



Faculty – Grade I listed medieval town church – Conversion of existing kitchen to a disabled toilet – Construction of new kitchenette in a pod in the north-east of the north aisle obscuring the lower part of an historic window – Faculty granted

Application Ref: 2021-061075

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday, 5 December 2021

Before:

THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR

In the matter of:

ST MARY THE VIRGIN, CHARLBURY

**THE PETITION OF MR PATRICK GALLAGHER (Churchwarden) and THE
REVEREND SALLY WELCH (Vicar)**

Unopposed petition determined on the papers and without a hearing.

The following cases are referred to in the Judgment:

Re St Alkmund, Duffield [2013] Fam 158

Re St Chad, Longsdon [2019] ECC Lic 5

Re St John the Baptist, Penshurst (2015) 17 Ecc LJ 393

Re St Peter, Shipton Bellinger [2016] Fam 193

Re St Peter & St Paul, Aston Rowant [2019] ECC Oxf 3, (2020) 22 Ecc LJ 265

JUDGMENT

Introduction and background

1. This is an unopposed online faculty application, dated 13 October 2021, by the churchwarden (Mr Patrick Gallagher) and the vicar (the Reverend Sally Welch) to: (1) convert the existing kitchen at the east of the north aisle of the church building into a new WC with full disabled access and baby changing facilities, opening up the existing kitchen hatchway so as to provide a new, wide access to the WC directly from the north aisle of the church; and (2) construct a new kitchen pod in the north-east corner of the north aisle using materials that will match the wooden frontage of the access to the existing foyer and kitchen, and with a wide serving opening directly into the north aisle of the church, all in accordance with revised drawings by Pendery Architecture and Heritage Ltd. Most of the foul drainage required to serve these new facilities is already in place so the only additional drainage will be a line to the new WC. The proposals have the full support of the PCC.

The church

2. Charlbury is a small market town in the Evenlode valley. It lies to the north of Witney and south-east of Chipping Norton. The church of St Mary the Virgin, Charlbury is a prominent, and active, Grade I listed, medieval town centre church in the Archdeaconry of Dorchester. It survives today as a fine, and well-preserved, example of a multi-phase medieval building of Norman origin. Enlarged in the 13th century with the addition of a south aisle, a west tower and north and south chapels, the church was restored by two distinguished architects of the Victorian Gothic revival: first by George Edmund Street in 1856 and then by Charles Buckeridge in 1873-4, when the chancel was mostly rebuilt. A substantial reordering, undertaken between 1992 and 1995, reoriented the church to face west, with an altar in the tower and providing kitchen, WC and vestry facilities (with a parish office above) in the 13th C chapel in the north-east corner of the nave. The arch into that chapel was infilled with a high-quality modern wooden screen. At that time, almost all the remaining vestiges of Street's 19th century re-ordering of the church were removed, including the pews and the chancel furnishings, so that only the font and the pulpit remain. The memorial chapel in the south-east corner was enclosed with glazed screens. Set within a large churchyard, the building forms a focal point in the local townscape and the conservation area into which it falls. Many surviving original and later

features contribute to the church's exceptional historical and architectural interest, which is reflected in the church's Grade I listing.

The justification for the proposals

3. The church's existing kitchen and WC facilities are at the east end of the north aisle. Within the arch at the east end of the north aisle is a wooden screen with a door leading into a small foyer. This provides access to: (1) a staircase on the left (north) which leads up to the parish office; (2) a small, cramped WC immediately to the right of the staircase, which is partly constricted by the space taken up by the staircase; (3) a vestry at the far (east) end of the foyer opposite the wooden entrance door; and (4) a small kitchen to the right (south) of the entrance door, with a small hatch opening into the east end of the north aisle through the southern half of the wooden screen, next to the entrance door. I have attached three photographic images at the end of this judgment which depict the existing arrangements.

4. The parish consider the existing arrangements to be inadequate for the needs of the church. The very small WC tucked under the stairway leading up to the parish office has no disabled access or facilities for babies. People with mobility issues, and parents with young children, have problems accessing the present WC, which is located under the stairwell leading up to the parish office. At the moment, the only way that babies can have their nappies changed is by placing the baby on the floor. The church feel that they need a WC which can be used by the disabled, by people with mobility problems, and by parents with children and babies. In addition, a second WC will be useful when the church is full, which is frequently the case. The proposal is to convert the present kitchen into a new WC, with full disabled access and nappy changing equipment. A new door to the WC, opening directly from the north aisle, will prevent the crowding which at present frequently occurs in the small foyer area. The present kitchen hatchway will be opened up to provide a new, wide access to the WC directly from the north aisle of the church.

5. The parish also feel the need to improve their facilities for serving refreshments. This is becoming increasingly important as the parish expand their activities, such as lecture series and concerts, which involve the town as a whole and not just their regular congregation. The existing kitchen is long and narrow, with cramped access within it. The hatchway between the kitchen and the north aisle only allows one person to stand there at a time. The parish feel that they need a kitchen which can be safely used and which does not feel congested when more than two people are working in it. The parish also need a servery which can be serviced by more than one person.

6. The parish propose to install a new kitchenette, contained within a "pod", in the north-east corner of the north aisle of the church, using materials that match the wooden frontage of the existing access to the foyer and the present kitchen. The new kitchenette will allow easier access for 3-4 persons working within it at the same time; and it will have a wide hatchway opening into the church which can be closed when it is not in use.

7. The parish do not believe that the new WC will harm the significance of either the north aisle or the church in general. They accept that the building of a new kitchenette in its north-east corner will affect the significance of the north aisle, but they consider that they have taken appropriate measures to mitigate this. The PCC, and many other members of the church congregation, have been discussing these improvements over the course of the last year. Several other options have been considered, including modification to the inside of the present kitchen;

but the parish consider that none of these options would address the present difficulties as well as their present proposals.

Involvement of the Diocesan Advisory Committee (the **DAC**)

8. The DAC's church buildings officer visited the church on 20 July 2021 with a representative of the DAC. They considered that the parish's proposals had been well thought through and that covering the new kitchen pod so as to match the existing wooden screen would reduce its impact on the character of the church. Several items were discussed during the site visit including the following: (1) It was recognised that the proposed direct entrance from the nave into the accessible WC was not ideal but the parish wish this facility to be available to visitors when the church is open and the outer door of the screen, which provides access to the vestry and the parish office, is locked. For this reason, they wish to provide a separate, independent entrance to the WC. (2) The DAC representatives felt that the proposal to extend the kitchen enclosure only two-thirds of the way across the north-east window of the north aisle would create an unsatisfactory junction with the window. Given the need for additional storage, they suggested that extending the kitchen enclosure westwards across the full width of the bottom of this window would appear less awkward, and would permit additional storage to be provided. Following this site visit, the parish have taken up this suggestion and they have provided revised proposal drawings. (3) Both Historic England and the Church Buildings Council (the **CBC**) had previously commented that it would be unfortunate to cut across the bottom of the north-east window in the north aisle. The CBC had accepted that the proposal to extend the kitchen across the whole of the bottom of the north-east window of the north aisle would sit more comfortably within the north aisle. Historic England had suggested that the kitchen should be retained in its existing location and extended into the adjoining vestry. The accessible WC could then be placed within a smaller enclosure which would not need to cut across the base of the north-east window. However, the parish considered that this proposal would not meet their perceived needs to provide an improved servery facility and reduce the bottleneck in the narrow kitchen. The option of omitting the enclosure in favour of a U-shaped servery was suggested as this would negate the need to cut across the bottom of the window. Following the site visit, the PCC considered this suggestion; but they maintained their preference for the kitchen facility to be enclosed in order to reduce cooking smells and clatter within the main body of the church.

9. The DAC consider that the parish have responded fully and appropriately to the views of consultees and the advice of the DAC, accommodating most of the suggestions made during the DAC delegation's visit. Following this site visit, the parish's original proposals have been revised to show the kitchen pod extending across the full width of the north-east window in the north aisle. Although this would cut across the bottom of the glazing in this window, the DAC support this revision and feel it to be a sensible solution, with the additional benefit of providing the parish with additional, much-needed, storage.

Responses to consultation

10. The Victorian Society have been consulted on the proposals but they had no comments to make on them.

11. When first consulted about the original proposals, Historic England said that they appreciated the public benefits that would result from the provision of an accessible toilet and a more efficient kitchen. They considered the preferred location for the new facilities to be

acceptable in principle. However, their view was that the extent of the new pod enclosure, which would obscure the lower section of the historic north-eastern window, would have an adverse impact upon the aesthetic and architectural value of the church. Having been re-consulted after the revisions to the proposals made following the DAC's site visit, Historic England revisited the revised proposal and formed the view that, whilst it was regrettable that it would obscure the lower section of the historic north-eastern window, the adverse impact on the significance of the church had been reduced; and they therefore raised no objection to the revised proposals on heritage grounds.

12. The conservation design architects for the local planning authority (the **LPA**) considered that the proposed wooden kitchen enclosure in the north-east corner of the north aisle would bear an unfortunate relationship to the window, and would also be sizeable and somewhat obtrusive. They also noted that the door to the new accessible WC would open straight into the main body of the church, which was not ideal in terms of amenity. They therefore suggested seeking possible alternatives.

13. When first consulted, the CBC supported the need for an accessible WC and improved kitchen facilities. However, their preference was for the accessible WC to be accessed via the existing vestibule, rather than directly from the north aisle of the church. The CBC noted that the proposed oven within the kitchen would create an additional fire load in the church and they had not seen any reference in the statement of needs to any facility to either cook or re-heat food. The location of the proposed kitchenette in the north aisle was considered suitable, but the elevations showed an inelegant visual juncture with the north-east window, both in terms of the height of the kitchenette and its placement along the window. The CBC considered it to be a shame to interrupt the window at all; but if the kitchenette could not sit to the east of the window, it was desirable for it at least to be in line with the tracery. Having been re-consulted about the revised proposal, the CBC withdrew their comments about the juncture with the windows; but they still maintained their other comments regarding the vestibule, and the fire loading and the lack of any demonstrated need for an oven.

14. The Society for the Protection of Ancient Buildings (**SPAB**) were consulted about the revised proposals. They appreciated the reasons underlying the decision to extend the new kitchen area to the west, but they regarded it as a great shame that it would obscure the lower part of the north-eastern window. Although they accepted that the parish had demonstrated a need for the larger kitchen area, they would have preferred that the kitchen was not roofed over as this would only serve to block the window to an even greater degree than the screen on its own. They were concerned that the roof of this 'pod' would become a dusty space that would be hard to keep clean and it would make it difficult to access the window. Unless significant cooking was going to be done, which would require suitable extraction systems, SPAB strongly recommended that the kitchen area should be left open rather than having a ceiling.

15. The DAC have considered these consultation responses but they have nevertheless recommended the proposals for approval by the court (subject to conditions 2 to 7 below). They acknowledge that the proposals are likely to affect the character of the church as a building of special architectural or historic interest and that they are also likely to affect archaeological remains existing within the church or its curtilage. As a result, notice of the proposals was published on the diocesan web-site pursuant to FJR 9.9. No objections have been received in response either to this publication or to the usual public notices.

16. The DAC accept the parish's need for an enclosed kitchen facility which would allow food and drink preparation to be carried out towards the end of services and during other events without disturbing those in attendance. Such an enclosed facility would also permit the ventilation of any cooking smells to the exterior of the building. The parish appreciate that, in an ideal world, the new WC should open into the vestry lobby; but the DAC recognise that the parish would wish the WC to be available to visitors when the church is open but left unattended. This would not be possible if the WC were to open directly into the lobby because this area needs to be locked when unattended since the open staircase leads to the parish office above where sensitive documents are kept. This is a point that the DAC accept.

The progress of the petition

17. On initially reviewing this application and the consultation responses, I directed that special notice under FJR 9.3 and 9.5 should be given to (1) the LPA, (2) the CBC, and (3) SPAB.

18. The LPA responded to the special notice reiterating the pre-application comments of their Conservation Design Architect:

“It is considered that the proposed wooden kitchen enclosure in the north-east corner would bear an unfortunate relationship to the window, and would also be sizeable and somewhat obtrusive. We also note that the door to the new accessible WC would open straight into the main body of the church, which in terms of amenity would not be ideal. As such, we suggest seeking possible alternatives.”

19. No response has been received from the CBC. SPAB have responded to the special notice confirming that they do not have any further comments to make regarding this scheme nor do they wish to become party opponents. They are happy to defer the design details to the DAC.

The legal framework

20. Since the church of St Mary, Charlbury is a Grade I listed building, this faculty application falls to be determined by reference to the series of questions identified by the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158 at paragraph 87 (as affirmed and clarified by that Court's later decisions in the cases of *Re St John the Baptist, Penshurst* (2015) 17 Ecc LJ 393 at paragraph 22 and *Re St Peter, Shipton Bellinger* [2016] Fam 193 at paragraph 39). These questions are:

- (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
- (2) If not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that, in the absence of good reason, change should not be permitted?
- (3) 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?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) In the light of the strong presumption against any proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to

viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?

21. When considering the last of the *Duffield* questions, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be required before the proposed works can be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed. I recognise that these questions provide a structure and not a strait-jacket. To adopt a well-worn phrase, these are guidelines and not tramlines. Nevertheless, they provide a convenient formula for navigating the considerations which lie at the core of adjudicating upon alterations to listed places of worship, namely a heavy presumption against change, and a burden of proof which lies upon the petitioners, with its exacting evidential threshold. Since the judgment of Chancellor Eyre QC (in the Diocese of Lichfield) in *Re St Chad, Longsdon* [2019] ECC Lic 5 (at paragraph 11) and my judgment in *Re St Peter & St Paul, Aston Rowant* [2019] ECC Oxf 3, (2020) 22 Ecc LJ 265, a practice has also developed of inquiring whether the same, or similar, benefits could be achieved in a manner less harmful to the heritage value of the particular church building concerned. At paragraph 7 of my judgment in the latter case I said the following (with reference to the fifth of the *Duffield* questions):

“In considering the last question, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be needed before proposals can be permitted. It also has to bear in mind that serious harm to a church listed as Grade I or Grade II* should only be permitted in exceptional cases. In applying the *Duffield* guidelines, the court has to consider whether the same or substantially the same benefit could be obtained by other works which would cause less harm to the character and special significance of the church. If the degree of harm to the special significance which would flow from proposed works is not necessary to achieve the intended benefit because the desired benefit could be obtained from other less harmful works, then that is highly relevant. In such circumstances, it would be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, on this hypothesis, cause more harm than is necessary to achieve the desired benefit.”

Analysis

22. Applying the *Duffield* framework, my assessment of the petitioners’ revised proposals is as follows:

(1) Harm

23. The existing kitchen and the new WC are in a part of the church building which is completely separated by a wooden wall from the rest of the church. Changing its use will have very little effect on the significance of this part of the church building, apart from the fact that the new door to the accessible WC will open directly into the north aisle of the church instead of the existing small foyer. Normally this would be undesirable; but I accept that the parish have demonstrated a genuine need for the WC to be available to visitors when the church is open but left unattended. The appearance of the door will be no different from the present wooden door and kitchen hatch. The new toilet unit will be placed on the east wall of the additional WC, at some distance from the door; and the room will be sound-proofed. I am satisfied that this aspect of the proposals will cause no harm to the significance of the church building.

24. The north aisle of the church clearly has moderate significance as it is part of the main body of the church. However, the proposed new kitchenette is in a corner of the church which is not really visible to the congregation during services as they face the other way. At the moment this corner is little used otherwise than as a storage area for spare chairs and a large cupboard storing altar coverings. Only the very lower part of the window above the new kitchenette will be hidden from view and the remainder of the window will still be visible above it. None of the areas in the church occupied by seating will be affected by the new kitchenette. The walls of the new kitchen will be covered with the same type and colour of wood as the neighbouring archway which serves as the existing entrance to the present kitchen and foyer. The new kitchenette will have a ceiling which is positioned as low as possible so as to minimise any obstruction to the north-east window. It will be sound-proofed although there is no intention to use it during services. The items which are presently stored in this area will be re-located. The new kitchenette will look better than this area presently appears, with its haphazard assemblage of stored items.

25. I am satisfied that the revised proposals will cause only moderate harm to the significance of this Grade I listed church building.

(2) Justification

26. For the reasons given by the DAC, I am entirely satisfied that the moderate harm to the significance of this Grade I listed church building is clearly outweighed by the benefits that the revised proposals will bring for the future viability, life and mission of the church.

(3) Alternative means

27. I am satisfied that the parish have conscientiously considered the views of the various consultees. I entirely agree with the DAC's assessment that the parish have responded fully, and appropriately, to the views of consultees and to the advice of the DAC, and that they have accommodated most of the suggestions made by the DAC. Where they have not done so, they have provided cogent, and valid, reasons for their response. I am entirely satisfied that the petitioners have demonstrated that the moderate degree of harm to the special significance of this church building which would flow from their revised proposals is necessary to achieve the benefits which they desire; and that those benefits could not be obtained from any other, less harmful, proposals.

(4) Balancing exercise

28. On the evidence, and for the reasons set out above, weighing the resulting harm to the church building against the benefits of the proposals, the balance clearly comes down in favour of approving the petitioners' proposals and granting this petition

Disposal

29. For these reasons, the court will grant the faculty as asked, subject to the following conditions:

(1) Before commencing any works, the petitioners must notify the church's insurers and comply with any recommendations or requirements they may make or impose.

(2) A watching brief is to be provided for investigating and recording any buried archaeology revealed during the excavation of the new foul drainage.

(3) The advice of the Diocesan Archaeological Adviser should be observed with regard to the discovery of any human remains and significant archaeological deposits. No spoil is to leave the churchyard and any chanel must be reburied with due reverence.

(4) The altar frontals chest is to be relocated to the west end of the new kitchen pod.

(5) The details of proposed drainage routes, external vents, kitchen units, screen, doors and floor coverings, if any, are to be submitted to and agreed by the DAC sub-committee before any tenders are invited for the works.

(6) The petitioners are to follow the DAC's April 2018 guidelines on electrical installations.

(7) Any fixings are to be non-ferrous and are to be made into mortar joints or into plain plaster.

I will allow 24 months for the works to be completed in order to allow adequate time for any necessary further fund-raising by the parish.

30. I waive my fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge QC

The Second Sunday in Advent 2021

The east end of the north aisle



Entrance to the existing foyer and kitchen



The existing staircase and WC

