to the affordability of such works.
5. There is a significant issue as to whether the proposed fencing to the south side of the Church is appropriate. The cost of such works alone is £ 1772 net of VAT.

6. At meetings of the PCC on 12 July 2011 and 13 September 2011, each attended by 13 members, the PCC resolved to seek a faculty for the proposed works. There was unanimous support for the CCTV cameras and the overhead projector. In respect of the proposed fencing 11 members were in favour with one against and one abstention.

7. I thus note that in respect of all matters the PCC have impliedly determined that such words are affordable. I am satisfied that it is for the PCC to determine what is and is not affordable by the Church.

8. At its meeting on 5 September 2011 the Diocesan Advisory Committee [‘the DAC’] considered what was proposed and recommended all the proposed works.

9. The Public Notice giving notice of the proposed works was displayed between 18 September 2011 and 15 October 2011.

10. There was a very significant response to the Public Notice. Letters of ‘objection’ were received from some 11 people, some of which enclosed photographs of the south side of the church, and a petition was presented which was signed by about 71 people and signed by many, if not all, of the former.

11. It is said by the Petitioners that people were asked to sign such petition when attending a funeral or other church activities. Some, but not all, of people signing the petition resided in the parish or were on the Electoral Roll. Subsequently, a very small number of people who signed the petition wrote to ‘withdraw’ their ‘objection’.

12. By letters dated 25 October 2011 each person who ‘objected’, including those who signed the petition, was asked whether they wished to become parties to the proceedings as an objector and file formal written particulars of objection or whether they simply wished me to take their views into account in reaching my decision.

13. In response thereto only three persons elected to become objectors in the strict legal sense, namely Mr David Woods, Mrs Deborah Woods and Revd Malcolm Drummond. I will only deal with their objections to the proposed fencing to the south side of the Church.

14. The grounds of objection relied on by Mr David Woods may be summarised thus :

[a] There are already lockable gates to the two entrances to the Church grounds.

[b] The provision of a tarmac access route to the south of the Church would enhance the visual aspect of the south side of the Church. The Incumbent has prevented a tarmac path being laid to the south side of the Church whereby there would have been a tarmac path around the whole of the church.

[c] Fencing would provide a very serious health and safety issue in that :

(i) people could not freely escape to the nearest perimeter access or safe fire evacuation muster point.

(ii) disabled, infirm and older people could not readily access their vehicles from the crypt to the unofficial Church car park on Ainsworth Lane.

(iii) people processing outside the Church would not have a continuous procession route within the grounds of the Church and would be required to walk outside the Church grounds.

(iv) it would prevent the construction of a ramped disabled access to the crypt.

- (v) it would block vehicular access to the entrance to the crypt for people offloading heavy goods or for emergency vehicles.
15. Mrs Deborah Woods made the same points. She added the following :
- [a] In the past a cherry picker type platform had been used to access the south side of the Church for maintenance purposes and that fencing would prevent such access and would require the use of expensive scaffolding.
  - [b] The south side of the Church is the only location where disabled access could be achieved.
  - [c] It is unlikely that the gates to the fencing would be opened at appropriate times.
16. Revd Malcolm Drummond does not reside in the Parish. He was formerly a non stipendiary priest and currently has the Bishop's permission to officiate. As such he is not eligible to have his name entered on the Church Electoral Roll. I determined that since he was a regular worshipper at the Church I should regard him as a person who had 'sufficient interest in the subject matter of the Petition'.
17. The grounds of objection relied on by Revd Drummond may be summarised thus :
- [a] Given that the Church is already totally enclosed by railings with access through two lockable gates, the additional fencing would provide no additional security.
  - [b] The proposed fencing would prevent access for a cherry picker type platform to carry out maintenance to the building.
  - [c] Parishioners currently used the grassed area on the south side of the Church to bring food and other items into the crypt.
  - [d] In the event of a fire in the crypt access to the nearest fire hydrant would be cut off.
  - [e] The most sensible, unobtrusive, cheapest and most convenient place for future disabled access to the crypt is on the south side of the Church and the erection of the proposed fencing would involve substantial, far more expensive and unnecessary building works if the access had to be sited at the north side of the Church.
  - [f] In summer the south side of the Church provides a safe and secure outdoor place for Brownie activities.
  - [g] Outside the PCC he had heard no support for the proposed railings. By contrast he has heard much opposition to the proposed fencing and believed that the proposal would be 'unnecessarily divisive in the life of the parish'.
18. Those who did not wish to become formal parties wished me to take their views into account in deciding this application. Such views included the following observations :
- [a] Currently people are able to walk around the whole of the Church : in particular the proposed fencing would prevent processions around Church.
  - [b] The proposed fencing would prevent access for fire appliances or necessary maintenance work.
  - [c] Before the vicarage was built there was a tarmac path : since its removal there is a path over a grassed area which is well used by people going to Church. It was suggested that the incumbent did not want people walking past his vicarage.
  - [d] Such path is the most direct access to the door to the crypt.
  - [e] The grassed area enclosed by the fencing will become a breeding ground for rodents.
19. It will be appreciated that there is considerable overlap in the matters relied upon by way of objection.

20. Having considered the papers I concluded that it would be expedient to determine this Petition on the basis of written representations provided that all parties consented and following the consent of the Petitioners, Mr and Mrs Woods and Revd Drummond that I should do so, I decide this Petition on the basis of such written submissions.

21. The objections were sent to the Petitioners and they have responded thereto with the following observations :

- [a] Not a single objector has sought to view the actual application.
- [b] There are ample PCC funds to carry out all the proposed works and it is for the PCC, democratically elected by those on the Electoral Roll, to determine how best to use the Church's resources.
- [c] Although it is not accepted that disabled access is only possible via the south side of the Church, even if the PCC were to determine that such was the case, it would be easy to permanently remove the proposed fencing.
- [d] The existing boundary gates are not routinely locked.
- [e] The south-west corner of the Church is a favoured gathering place for youths since from whatever direction `authority approaches, whether church staff or the police, there is an alternative means of escape. It is said that the police are supportive of the proposed fencing. In particular it is pointed out that :
  - [i] in 2011 all 5 external lighting bollards on the tarmac path around the west of the Church were vandalised and cost £ 4872 to repair
  - [ii] there are periodic interruptions to divine worship caused by youths shouting into the church and running off
  - [iii] such youths have caused a disturbance and necessitated the calling of the police and that they run away when the police arrive
  - [iv] recently the external air thermostat on the southern wall of the Church has been vandalised.
- [f] There has never been a path, tarmac or otherwise, to the south of the Church.
- [g] Until the old Vicarage was demolished in 2003, two paths converged on the Vicar's Gate in the Vicarage fence, one from each corner of the Church building.
- [h] Although very many years ago there may have been processions around the Church, since 2002 processions have processed along the pavement between the Ainsworth Lane and Thicketford Road perimeter gates.
- [i] If access for maintenance to the south side of the Church was required, a section of the fencing could be unbolted.
- [j] The vast majority of people access the crypt via the tarmac path at the west of the Church. Moreover in practice most people carrying food or other items into the crypt do so via the East door and through the sacristy area or via the tarmac path at the west of the Church.
- [k] Although it is agreed that the proposed fencing would offer the Incumbent and his family some greater degree of privacy and the Incumbent does not wish to encourage greater public foot traffic at the southern boundary of the Church, the principal reason for such fencing remains the deterrence of miscreants who gather at the south-west corner of the Church.

22. I decided that it was appropriate to visit the Church so as to ensure that I could better understand what was being proposed and the precise objections thereto. I directed that the



Petitioners together with Mr and Mrs Woods and Revd Drummond should be entitled to attend and they all did so. The visit took place on 14 April 2012.

23. The Church stands at the junction of Thicketford Road and Ainsworth Lane. It has two gates on each road and I observed that the main tarmaced path along the east and northern sides of the Church was well used. There is also a tarmaced path at the west end of the Church which is adjacent to a memorial garden. The gardens adjacent to the eastern, northern and western sides of the Church are very well maintained. Entry to the crypt is by steps at the western side of the Church. By contrast the area to the south of the Church is unevenly grassed, has no tarmaced path and does not appear to be regularly maintained. There is a path worn into it in parts but it would be slippery underfoot when wet and I am bound to observe that it is not a path which I would choose to walk along to gain access to the crypt.

24. Although some of the 'objectors' refer to an unofficial Church car park, this is a reference to the car park outside the former Labour Club on Ainsworth Lane. The club is now in receivership and there is no guarantee that its eventual new owners will permit such car parking.

25. Mrs and Mrs Woods and Revd Drummond confirmed that the proposed works in relation to the external CCTV cameras and the overhead projector were uncontroversial and they did not suggest that there was any significant opposition thereto.

26. I am thus satisfied that in the absence of any significant objection thereto, I should grant a faculty for such works.

27. As to the proposed fencing on the south side of the Church, the Incumbent explained to me that it was proposed to erect fencing which would match the fencing which already marks the boundary between the Church and the Vicarage, that such would be 1.8 metres high and would be positioned at the two locations indicated on the plans submitted to the DAC, being attached to the existing fence and the south side of the Church, and that each fence so erected would contain a 1 metre wide lockable gate, positioned close to the existing fence, which could at appropriate times be unlocked to facilitate access to the area so enclosed. The specification for such works is contained in the quotation of Messrs Connaught Security.

28. The Incumbent explained that such proposed fencing was necessary because of the youths congregating at the south-west corner of the Church who caused a disturbance to nearby residents.

29. In response thereto Mr and Mrs Woods and Revd Drummond contended that the route to the crypt over the grassed area on the south side of the Church was well established, that it could be improved by tarmacing it [something which it does not seem that the PCC is inclined to do], that it will prevent access for maintenance or disabled access to the crypt and that it will serve no useful purpose.

30. Although the visit left me better informed as to what was proposed in relation to the proposed fencing, I am bound to observe that I detected a degree of hostility between Mr and Mrs Woods and Revd Drummond on the one hand and the Incumbent on the other hand

which I regarded as both unnecessary and unfortunate. Whilst I have no intention of 'taking sides' in any dispute, Christian people who worship together should be able to do so with goodwill towards each other. Such goodwill was in my view conspicuously absent at such visit.

*My decision*

31. I do not decide this Petition on the basis that the proposed fencing would offer the Incumbent and his family some greater degree of privacy or that the Incumbent does not wish to encourage greater public foot traffic at the southern boundary of the Church. Such matters have no part in my evaluation of the facts.

32. Frankly, I can see no merit in the specific objections put forward. My reasons may be summarised thus.

33. Firstly, I am satisfied that not only is there no existing tarmac path to the south of the Church, but also that there never was such a tarmaced path and there was never any intention to construct such a path. If the PCC had thought it appropriate to create such a path, tarmaced or otherwise, it could have so decided but has not. Moreover I am not satisfied that it is necessary to walk across the grassed area to the south of the Church because there is an existing route to the crypt which is not much longer and in certain weather conditions I am satisfied that it would be foolhardy to walk across the grassed area.

34. Secondly, I reject the health and safety concerns raised in particular by Mr Woods. In particular I do not accept that such fencing will inhibit escape in the case of fire or prevent access to the nearest fire hydrant by any bodied fireman. Neither will it, in my judgment, significantly impede access to the church by those who are offloading heavy goods or who are disabled, infirm or older and who would be well advised to walk on a tarmaced path from the unofficial Church car park on Ainsworth Lane rather than on the grassed area which might offer an inferior foothold. The same applies to processions around the Church although I accept what the Incumbent says that for the last 10 years such processions have not travelled along the south side of the Church.

35. Thirdly, if the PCC decided at any time that it was appropriate that disabled access to the Church should be created via the south side of the Church, this inexpensive fencing could be permanently removed to allow such disabled access. Equally, if it was necessary to provide access for maintenance for the south side of the Church, which it seems to be agreed have not occurred in the last 10 years, part or all of the fencing could be unbolted and subsequently reinstated.

36. Fourthly, there is no reason in principle why the gates could not be unlocked to allow particular access, such as that by Brownies or any other person with a legitimate reason for access.

37. By contrast, I do accept that there is a problem caused by youths congregating at the south-west corner of the Church, that there has been damage caused to the Church recently and that the police are supportive of the proposed fencing.

38. For my part I am bound to express the view that I doubt whether the proposed fencing will in fact *prevent* the congregation of youths in the south-west corner of the Church, although I concede that it is possible that the number of youths so congregating may be diminished, or will provide much of an obstacle to such youths in escaping from the police. My own personal view is that such fencing may prove to achieve little.

39. However on the facts of this case I am satisfied that I should have particular regard to the fact that the PCC, which exists to reflect opinions of parishioners or those on the Electoral Roll and to make decisions as to what is appropriate for the Church, are satisfied that it is appropriate to install the fencing and that the DAC does not suggest that such is inappropriate. I also bear in mind that the proposed fencing is inexpensive and that if after its installation it is concluded by the PCC that it serves no useful purpose, it can be easily removed.

40. On balance therefore I am satisfied that I should grant a faculty for the proposed fencing.

#### *Conclusion*

41. I grant the Petitioners the faculty they seek as set out in paragraph 2 above. In accordance with the practice of the court the Petitioners must pay the court fees incurred in relation to the Petition.



Geoffrey Tattersall QC

Chancellor of the Diocese of Manchester



