

Winchester
above, Phil Dy

In the Winchester Consistory Court

9.8.00
Temporary building
within curtilage

In the matter of St James, Pokesdown
And in the matter of the erection of a temporary classroom

JUDGMENT

I have received this morning the papers in the above matter, which was first heralded in telephone conversations on 27 and 28 July. For the reasons set out below, there is considerable urgency in this petition. I very much regret that this court, but more particularly the PCC of St James' Pokesdown, has been placed in the very difficult position of dealing with important issues concerning the church and its environs at such short notice. Those responsible ought to have been alive to these issues some while ago. This is not the place for recrimination, although I trust lessons have been learned. I should like, instead, to record my gratitude to the churchwardens and the fabric committee of St James' for dealing with the unfortunate position in which they found themselves with expedition, sensitivity and thoroughness. I trust that the PCC will fully endorse the action taken on their behalf and echo my thanks for what the church officers have done during the present interregnum. It is a worthy example of collaborative pastoral ministry to the wider community.

What is proposed is the siting of a temporary structure within the curtilage of the church and its use as a classroom for St James' Voluntary Aided Church of England School, for both aspects of which the permission of this court is required. Whilst the structure has the approval of the DAC and whilst there are no objections arising from the citation of the petition, the proposal relates to a disused burial ground, the erection on which of buildings (even of a temporary nature) is prohibited under the Disused Burial Grounds Act 1884, s 3. This prohibition, however, does not apply in the case of the enlarging of a church, chapel, meeting house or other place of worship.

The revised plan (if I may adopt this term) contemplates a covered link between the classroom and the annexe of the church. This is best seen in plan on drawing 7065/Temp 1. The link is free-standing and self draining and will not take support from the church whose fabric will be untouched. The church will have use of the classroom for children's overflow during the parish communion and, perhaps, at other occasions. It would appear that there already exists a symbiosis of use between church and school premises, not least for Sunday School and the provision of car parking.

I have considered with care the factual background necessitating the use of the temporary classroom as helpfully summarised by Richard Lindley in his letter of 28 July 2000. I note the major works to enlarge the school to provide more primary places and the action of the DfEE in undertaking to provide additional classroom accommodation without reference to the school or the diocese. I am satisfied as to the pressing need for temporary classroom accommodation, and that such an eventuality was brought about by external forces, to the challenge of which the school, LEA, and diocesan board of education have risen. I am further satisfied that there are no practical alternatives to that now proposed.

I am prepared to take a purposive interpretation of the 1884 Act. In referring to the enlargement of a 'church' or 'meeting house' it intends to cover not merely the use of a church for divine worship and private prayer but also ancillary purposes - pastoral, social and evangelistic. Consistory courts have placed reliance upon the Report of the Archbishops' Commission on Rural Areas, *Faith in the Countryside* and its support for multiple uses of church buildings as focal points for the community. The same principles apply in more urban areas. In my opinion, the proposed classroom represents not merely an educational resource for the school but premises within which the mission and witness of the church of St James, Pokesdown may take place. I am fortified in this opinion by the temporary nature of the provision, pending completion of an ambitious enlargement of the school in which by example and through collaboration the work of St James' church will seek to further the coming of the Kingdom.

I therefore propose to grant the petition and order that a faculty be issued for the proposed works and purposes, as subsequently revised. The faculty will be subject to the following conditions:

- (1) that the classroom and all ancillary structures attendant there to including the link to the church be removed by or before 4.00 pm on 31 August 2002;
- (2) that the churchyard be made good at the expense of the school by or before 4.00 pm on 31 August 2002 (or such later time as the churchwardens or incumbent may hereafter agree in writing); such making good to cover all paths, lawns, drainage, utilities and other services and all damage occasioned to any part of the church or items within its curtilage, including but not limited to grave stones and memorials;
- (3) that for the purposes of securing compliance with (2) above, a detailed photographic record be taken of the site for the proposed classroom prior to its installation and of the church and churchyard where the link is to be erected and that the making good shall be to the satisfaction of the church's inspecting architect whose professional fees shall be borne by the school;
- (4) that public liability insurance be taken out in relation to the use of the classroom and at the expense of the school, the nature and scope of such insurance to be to the satisfaction of the registrar;
- (5) that prior to the installation of the classroom, the school (by its board of governors) and PCC do execute an agreement to the satisfaction of the registrar covering the matters set out in the appendix hereto;
- (6) that in the event that drainage provision be needed, it shall not exceed one foot in depth and, in the case of disturbance to human remains however occurring in the installation or removal, work shall cease and the remains reinterred in a seemly manner at the direction of the rural dean;
- (7) that the electricity supply be in such manner as may be agreed by the churchwardens;
- (8) that the costs of and occasioned by this petition and the costs of and occasioned in the drawing up of the agreement at (5) above be borne by the school, such costs to be assessed by the registrar if not agreed between the parties;

- (9) that there be liberty to apply to the court on any matter relating to the works authorised by this petition and their implementation, and, unless the Chancellor otherwise orders, the matter be reserved to the Deputy Chancellor.

APPENDIX

The agreement between the PCC, school should cover:

- i. the provision of a full indemnity in relation to the classroom and its installation and removal and any third party claims;
- ii. the provision of a full indemnity in the case of damage to the church, war memorial or gravestones;
- iii. means of access for children, teachers and parents;
- iv. times of access;
- v. classroom not to be used for any immoral or unlawful purpose;
- vi. security, locking and unlocking;
- vii. the prohibition of any use of the building by the school on Sundays;
- viii. the prohibition of works of installation, repair or removal on Sundays or during divine worship (and for half an hour before and after) on other occasions notification of which to be given in writing by a church officer 48 hours beforehand;
- ix. the prohibition of noise and annoyance on site;
- x. the non-use of the classroom during funerals (if practicable) alternatively a requirement of quiet during such services and for half an hour before and after, like notification to be given;
- xi. the use by the church of the classroom on Sundays and at other times by arrangement;
- xii. maintenance, repair and cost of utilities to be borne by the school;
- xiii. church to continue to have access to playground for car parking;
- xiv. access to be given along the driveway (and playground) for weddings and funerals;

I am confident that all concerned will work together to ensure that the very best is made out of the difficult position in which they find themselves, and that a spirit of toleration and co-operation will guide their thoughts and actions in the next two years, ever mindful (under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, s 1) of the role of the church as a local centre of worship and mission.

Mark Hill
Deputy Chancellor

9 August 2000