

Diocese of Exeter

Chancellor

Date: 26th January 2016

Parish: St Mary, West Worlington

JUDGMENT

1. By a petition lodged on 20th May 2015 the team Vicar and churchwardens responsible for the parish church of St Mary at West Worlington have applied for a faculty to authorise the following:
 - a. installation of four timber bollards along the boundary of a cobbled approach to the churchyard;
 - b. installation of iron gate and fence within the church boundary to prevent entry of livestock

Full details of the specification of the bollards, gate and fence are contained within the papers.

2. The application arises following an unfortunate breakdown in discussions between the petitioners and the owners of Church Cottage, West Worlington. Church Cottage is a building which stands along the boundary of the churchyard. Entry to the churchyard at that point is achieved through an archway or tunnel which passes through the cottage at ground floor level. The patch of land between the roadside mouth of that archway and the road itself is occupied by a sloping area of shallow stepped cobbling which is of some 10 or 12 feet in depth.
3. The owners of Church Cottage, have, apparently become accustomed to parking their car on the cobbled steps. The petitioners claim that the owners of Church Cottage have no right to park a car in that location and, moreover, regular parking of a car on the cobbled area can only cause damage as well as creating an eyesore. The purpose of the installation of bollards, therefore, is to provide a barrier preventing any car being driven onto the steps at any time.

4. The purpose of the fence and gate is, as the application makes clear, simply to keep livestock out of the churchyard.
5. Miss J Walters, the owner of Church Cottage, has lodged a formal objection to the Petition. All parties are in agreement that the court should deal with this issue on consideration of the papers rather than following a full oral hearing. I agree that that is a proportionate process to adopt in this case. Unfortunately, due to a misunderstanding, the papers were passed to me for decision on the basis of the written representations that had been made by each side at that time. Having considered all matters that were then before the court on paper I granted the Petition on 23rd October 2015. Once that fact was communicated to Miss Walters she stated that her understanding was that no decision would be taken until she had had the opportunity to submit further written representations. In order to ensure that all parties had had a full opportunity to put their material before the court, I therefore set aside my original decision and gave directions for the submission of further documentary material.
6. I am grateful to all parties for acting promptly and I can confirm that the court has now received and read the letter from Miss Walters dated 29th December 2015, together with the documents attached to it, her further email of 6th January, supplemented by a subsequent email of 8th January, together with an email from Sir Hugh Stucley dated 7th January and an email from Patrick Brook [and Mr Mills] dated 10th January.
7. It is, unfortunately, all too plain that the issue of car parking on the area of cobbled stones at Church Cottage has greatly exercised each of those individuals who are closely involved in the dispute over a substantial period of time. The papers that I have read include a great deal of detail. It is not, however, necessary in this judgment to describe those matters at any length, or indeed at all. Despite the head of steam that has been built up on both sides, the legal issues in the case are, in reality, very straightforward and, happily, Miss Walters' most recent correspondence indicates a high level of agreement with the two elements of the application.
8. I propose to deal first with the installation of the bollards. In the light of the fact that the design of the bollards and their location, subject, of course, to the dispute as to whether it is right and/or necessary to put them there, are not in issue and in the light of the fact that the DAC recommends the granting of the Faculty, subject to provisos, I propose to move straightaway to the objections put forward by Miss Walters.
9. In support of her objection Miss Walters makes the following points:
 - a. The previous owners of Church Cottage, Mr and Mrs Richardson, purchased the property in September 1984 and, according to a declaration made by Mrs Richardson in 2001, they had parked their vehicle on the cobbled area "as of right" since that date;

- b. Miss Walters had been prepared to agree to limit parking on the cobbled area to “loading and unloading” but that proposed agreement was ultimately rejected by the PCC;
 - c. One of the petitioners, Mr Brook, acknowledged that vehicle access for loading and unloading is needed for Church Cottage;
 - d. Parking a vehicle would not impede access for pedestrians using that route into the churchyard.
10. The assertion that Mrs Richardson had continuously parked on the area for a period of 29 or so years is challenged by the petitioners who have produced a number of statements from long-established villagers to the effect that the Richardsons’ occupation of the property was only ever as a holiday cottage, their visits were very infrequent and parking of cars on the cobbled area, if it occurred at all, was not noticeable.
11. In Miss Walters’ most recent statement of her case (letter 29th December 2015) she repeats her reference to Mrs Richardson’s statutory declaration and raises a number of points in challenge to the recollection offered in the letters and/or statements of other villagers. At no stage does Miss Walters positively assert that she has a right either in law or equity to park a vehicle on the cobbled areas. She expressly accepts that she has no ownership of the area of land in question.
12. The closing paragraph of Miss Walters’ letter is of particular note:
- i. “I do not object to the bollards, indeed they were part of the original agreement with the proviso that I had access to load and unload. This could all have been resolved a year ago. I do not understand why the PCC cannot agree to me parking for loading and unloading. They can choose a path that leads to great cooperation or one of conflict, further dispute and potential legal action.”
13. Having read Miss Walters’ letter of December 2015 I invited her to clarify her position further. In response, in her email of 8th January, she states:
- i. “I have always said that my wish is to return to the agreement which the church rejected. The clause in the agreement relating to loading and unloaded stated:
 - ii. *Full right and liberty for the first owner (owner of Church Cottage) and persons visiting Church Cottage or carrying out maintenance work on or at Church Cottage to draw up vehicles on the Cobbled Area for the purpose of picking up dropping off loading and unloading only and in the case of maintenance work to erect scaffolding both on the Cobbled Area and that part of the churchyard at the rear of Church Cottage subject in the case of scaffolding passage over the Cobbled Area and over the path leading to the Church not being totally obstructed and*

subject to the first owner making good all damage caused in the exercise of such right.

- iii. The clause of the agreement relating to bollards referred to two bollards with a chain, which would not be locked but would be removable to facilitate the loading and unloading. Planning permission, as you know, has now been sought and granted for four oak posts. My suggestion would be that one or two of these (depending upon the space needed) should be removable or collapsible with the use of a key so that the owner of Church Cottage can exercise the full right and liberty to load and unload etc. as described in the extract of the original agreement referred to above.”
14. Finally, in terms of summarising the relevant material, Mr Patrick Brook has sought to deal with various points in his email of 10th January 2016. Amongst the points made by him is the assertion that as Mrs Richardson only stayed in the cottage one or two weekends each year, any parking by her on the cobbles never gave the local residents any cause to object. He considers that Miss Walters and her partner have been “clearly misled” by the wider implications of Mrs Richardson’s 2001 statement.
 15. Mr Brook states that the proposed agreement with Miss Walter was not pursued in the light of Miss Walters insistence upon a stipulation that only individuals who were actually visiting the church should be allowed to pass through the archway.
 16. Mr Brook and Mr Mills’ email concludes as follows:
 - i. “We welcome the fact that Miss Walters is prepared to no longer park her car permanently on the cobbles and will use the parking area on the hill which is less than 50 metres from her cottage. Providing that there is free access through the archway there is no reason for us to install the bollards and it will always be possible for her car to be parked for short period to load and unload. We do of course require the faculty to be granted in case a car is ever parked permanently on the cobbles again and for the installation for the gate at the rear of the archway.”
 17. Finally, in an email of 7th January, Sir Hugh Stucley states that Miss Richardson very seldom visited Church Cottage during her ownership and that therefore the cobbled area was never used for parking on a permanent basis. He further states that, from the perspective of a lifetime’s knowledge of this village, “parking on the cobble stone entrance to St Mary’s Church has never been an issue before the arrival of Miss Walters”. In like manner to the email from Mr Brook and Mr Mills, Sir Hugh concludes:
 - i. “If she would simply agree to parking her car in the area provided and not use the cobbles as a permanent parking area I am sure that the parish would agree that there was no need for the bollards”.

18. Before turning to draw this judgment to a conclusion, it is necessary to be plain that this court, as a Consistory Court, has no jurisdiction to determine the civil rights of parties. Even if Miss Walters was asserting a right to permanent parking, which she is not, this court would not have jurisdiction to determine that issue. This court's jurisdiction is limited to the granting, or otherwise, of "Faculties". A Faculty is a permissive right to effect some alteration to a church building, its grounds or contents. The issue that falls for determination is simply whether the petitioners should be given permission to erect the bollards on, what is admitted to be, church land.
19. Looking at the application simply from the perspective of the good management of church property and the principles normally applicable to the grant or refusal of a Faculty, this application is unremarkable. The installation of bollards to protect the cobbled area from damage by parking, and the unsightly introduction of motor vehicles on what is otherwise a pleasing and ancient aspect on the edge of the churchyard, would seem to be a sensible proposal with no, or minimal, adverse impact to the church property. It is a proposal which is recommended by the DAC, subject to some small matters of detail. On that basis the application is unremarkable and deserves to be granted.
20. Does Miss Walters' ownership and occupation of Church Cottage alter that outcome? If any proposed change to church property would be clearly contrary to the lawful rights of another person or body, that, plainly, would be highly relevant to whether or not a Faculty should be granted. Here, the position is different. Miss Walters does not assert a right in law or equity permanently to park vehicles on the cobbled area. Moreover she offers to limit her vehicular use of this plot to loading and unloading on a temporary basis. The petitioners, in a similar spirit of compromise, indicate that if Miss Walters' use of the land is indeed limited to loading and unloading, they are unlikely to wish to install the bollards.
21. Despite the stand-off between the various parties that apparently existed some months ago, the passage of time and the working out of the court process does, ironically, seem to have led to a common understanding as to the way forward.
22. In summary, from the ordinary perspective of the Faculty jurisdiction, this application is unremarkable and one that is likely to be granted and the only objector does not assert that the installation would be contrary to any legal or equitable right that she may have as owner of the cottage. In the circumstances I am persuaded that the petitioners should be entitled to install bollards as proposed. If they wish to do so, these bollards can be installed on a permanent basis. Alternatively, again if the petitioners wish to do so, some of the bollards may be installed so that one or more of them could be removed from time to time or for specific purposes or by specific individuals. I stress, once again, that the jurisdiction of this court is "permissive". By the order that will follow from this judgment I am giving permission for bollards to be installed permanently as requested, but I am not requiring the petitioners to do so. It will be up to them, or their successors, whether this permission is in fact utilised either now or in months or years to come. Normally, when granting a Faculty, the court will limit the lifetime of the Faculty so that the permission will

- expire if it is not exercised in, say, 12 or 18 months, depending on the scale of the work involved. In this case I propose to take an exceptional course. The permission granted with respect to these bollards may be exercised by the petitioners or their successors at any time during the next 20 years. If, at the end of the period of 20 years, no bollards have been installed, the Faculty will lapse, unless an application is made before that time for an extension.
23. It is to be hoped that the level of agreement that is apparently demonstrated by the most recent written contributions of each side will result in a working arrangement by which the owners and occupiers of Church Cottage will limit the time that any vehicle is on this cobbled area to that which is acceptable to the petitioners. In those circumstances, it is unlikely that the petitioners will feel it necessary to use the permission given by this Faculty to install the bollards. If not, the order that I have made gives them authority to carry out the installation of the bollards.
24. The issue with respect to the gate and the fence is altogether less controversial and more narrowly stated. It is simply that Miss Walters is concerned that the presence of any fence or gate does not prevent her from time to time from being able to erect scaffolding in order to maintain her building. No details have, however, been provided by her to demonstrate that the current proposed position would in fact cause a problem for scaffolding. General experience of scaffolders is that they are normally able to accommodate the structure that they erect to the physical circumstances of any particular location. I am confident that this is an issue that can be worked out on the ground in the event that scaffolding is needed at some future date. In the absence of any detailed expert appraisal by a scaffolder, it is not a matter that is capable of resolution by this court. Other than this point, there is no objection to the erection of the fence and gate. I will therefore grant permission for the erection of the fence and gate as requested.
25. For the reasons that I have given, I therefore grant a Faculty for both elements of the petition.

The Rt Hon Sir Andrew McFarlane
Chancellor of the Diocese of Exeter