

In the Consistory Court of the Diocese of Chester

In the Parish of Prestbury

In the Church of Saint Peter

In the Matter of Faculty Petition Number 003/12

Judgment

1. By a Petition dated the 5th April 2012 the petitioners seek authority to build an extension at the north east corner of the church, for level access works and to provide new paths to the churchyard. The works will involve demolition of a 19th century clergy vestry, the only part of this Grade I listed building likely directly to be adversely affected by the proposals. A suspended slab construction approach is proposed, specifically to minimise the impact of the extension on graves in the area of the extension.
2. The proposals have, over some years, generated a great deal of local interest and, in addition to significant and enthusiastic parochial and congregational support, considerable and often forcefully expressed opposition from local people.
3. By way only of example, the voluminous papers before me in the proceedings - the hearing bundle ran to some 2320 pages in all – included 226 pages of letters in support of the project from 100 individuals (some writing as couples) and 337 pages from 121 like individuals (including some of the existing parties) in opposition.
4. In the event, 16 named individuals, and the Prestbury Amenity Society, chose to become opponent parties to the Petition. Prior to the hearing a further individual, Lillian Burns, sought, and was granted, discharge from party status, though I have taken her carefully prepared written material into account.
5. Both petitioners and objectors had the benefit of legal advice and representation of the highest quality and I am indebted to solicitors and counsel on both sides for their careful and thorough preparation and presentation of the issues.
6. Not without reluctance on the court's part, but persuaded that the depth of local interest and controversy justified my decision, and that some limited utility might even be achieved in 'clearing the air', a hearing upon limited oral evidence occurred on Saturday, 27th July 2013.
7. I heard oral evidence from (for the petitioners) the Revd Patrick Angier, the vicar, Mr Christopher Leonard, a former lay chairman of the Parochial Church Council (PCC), and Mr David Hopewell, the current church treasurer, and (for the objectors) from Mr David Hine, a local resident involved in a number of aspects of Prestbury civic and church life and a founding member of the 'Save Ford House' Group. I had statements and material from a good number of others too – on both sides.

8. Immediately following the hearing, with counsel and the Registrar and some other legal representatives, I had the opportunity to visit the church, churchyard, Norman Chapel, Hearse House, Swanwick House, Ford House (from the road only) and the most attractive village of Prestbury itself.
9. What at the hearing I colloquially termed 'the elephant in the room' in this case - and the source of probably the greatest single aspect of concern for a majority of local objectors to the present Petition (though strictly now only indirectly relevant to that Petition) - was the disposal by the parish of Ford House, a property which had been acquired by the parish in or about 1968.
10. Ford House is a substantial property, across a road from the church and a short distance from it, which, until 2013, belonged to the church and was (until May 2007) used for a wide variety of church and community purposes. In 2007 the church's insurers concluded that the roof of the building and aspects of wiring were dangerous and public use thereafter effectively (and of necessity) ceased. The objectors charged the parish with (as one put it) 'decades of neglect' - a charge firmly denied by the PCC.
11. There is no doubt that closure came as a very considerable blow to many, in the congregation and the community. At the point of closure some 22 organisations or groups (19 of them church based) used Ford House. Youth groups were without doubt directly affected, and probably disadvantaged.
12. There is disagreement, which it is unnecessary to resolve, as to the extent to which Ford House was essentially a 'church' facility. The fact is there was (unsurprisingly) both church and community use, the loss of which was sorely felt.
13. Developments thereafter are the subject of debate and disagreement, not to mention much anger and frustration on all sides, amply reflected in the papers. The detail no longer matters. Costs of necessary repairs and refurbishment at closure were variously put at around the £1million mark, certainly outwith the parish's resources. A decision was taken to sell, the PCC concluding after much debate and discussion that that was the preferred strategy, overall, to meet the longer term requirements of a modern, living, church.
14. The sale was bitterly opposed by a significant number of local people. A 'Save Ford House' Group came into being, led by some determined activists. In 2008 some 410 people wrote to the PCC or signed a petition in opposition. Leaflets in opposition were disseminated. The press and a village website were engaged. Opinion was marshalled. An Extraordinary General Meeting (EGM), chaired by the then Archdeacon of Macclesfield, was held on 7th April 2008 at which, by the slimmest of majorities, sale was opposed. Later that month the PCC nevertheless determined to proceed. The genesis of, and certain conduct connected to, the EGM are still, even today, the subject of dispute and (regrettably) recrimination, but given that neither counsel (sensibly) sought to explore before me in any detail this particular conflict, it is unnecessary for me to reach firm conclusions. The church leadership, however, became the subject of a good deal of (to my mind) unpleasant and unnecessary criticism, unfairly questioning motives and even integrity.
15. I unhesitatingly reject any suggestion that closure of Ford House (and later sale) was in any sense 'contrived' by the church leaders and any view (as Mr Hine expressed it) that closure was 'convenient' was, in my judgment misplaced and unduly cynical. I reject any suggestion of bad faith by the parish in relation to dealings with Ford House, or indeed that the building had been deliberately and culpably allowed by the church to fall into decline.

16. Contracts of sale were exchanged in Summer 2008. In response to community representations and with the agreement of the purchaser, a clause in the contract afforded a deferment in completion for 6 months to allow (according to the petitioners) the local community to raise funds to acquire the property as a community building. No such offer or approach followed. Mr Hine, giving oral evidence at the hearing before me on behalf of the objectors, frankly conceded that it would have been impossible at that time for a local group to have raised a matching purchase price, that all that his group intended, or aspired to, was to raise funds to restore Ford House, but that the success of that, in turn, depended upon a commitment by the church to keeping the building, which was not forthcoming.
17. In the event, the purchaser was unable to complete, sale aborted and the lost deposit of £132,500 came to the church as something of a windfall. The PCC has (entirely reasonably) used much of it to take forward the professional costs of developing the present project.
18. In December 2011, a planning application for an ambitious redevelopment scheme was submitted by the parish for the demolition of Ford House and its replacement with a similar building containing parish offices and apartments, together with town houses in the grounds. The application was refused. I accept this came as a considerable disappointment to the parish.
19. The property was marketed once more in 2012 and completion occurred on 19th February 2013. The purchasers, who in June 2013 apparently conducted some public consultation in the village, hope to demolish the building and develop various houses and flats on the site. The outcome of any further planning application to that end remains to be seen.
20. The net proceeds of sale amounted to some £797,000 which the parish thus has potentially available on deposit to apply to any new building. I was informed that, in addition, some £195,000 (excluding tax relief) had been pledged by members of the congregation in a two-week, focussed, fund raising initiative in July 2013. The current estimated cost of the new building and works proposed is of the order of £1,041,000. The parish may therefore be said to be well within reach of its goal, as the plainly experienced and impressively qualified PCC treasurer, David Hopewell, confirmed in evidence.
21. Whilst (entirely rightly in my view) making clear in his closing written submissions to the court that no suggestion was made of impropriety, bad faith or conscious concealment on the part of the petitioners in relation to disclosure of the final completion of the sale of Ford House, Mr Morgan, counsel for the objectors, nevertheless courteously protested that, despite the current consistory court litigation, the fact of final sale had only become clear to the objectors shortly before the hearing. That was no doubt in part at least (as Mr Angier explained) due to some sort of confidentiality embargo in the contract of sale, the purchasers themselves apparently making limited public statements only in June or July 2013, the petitioners not formally informing the objectors at all. I had some sympathy with Mr Morgan's protest.
22. There can be little doubt that, rightly or wrongly, the objectors' core case had, in reality, been founded upon the continuing availability of Ford House, as possessing at least the potential to be re-developed to meet some or all of the facilities for which the parish contended. As Mr Hine stated, somewhat ruefully, in evidence, 'Ford House presented the only real alternative'.
23. In the circumstances, the focus of the objectors' case was forced to rest upon what they contended could (with proper investigation and enquiry, and a little creativity) be achieved

by the petitioners making greater (and different) use of the Norman Chapel, the Hearse House and the south porch.

24. In summary, the objectors did not challenge in principle the petitioners' arguments for enhanced facilities. Very significantly, (and in contrast to the position of Ms Burns in her written material) they did not seek to challenge the expert architectural evidence relied upon by the petitioners or to mount a case founded upon conservation, architectural or aesthetic issues. (That was, in the circumstances, a helpful concession which, without doubt, shortened any hearing and made the court's task simpler.)
25. They did however argue that no, or no adequate, consideration had been given to development options in the buildings I have mentioned and that the scheme proposed was thus neither a necessary nor proportionate response to the undoubted need for facilities. The evidence of Mr Hine, principal spokesman for the objectors at the hearing was, it was submitted by Mr Morgan, capable of distillation to a single proposition – 'there was a case for change; but no justification for the change proposed'.
26. The petitioners decisively rejected that argument, and the reasoning behind it. Their case was that the extension now proposed (plans for a significantly larger one not having been pursued) was imaginative, well designed, optimally positioned to reduce visual impact and unquestionably needed - to provide the (relatively modest) facilities now long overdue to ensure the future health and well being of the church and community. Other options had, it was argued, been comprehensively explored, appraised over a period of years and, for good reason, rejected, as the wealth of documentation, analysis and report in the papers made clear.
27. The church of St Peter is a beautiful, well maintained, church set in an interesting and historic churchyard in the heart of a most attractive village. It has a substantial electoral roll, high regular Sunday attendance, a thriving Sunday school, a strong musical tradition and an active and committed congregation. It has huge potential for mission and ministry in Prestbury, but lacks the (even basic) facilities a modern church needs. One can readily appreciate how difficult it may have been for the petitioners to have contended for any significant internal re-ordering to meet those needs.
28. The nave and chancel date to about 1220, the south aisle to 1310, the tower and porch to 1480 and the building has (inevitably) been subject to re-modelling and restoration in ensuing centuries, most recently in 1879-88 by Scott. The vicar's vestry is considered to be a poor quality addition, both in design and materials, predating Scott's work but partially rebuilt during it. It has neither the historic importance of the medieval church, nor the architectural importance of the Scott restoration, and is considered of low significance compared to the church as a whole.
29. Within the curtilage are located the two other free standing heritage buildings of relevance which I have already mentioned, the Norman chapel (11th or 12th century) and the Hearse House (mid-19th century). Each is Grade II listed. The objectors contended either or both could be refurbished and utilised to meet current church needs. The petitioners decisively rejected that, saying that neither is, or could be, capable of satisfactory adaptation to meet the particular combination of needs presented. Having visited each building for myself, I confess I could see immediately some of the potential obstacles in the way of the objectors' suggestions.

30. That said, the petitioners have in mind (as part of longer term goals) further applications for faculty (as yet not fully developed but, it was explained, intended to raise floor levels, deal with damp, provide heating, lighting etc) to improve both buildings. One complaint of the objectors was that those proposals had been insufficiently developed as yet, and the court had consequently not, to date, been provided with sufficient information to judge the inter-relationship between those changes and the present proposals. The suggestion was that a decision upon the necessity of the present works might well be premature, at least until those further plans had been fleshed out. I have had to consider that submission carefully.
31. As with many complex projects for church re-ordering or extension, so this faculty process has been a long and detailed one in which the petitioners have been determinedly and continuously engaged since 2006. It is impossible in a judgment of proportionate length to do justice to the wealth of material, detail and opinion this process has generated. I have been greatly impressed by the quality and thoroughness of preparation and presentation of all aspects of the project. Those involved in the task, and their professional advisers, deserved considerable credit.
32. A carefully prepared Statement of Significance (November 2011; 27pp) detailed the history, development and significance of the building.
33. A Statement of Need (revised to September 2012; 15pp) presented a detailed case for the development proposed.
34. A Conservation and Design Statement (December 2010; 42pp) prepared by the architects, afforded a careful analysis and appraisal of proposals.
35. A Feasibility Report 'A Thriving Church in a Thriving Village' (February 2008; 47pp), itself the product of some ten months of careful investigation and preparation, set out a range of options and issues as part of the wider consultation process. Five 'internal' re-ordering options and four 'extension' options had been included in that report, with the advantages, disadvantages, mission opportunities and space implications of each examined carefully.
36. A Statement of Process (September 2012; 17pp and supporting documents of 227pp) provided a detailed chronology of the evolution of the project and the steps taken by way of public consultation and communication.
37. The papers documented regular newsletters, magazine articles, public meetings, public questionnaires, open days (with entry and exit polls), a meeting with the Prestbury Parish Council, a meeting with English Heritage, Cheshire East Planning Authority and the Conservation Officer, as well as submission to the (secular) planning process and the public notice provisions of the present faculty proceedings (including in addition, at my direction, compliance with the stringent requirements of Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s.17 in respect of demolition or partial demolition aspects of the proposals).
38. I am satisfied the petitioners could not have done more to consult the community or to seek to communicate their thinking about the present proposals to all interested parties.
39. In addition to the documents mentioned, I have been provided with a Specification of Works (November 2011; 81pp); an Archaeological Desk based Assessment (82pp); an Archaeological Evaluation (56pp); A Bat Survey Report (10pp); a Grave Survey; an Arboricultural Consultancy Report (41pp); a Village Design Statement (84pp) and a selection of PCC Minutes (2007-2012).

40. Again, as with any complex faculty application, there has been extensive consultation by the petitioners with the local authority and the amenity societies, as well as the Church Buildings Council. It is right that I indicate, briefly, the position of each.
41. Planning permission for the proposed extension was granted by Cheshire East on 26th September 2011. It is said that of 110 representations received, only 21 stated objection.
42. English Heritage (EH) accepted the extension in its final iteration, there having been lengthy negotiations concerning scale and design. Whilst regretting demolition of the vestry, the officer accepted the proposed extension 'will provide St Peter's with the required facilities and accommodation to secure a sustainable future in the long term'.
43. The Victorian Society considered the extension 'well thought out' and had no objection to the demolition of the vestry which the Society considered was of very limited architectural interest relative to the other 19th century fabric in the building. The Society noted visual impact on the north elevation would be substantial, but considered this was not the church's principal aspect and believed the effect of the new work needed to be considered in the context of the church as a whole, which was primarily a medieval building. It was content to defer to the Society for the Protection of Ancient Buildings (SPAB), as indeed were the Georgian Group and the Ancient Monuments Society in respect of demolition aspects.
44. SPAB did not wish to register a formal objection to the scheme, but regretted it was unable to support it since the Society had not (unlike EH and the planning authority) been consulted at a sufficiently early stage in the process for their staff to make a meaningful contribution to the evolving design.
45. The Church Buildings Council, in a letter from Mr Jonathan Goodchild of 20th June 2011, expressed the Council's view that the site chosen, the general form of the proposed building and the intended materials were appropriate, though raised (amongst other points) an important concern (shared, as it happens, to some extent by the Archdeacon and certainly by Mr Hine for the objectors) that the extension may not be big enough. Following further discussions, Mrs Janet Gough, by a letter of 9th July 2012, felt sufficient 'reasonable responses' had been received to enable the Council not to wish to object to the proposals.
46. In addition to these various responses to statutory consultation, the petitioners pointed to: the unanimous support of the PCC for the project; widespread congregational support (not least evidenced by recent financial pledges); community support founded upon an analysis of responses to the village questionnaire and Open Day responses; support from some 68% of respondents to a Prestbury Parish Council Questionnaire; the many letters of support with the papers; witness statements in support prepared for the present hearing; the support of the Diocesan Advisory Committee (DAC); the support of the Archdeacon of Macclesfield.
47. In a carefully prepared report which I directed for the purposes of the hearing, the Secretary of the DAC set out the views which led this very experienced committee to recommend the works by their Certificate dated 30th March 2012. As might be expected, there had been extensive committee involvement in the emerging project and its detail. The committee had concluded that the proposals, if implemented, would not harm the significance of the church as a building of special architectural or historic importance. They considered the parish had fully demonstrated the need for facilities adjoining the church. In their view, the parish had explored in detail all possible alternatives for meeting their needs. The extension was to be positioned in by far the least visually intrusive location for such building. The design was visually subservient to the existing building. The proposal would present significant benefits

to church and community, such that any perception of harm was outweighed. Objections received did not merit refusal of a faculty for the proposed works.

48. The Archdeacon too was convinced the design was imaginative, well thought through and would provide good space for the church in a confined area. He congratulated the petitioners for the thoroughness of their consultation, communication and adaptation to advice. He considered the need they had presented 'unquestionable', and was himself wholly persuaded that worship, education, pastoral care, welcome, inclusion, safeguarding, service to the community, mission and church growth would all, in various ways, benefit from the changes. He was strongly critical of, and disappointed by, what he judged to be needlessly hostile, aggressive and well organised opposition by some to the church's plans. He regretted the costs (not to mention the relational) implications of the matter having had to enter the forensic arena.
49. Given that the objecting parties had decided not to challenge what I might term the 'architectural case', it is not necessary to deal at great length with these aspects. However, given that Ms Burns had in her written material (prepared, if I may say so, from a position of obvious and detailed knowledge of the subject) sought to argue 'adverse affect', it is only right I should set out my conclusions on that aspect.
50. Ms Burns raised wide ranging criticism of the case presented for change. She argued 'need' had not been adequately demonstrated. She considered other alternatives had not been fully explored or costed. She made a number of criticisms of the petitioners' documents, and of 'process' generally. She was critical of the lack of opposition from EH, reasoning that the proposals failed to meet any of EH's own published criteria for new work in historic places of worship.
51. She concluded: 'Of all the options which could be tabled, this is a deeply unsatisfactory one. It involves adding an extension directly on to a rare, Grade I listed building and, in doing so, covering ancient graves and impacting on protected trees, a tranquil area, an important open space and views in a Conservation Area. This prompts the question whether, for all of this deleterious impact, the outcome would be positive overall? It is not possible to see how the present proposal could not affect the character of the church and could be considered positive on balance because the design of the extension is not sympathetic, the materials proposed are questionable (particularly the large plain glass facia) and the public/wider community is not intended to be a beneficiary of the new accommodation provided.....If the current church extension plan in the heart of Prestbury's Conservation Area is allowed to go ahead it would despoil a unique and hugely important ancient building and it would be doing so when a sound case for 'need' has not been proven'.
52. Mr Angier, the vicar, responded in detail in his statements to much of the content of Ms Burns' material. He considered she had presented an essentially 'conservation' focussed case, rather missing the point, in his opinion, that public benefit was in part at least to be derived from having a living, growing and varied church community occupying and cherishing all the buildings on this historic site and thus securing their future. He rejected many of her other criticisms in carefully reasoned responses.
53. What I might term the 'architectural' responses to Ms Burns' critique were to be found in impressively detailed statements from Mr James Coath, the parish's instructed architect, and Mr Peter de Figueiredo, an architect and heritage consultant of considerable experience and distinction who, in fact, served as Historic Buildings Inspector for EH in the North West

between 1999 and 2007. The parish had, in preparation of their case, turned to Mr de Figueiredo for a thorough and independent appraisal of many of the issues most troubling Ms Burns.

54. Mr de Figueiredo's opinion of the proposals was altogether more positive. It has not been challenged by the objecting parties. He was not requested for cross examination before me.
55. He wrote: 'The creative intention has been to interpret the spirit of the church in a contemporary manner. This requires considerable skill, but an intelligent approach to the functional requirements of the brief and a sensitive understanding of the historic building has been used to create a fresh and attractive design that will complement the historic character and enrich the architectural experience for users of the church. In my view the impact on the character and appearance of the building will be beneficial'.
56. After a careful analysis of the balance of benefits and 'disbenefits' (as he termed them), Mr de Figueiredo continued: 'The positive public benefit, however, of securing the viability and sustainability of the church and the other heritage assets, and providing the opportunity to increase access and the use of the building by the wider community, substantially outweighs any negative effect'.
57. He concluded: 'In my view, the architects for the scheme have succeeded well in producing a scheme that is both innovative and respects the local context. This is achieved through a sensitive understanding of the historic character of the church and its setting, and a thoughtful approach to the brief. The extension will subtly complement the church and contribute to local distinctiveness in a creative manner. In conclusion, my assessment of the potential impact of the proposals on significance demonstrates that these are not substantial, and that there will be substantial public benefits that outweigh any adverse effect. Accordingly, I am not convinced by the arguments put forward by Ms Burns in her objection. I would therefore urge that the Petition be granted'.
58. I unhesitatingly prefer the evidence and analysis of the two architects to the submissions of Ms Burns. Their evidence and conclusions are effectively unchallenged in the proceedings. Support for their conclusions is to be found in the recommendation of the DAC (and, arguably too, in the stance of the majority of the amenity societies and the planning authority).
59. I am satisfied that the works would not result in harm of any substantial kind to the church as a building of special architectural or historic importance. Mr Morgan made clear in his closing submissions that whilst, of course, any appraisal of harm (and its seriousness) remained a matter for the court, the objectors did not, in this case, advance any opposition founded upon harm.
60. At the heart of the case was the contention that these particular works had been insufficiently justified. Judgment of that required some appraisal of the petitioners' case on 'need'.
61. The justification for the proposed works was set out in the Statement of Need and has been amplified in considerable practical (and theological) detail in the statements (and oral evidence) of Mr Angier. In barest summary, the following needs have been identified: proper lavatory facilities for all users; baby changing facilities; kitchen facilities and associated meeting space for coffee after services and at other times to facilitate youth and children's work; flexible meeting spaces to serve a number of different activities; a church lounge; a welcome and information area; an area for education; space for teaching and

practising; facilities for visitors with young families, including a crèche, early years' activities and youth activities; facilities for musical needs at the church including rehearsal, practice and storage space; vestry space; and office space.

62. The 'mismatch' between these needs and present facilities was not the subject of significant challenge in evidence. Frankly, it could not realistically have been so. The objectors conceded the church needed - and should have - enhanced facilities; the point in dispute was whether the current proposals were proper and proportionate means of meeting those needs. It was plain to me that some of the miscellany of current options in use to meet some of these needs (Swanwick House; the vicarage; the school; the village hall) were deeply unsatisfactory and impracticable for the longer term as solutions.
63. The objectors were critical of what Mr Morgan termed the 'everything under one roof' model, to which the petitioners seemed so immovably wedded. The contention was that, with proper refurbishment of the Norman Chapel and Hearse House, these needs (or many of them) could be met in those buildings (aided perhaps by an upgraded or re-modelled vestry) and that, by creating 'brewing facilities' (to use Mr Hine's phrase) in the South porch, kitchen and coffee serving needs could also reasonably be accommodated.
64. The petitioners did not seek to pretend other than that the extension would primarily benefit the congregation and church groups, but Mr Angier took some care to underline that substantial expansion of use of any new facilities by members of the community was both anticipated and welcomed. He was unshaken in his belief that if children in particular, who he considered vital to the future of the church, were properly and safely accommodated; their parents would very likely follow.
65. Unsurprisingly, Mr Angier wrote and spoke passionately about the project and its evolution. With some justification, he was able to point to the depth of thought and planning which had gone into the final proposals. Those followed exhaustive (and perhaps exhausting) appraisal of alternatives. What was sought, Mr Angier stressed in evidence, went beyond the merely 'desirable'; people, he underlined, 'make choices' and have high expectations of what a living, working, building should provide. He believed the extension would enable the church to 'be what we want to be'; it would further the development of the church's values, mission, welcome and desire for growth. In short, he considered it key to the church's future.
66. I found his evidence thorough, detailed, thoughtful and measured. He dealt courteously and convincingly with matters put in cross examination. I had no doubt from my reading of the papers that he had shouldered (no doubt with others) much of the burden of the project and that, at times, local opposition had, wholly unfairly, assumed a rather ugly ad hominem flavour which can only have caused him undeserved distress. I had no doubt whatever that he has sought throughout to act with complete integrity and in the best interests of the parish and community.
67. Whilst there can be no doubt painful and difficult decisions had to be made by the PCC in respect of Ford House, and that there may well have been scope for legitimately conflicting views, I wholly reject any suggestion Mr Angier (or indeed the parish) has acted with any moral or ethical (let alone legal) impropriety in respect of the management, decision making and now sale of that property.
68. Mr Hine, as spokesman for the objectors, plainly felt the loss of Ford House (and youth facilities there) greatly. I did not doubt his genuineness in that regard.

69. His statement helpfully set out the objectors' basic case on the alternative: 'We all agree that the church community should have some new basic facilities such as toilets, Sunday School and a small kitchen. The toilets could be situated in the Hearse House and the Sunday School in an improved Norman Chapel. This can be done without disturbing the fabric of the main church building or the medieval graveyard. The other facilities such as the vicar's office, robing rooms, meeting rooms, and archives would be nice and convenient on site but it is an impossible dream. The SPAB have declined to support this proposal. Rev Angier (sic) is wrong to have led his followers into thinking it could be a reality. There is no over-riding need that justifies disturbing the Grade I listed church and trying to build in this very difficult and inaccessible location.'
70. In oral evidence Mr Hine told me he believed the project would signal financial disaster. He believed the proposed extension was, in any event, too small for most activities which had formerly occupied Ford House, and was in the wrong location to serve as a place of meeting and welcome, which should, he reasoned, be at the back of a church. In his view the only toilet the church needed was a 'single disabled 'loo in an enlarged vicar's vestry'. He had no suggestion, he said, for 'sit down meals', considering 'brewing facilities' in the south porch would suffice. The Hearse House and Norman Chapel could be 'developed', he said, and would 'provide all that is needed by the church'.
71. Is that argument tenable? I have looked at it (and the nature and challenges of the buildings concerned) with some care.
72. As to size, I rely upon figures helpfully provided by Mr Tattersall QC, for the petitioners, in his closing submissions. The contrast in respective footprint perhaps speaks for itself. The proposed extension measures some 262 square metres; the Norman Chapel 58 square metres and the Hearse House 40 square metres. Much more fundamental to my mind, however, is the essential nature of the respective buildings.
73. The Hearse House was, as long ago as 2009, after careful consideration, deemed of insufficient size to satisfy reasonable parochial requirements without purchase of an adjacent site or significant encroachment across the churchyard. The purchase of additional land (complicated as it was by location and parking rights) was likely to be prohibitively expensive. In addition, the reluctance of planning officers to contemplate development at the Hearse House above the level of its existing height led the parish and its advisers to reject the option. I am, I confess, not in the least surprised.
74. That building (which is, in reality, essentially a large, dry, Grade II listed, shed) is at present used as a store and workshop for gardening and other equipment, some of it bulky. I do not doubt toilets could theoretically be constructed within the building, but they would be at some distance from the church building (along a path through trees and past graves) and I accepted Mr Angier's evidence that their nature and location would be such as to give rise to very real management and security, not to mention child protection, problems. I had great difficulty in envisaging how this building (even when restored) could make a contribution to the church's overall needs, of the sort the objectors suggested.
75. The Norman Chapel is a building of a wholly different kind. It is essentially a worship space, with what is considered a somewhat unique, 'spiritual' (Celtic) character. It is used for special services and occasional small events and groups. It consists of two rectangular areas, 35 and 23 square metres respectively, on different levels, linked by some steep steps. In the winter in particular the chapel is plagued by cold and damp and has been the subject of

complaint by users about those issues, and about accessibility more generally. Plans are in hand to address some of the fundamental difficulties of the building, but the thought that it might somehow serve (as required) as quiet worship space, crèche, meeting room, or children's area struck me as wildly unrealistic. Mr Angier was right to reject the suggestion in evidence – as it had long since been rejected in project planning.

76. I regret to say that I sensed an air of utter unreality in the case presented by the objectors that the facilities they (broadly) acknowledged the church needed could, and should, be met in the Norman Chapel and Hearse House.
77. It revealed, I fear, an impoverished and partial understanding of the realities, challenges and opportunities in the corporate life and calling to mission of a living congregation. As Mr Tattersall QC submitted, the objectors' 'secondary case' (the primary case -Ford House - being no longer available) was 'misconceived'.
78. However useful it may be to have the benefit of supplementary buildings in other parts of the churchyard, the case presented for facilities of the kind described by the petitioners being at the church itself seemed to me (as the Archdeacon had said) 'unquestionable'. As Mr Angier said, whilst the objectors had a perfect right to express their view, those regularly attending, and most directly involved in the life of the church, were more likely to have a better understanding of the deficiencies of the facilities - and the solution- and that group overwhelmingly supported the petition. As Mr Hine himself put it to me: 'Most of the congregation is now totally convinced. I represent an alternative view'.
79. The law which I must apply in reaching a decision was (rightly) the subject of complete agreement between counsel.
80. The onus of proving the case is upon the petitioners. Proof must be to the civil standard.
81. Whilst the wishes of a majority of parishioners are relevant, they are not paramount, because the church belongs not to any one generation.
82. In the case of a listed church, there is a strong presumption against change which would adversely affect the character of the building as a building of special architectural or historic interest.
83. Where there will be such an adverse effect, a faculty should only be granted in wholly exceptional circumstances, where there is a necessity for change.
84. Necessity has been considered elsewhere as something less than essential but more than merely desirable or convenient; in other words, something that is requisite or reasonably necessary. Petitioners are not required to establish necessity in some abstract sense that the works are necessary, but simply that the benefit resulting from them outweighs any architectural or aesthetic harm.
85. The pastoral well being of the church can constitute a necessity.
86. A change which is permanent is particularly to be avoided.
87. The court, whilst not bound by the planning decision, is entitled to accept it as a reasoned starting point from which to begin its deliberations.
88. No point was taken (or realistically could be) relating to the lawfulness of the construction of the extension over graves. The plans were conspicuously sensitive to that issue.
89. All agreed my approach to the Petition should be that recently set out in the judgment in the Arches Court of Canterbury in **Re St Alkmund, Duffield** [2013] 2 WLR 854.
90. At paragraph [87] the court said: " In our opinion chancellors should be freed from the constraints of the *Bishopsgate* questions. We have much sympathy for the view....that there

is a danger of imposing an unduly prescriptive framework on what is essentially a balancing process. For those chancellors who would be assisted by a new framework or guidelines, we suggest the following approach of asking:

- (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 the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals. Questions 3,4 and 5 do not arise.
- (3) If the answer to question (1) is “yes”, how serious would the harm be?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral wellbeing, 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? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2*, where serious harm should only exceptionally be allowed.”

91. The petitioners urged that the (largely unchallenged) professional evidence was that no harm would result to the significance of the building and that, thus, the presumption ‘in favour of things as they stand’ was readily (indeed overwhelmingly) rebutted by the clear need, and likely benefit, presented in the petitioners’ written and oral evidence.
92. The objectors contended that the court (as part of a balancing exercise) was obliged to find objective justification for what was actually proposed; the petitioners had, in the present proposals, failed to demonstrate the requisite degree of necessity and proportionality, and the petition should be refused.
93. It follows from all I have said above that I prefer the arguments of the petitioners. I find them to be well made and convincing, upon the evidence. Indeed the overwhelming balance of the evidence in the case supported the petitioners’ position.
94. I am satisfied the proposed works will not (for the reasons set out in the architectural evidence presented by the petitioners) result in harm to the significance of the church as a building of special architectural or historic interest. I find there to be a clear justification for all that is proposed.
95. The public benefit which I am satisfied will result from the carrying out of the proposed works amply justifies the granting of the faculty sought. The church’s opportunities for mission will be enhanced in substantial and significant ways. Congregational life and the potential for increased community involvement will be immeasurably improved by the creation of the extension. The building will be significantly more ‘user friendly’ - in a number of quite basic, but essential, respects.
96. The proposals have been thoroughly and impressively thought out and talked through over a period of years. They have been the subject of extensive consultation and modification. The case for enhancement of facilities is, in my judgment, overwhelming - and long overdue. The effective accommodation in the other historic buildings in the churchyard of what is reasonably required is, I have concluded, wholly impractical and unrealistic. I reject the

option for which the objectors contended. I am persuaded it is no realistic solution whatever.

97. I was not persuaded in the least that to sanction the project would be to commit the church to financial peril. Substantial funds are already potentially available. Everything about the planning and preparation of the project spoke to me of caution and realism on the part of the PCC and the treasurer. I had no reason to doubt that prudent parochial finances would be maintained. It would not be appropriate to refuse the faculty upon that ground.

98. It follows that the faculty will be granted for the works proposed.

99. The faculty will be subject to the following conditions:

- (i) The works shall be completed within the next 2 years, or such extended time as the court may permit;
- (ii) The works shall be under the direction and subject to the inspection of the church's architect;
- (iii) The parish shall obtain all necessary planning consent relating to any aspect of the works hereby authorised, before commencement of that aspect of the work;
- (iv) There shall be implemented an appropriate archaeological watching brief relating to all floor or ground works to be carried out;
- (v) A photographic record of good quality of the existing vestry and all sections of the churchyard (including graves and memorials) to be affected by the works shall be made and preserved with the church's archive;
- (vi) Stone from the existing vestry shall, so far as practicable, be re-used in the new construction;
- (vii) Necessary tree works shall be carried out in consultation with an arboriculturist and the local trees officer;
- (viii) The rooms and spaces created by the works shall be, and shall remain, part of the church and subject to the management and control of the incumbent, churchwardens and PCC and shall be used for purposes which are consistent with the mission and ministry of the church;
- (ix) Any electrical works should be carried out by an electrical contractor accredited with NICEIC or ECA, to the standards recommended in the guidance Note: Electrical Wiring Installations in Churches, available via Churchcare;
- (x) In the event of disturbance of human remains during any aspect of the works, the immediate directions of the Registrar shall be sought.
- (xi) There is permission to apply to the court for further directions as to implementation or execution of the terms of this faculty.

100. The decision of the petitioners, irrespective of the outcome of the application, not to seek an order for costs against any of the objectors (and Mr Hine in particular) is, in the circumstances, a fair and proper one, and has relieved me of the necessity of exploring and ultimately adjudicating upon the points made in trenchant observations by the Archdeacon in his written statement. It may be wise to say nothing further on the subject of costs, save that the faculty jurisdiction must remain a robust and rigorous process through which conflicting and often passionately held opinions about much loved church buildings (and priorities in church life) may be resolved.

101. The costs of the petition and the hearing will therefore be borne by the petitioners, in the usual way.

102. There will be a correspondence fee to the Registrar which shall be in a sum to be agreed, or as I shall determine.
103. Subject to any appeal, this decision brings to a conclusion a somewhat unhappy and difficult chapter in village life in Prestbury. I hope that, despite inevitable frustration and disappointment (and probably frank disagreement) some may feel at my decision, there may be a readiness to look forward in reconciliation and unity and a willingness collectively and enthusiastically to support the important continuing role St Peter's will, without doubt, play in the spiritual and temporal life of Prestbury. My hope is that the message of grace which has attracted and kept Christian people worshipping there for most of nine hundred years will be matched by a culture of grace without which the church has no future.

David Turner

His Honour Judge David Turner QC
Chancellor of the Diocese of Chester

7th September 2013