

IN THE CONSISTORY COURT OF THE DIOCESE OF BIRMINGHAM

AND IN THE MATTER OF A PETITION FOR FACULTY

IN RESPECT

OF ST STEPHEN, SELLY PARK

JUDGMENT

1. On the 22 March 2013 I gave an Interim Judgment in respect of the Petition dated the 23 September 2012. The contents of that Judgment were informally disclosed to the interested parties but given the number of outstanding matters that Judgment has not formally been handed down. However this Judgment is intended to be read in conjunction with that Judgment.
2. I mentioned in my Interim Judgment the long history and complex nature of the Petition and I do have considerable sympathy with the exasperation that is no doubt felt by the congregation and was politely if forcefully set out in an email received in the Registry from the Rev. Chris Hobbs, the Vicar of the Parish, dated the 17 June 2013. I would however point out that some of the delay has been caused by uncertainty as to the exact nature of what the Parish is requiring so far as the proposals to erect a foyer at the West end of the church are concerned. As a result of that confusion I invited further submissions from the Parish to clarify their position and I am grateful to have received a helpful document from Dr David Twiss, the Chairman of the Building Development Group at the Parish together with further clarification from the Planning Department at Birmingham City Council. These pieces of information arose out of the contents of a visit that the Registrar and I undertook to the church in December 2012.

3. As all parties agreed that they did not wish to insist upon an oral hearing of the Petition and as no agreement had been reached as to the form of a Petition that the DAC could support, I thought it appropriate to invite the Victorian Society and English Heritage to comment upon the Petition that was actually being sought and I have received submissions from them and from the DAC. I believe that I now have a clear idea of what is being sought and where the areas of conflict lie.
4. My approach to the Petition so far as the law is concerned is as set out in my Interim Judgment and nothing has occurred since March 2013 to persuade me that the approach set out in paragraph 17 and 18 of the Interim Judgment, drawn as it is from the Judgment *IN RE: ST ALKMUND DUFFIELD* should be altered.
5. It may be helpful to set out here precisely what the Parish seek and what the views of the DAC are. The Parish seek the following:-
  - a. To demolish the existing church hall (the "Dain Room") and build a two storey extension as a new Parish centre.
  - b. To construct a glazed foyer at the West end of the church linking the new Parish centre to the church via two sets of glazed double doors. The Parish centre will be attached to the north wall of the church by a lightweight glass link in the form of a valley. *I should repeat at this stage that the observations of the DAC were on the basis that the Parish were seeking an octagonal design of the foyer but further investigation revealed that planning consent was given on the 18 July 2013 for a circular design and it is that design that I am asked to consider.*
  - c. To clean the exterior stone work and re-point and repair as required.
  - d. To install new paving and rough planting in the vicinity of the new foyer and hall.

6. I should say as is clear from the Interim Judgment that this Petition relates merely to phase 1 of the work that the Parish propose.
7. The DAC's response is contained in a document dated the 14 November 2012 although it has of course been subsequently modified by the correspondence that I have referred to above. The Committee have decided to recommend the Petition (although clearly under a misapprehension about the design of the foyer) subject to the following provisos.
  - a. The framework of the octagonal porch (sic) is given greater expression, to increase the perceived solidity of the structure, so that it relates better to the church building and new hall;
  - b. The proposed glass canopy around the porch is removed;
  - c. The porch footprint is repositioned to remove the awkward junctions between the octagonal porch and the walls connecting it to the church building and the new hall;
  - d. All proposals for the introduction of a new hard surface apron around the church should be covered by the Parish's phase 2 Petition with the exception of any paving required to allow safe access into the church following the phase 1 work, the details of which should be agreed with the DAC.
  - e. The final materials, finishings and colours are specified fully and demonstrated on sample boards, and agreed by the DAC.
8. I have of course granted a Faculty for the demolition of the Dain Room and the construction of a new Parish centre. The issues that I now have to consider are the construction of the foyer, the need for a new access to be opened up in the West end of the church and the external landscaping works both incidental to the proposed foyer and more generally in the churchyard. It is that work that the DAC suggest

should be considered when the outstanding work that is proposed will be subject to my further consideration.

*What then is the position of the interested parties?*

The Church Generally

9. The significance of St Stephens as a Grade II listed building has been the subject of some debate between the parties. Perhaps in an example of "special pleading" the Parish ask me to accept that the Grade II status of the church and the architecture of the church itself means that its importance is local rather than national. They correctly point out that St Stephens is not a Grade II\* or Grade I building and point out that Pevsner's Warwickshire Guide only gives the church a modest mention and that it is not mentioned at all in the recent architectural guide on Birmingham by Andy Foster. The DAC, through the Victorian Society representative, point to the national importance of the church as a fine example of the Gothic Revival and say that this is the only Anglican church in Birmingham designed by John Henry Chamberlain and that Foster's work does not cover Selly Park in any event. Having visited the church I am firmly of the view that St Stephens is of national importance given its uniqueness as an Anglican example of Chamberlain's work, and given the importance of Chamberlain in the Gothic Revival movement.

The Proposed Foyer

10. I must of course remind myself that the mere grant of Planning Consent by, in this case, Birmingham City Council, does not mean that I am bound by their decision. However it seems to me that my starting point must be that in this case the Authority has granted planning Consent for a circular foyer and that considerable attention had been paid to the proposals by the Conservation Officer of Birmingham County Council so far as the design of what is proposed. Thus, and subject to the "Alkmund" questions I should approach the Petition upon the basis that if I approve the concept, then subject to any arguments to the contrary, I should hold that the design approved by the Planning Authority is an appropriate design. I say "the design" because the real issue so far as the foyer is concerned does not seem to me to be whether a

foyer should be constructed, given the acceptance of the design of the new Parish rooms, but what shape it should take. As a result of the enquiries that I caused to be made it is likely that if the Parish had sought a design that was octagonal rather than round then in all probability it would have been granted. However they did not do so and their reasons for preferring a circular rather than an octagonal design are set out in their response to the DAC comments dated the 5 September 2012. The DAC had indicated that "members were concerned that the proposed design solution for the foyer did not connect well architecturally with the church and so would have a negative impact on the significance of the listed building". In particular the DAC felt that an octagonal design would replicate the octagonal design of the chancel at the east end of the church. The response from the Petitioners was as follows:-

*"There are two possible approaches:*

- (a) To copy the language of the existing architecture or*
- (b) Use a complementary but contrasting design.*

*The latter approach has been adopted because of the completeness of the original church and the desire not to dilute its wholeness and aesthetic balance with prominent disproportional extensions in the original architectural style. The contrasting approach works, the Church is solid, massive, substantial and impenetrable to the eye. It has a high pitched roof. In contrast the foyer is lightweight, transparent, with a low pitched roof, in copper, and much smaller in scale. There is every intention ... of keeping the foyer as a grandchild next to the Church as the senior grandfather."*

11. What is also clear is that the Parish would have been prepared to consider an octagonal design in an attempt to proceed on a consensual basis but the position of the Planning Authority is helpfully set out in an email dated the 7 March 2013. To summarise, they indicate that in principle, an octagonal shaped extension is likely to be acceptable but they point out the potential awkwardness of junctions to the link section and onward to the original building and that a change to the shape of the footprint may not be a material change requiring the re-application for planning consent but that a change to the elevational design or an increase in the footprint are

likely to require a full Planning Application. As they point out, a change at this stage would be "really starting to go back to the beginning of (the) design journey".

12. Any alteration to a Victorian church is of special interest and concern to the Victorian Society and the DAC are fortunate to have as one of its members Mr Tim Bridges who is the Victorian Society's conservation advisor for Birmingham and the West Midlands. His Society's view has always been that any erection of a foyer is unnecessary and that there is no need for there to be an external link between the new Parish rooms and the church building. I remind myself that I have granted a Faculty for the building of the new Parish rooms which incorporates an access to the Parish rooms outside the West end of the church. The Victorian Society's view is that its presence would detract from the visual amenity of the church as an example of Gothic Revival and that the design resembles a "bandstand".
13. The Petition for the foyer if granted will of course provide level access both into the church and from the church into the Parish rooms. I have seen for myself the differing levels of the accesses to the church; this did not of course trouble Victorian society but is of much more concern in the present day when the needs of disabled people have to be taken into much more focused account. There is no doubt in my mind that in terms of improving the access to the church itself, a foyer placed linking the West end of the church and the Parish rooms, with a third access to the exterior of the churchyard would be a considerable improvement.
14. It is perhaps significant that, subject to the views of the VS that I have alluded to above, the advice that I have received from the DAC is not to the effect that the foyer should not be built on a conceptual basis but rather that the design is either wrong, or not as good as it could be. Against that view, I have to weigh in the balance the fact that the design has been approved by the local Planning Authority and its conservation officer and that to insist upon the amendment so as to provide an octagonal design would mean a reapplication for Planning Permission which would inevitably cause considerable delay and even more cost to the Parish, the costs so far already having been appreciable.

#### The Other Works

15. The proposal to insert two pairs of double doors below and of the same width as the West window is dictated by the need to provide an internal access from the proposed

foyer to the church. The DAC's position, subject again to the VS's view, is that it is appropriate for such access way to be opened up but I am asked to consider whether the two pairs of double doors are excessive in size and appropriate in design. Inevitably the building of the foyer will require an alteration of the parking areas in the churchyard which are presently asphalted. One might have thought that the proposals to extend the hard standing area might not be controversial but the Statement of Need which accompanies the Petition indicates that there is adequate parking space outside on the road taken in conjunction with the present parking space. Furthermore the proposal is to replace the asphalt by extending the area of hard standing and using tegula bricks. The DAC are of the view that tegula is a manmade material more commonly associated with urban street works. They believe that this element of the scheme would have a negative impact on the setting of the church as the extension of hard standing will detract from the soft churchyard setting and does not appear to be necessary. The Parish's response is that for services involving large numbers of peoples, including weddings and funerals a large external space is required. The design objective is to give the Church three things;

- (i) A substantial external level paved assembly space;
- (ii) A proper forecourt to "de-domesticate" the landscaping and enhance the setting of the church, and a little more onsite parking. They say that the tegula paving blocks are a good compromise between asphalt and, say, York stone which would be more attractive but prohibitively expensive and they point out that the design proposals for the external space around St Stephens have been through the statutory consultation process in the planning system, and detailed planning permission has been received.
- (iii) A little more on-site parking.

- 16. Inevitably the building of the foyer will require an alteration to the parking areas in the churchyard which are presently asphalted.
- 17. Quite appropriately no comments have been raised in relation to the Petition to clean the exterior stonework and re-point and repair as required. That is non-controversial and I grant a Faculty to enable that to take place but I would make it subject to the

conditions sought by the DAC that the final materials, finishings and colours (if any alteration to the façade is required) should be specified fully and demonstrated on ensemble boards, and agreed by the DAC.

18. That then summarises the respective positions of the parties in respect of the works to be proposed. I shall now turn to a consideration as to how the Law impacts upon such proposals.
19. It seems to me to be logical that I deal first of all with the Petition for the creation of a new foyer; from that springs the request to open up the West end to provide an access and also to alter the hard standing areas outside the church. If the Petition for the foyer fails then there would be no purpose in pursuing the plans for the new access.
20. Considering the "Alkmund" questions it is clear that the proposals would, in the view of some sections of the community at least, result in harm to the significance of the church as a building of special architectural or historic interest. The views expressed by the Victorian Society are architecturally valid and must command a great deal of intellectual respect. In my Judgment therefore the answer to the first "Alkmund" question must be "yes". I must therefore consider how serious would that harm be and how clear and convincing is the justification for carrying out the proposals.
21. In addressing the seriousness of harm I am conscious of the fact that on balance the expert advice to which I have been privy is supportive of a foyer which would link the West end of the church with the new Parish rooms. I also bear in mind that the planning and conservation authorities of Birmingham City Council have approved the plans for a circular foyer. Of course the DAC would prefer an octagonal design although that seems to have found less favour with the Planners. Given the time and energy expended on the Petition it seems to me that once the concept is conceded it is a matter of very fine judgment as to whether a round design is better than an octagonal design or vice versa. Given the two perfectly respectable but conflicting views I then have to consider whether I should insist upon the Parish changing their plans and re-submitting an application for Planning Consent based on the DAC's preferred octagonal design. On balance I do not think that that is necessary. There may be visual advantages to an octagonal scheme but there may equally be disadvantages as is pointed out in the email from the Planning Officer. In



those circumstances it seems to me that the harm to the present church buildings of the erection of the foyer is not so serious as to prevent my granting the Petition for this work to be carried out. Of course there is a strong presumption against proposals which will adversely affect the special character of this listed building but the benefit to the Parish in terms of improvements in carrying out its mission and in terms of presenting a welcoming face to the community are in my judgement highly significant. The presence of the foyer will enable the church and the Parish rooms to be used in a more uniform way and will provide access to this remarkable church which is more in keeping with the 21<sup>st</sup> rather than the 19<sup>th</sup>, century. It follows from that that the proposals of the Petitioners for the carrying out of these works are clear and to my mind convincing. In many ways I am assisted in coming to this conclusion by the fact that the foyer is an "add on" to the Victorian original and will be visually (if not practically) separate from the original.

22. Having been satisfied about the appropriateness of the foyer I then must consider what sort of access should be provided from the foyer into the church itself. In my judgment it would make a nonsense of the overall scheme if access was not available from the foyer into the church building without having to go outside and re-enter through the south door. The real issue seems to me to be not whether there should be an access in the West end of the church but what that access should look like. In response to the DAC's comments the Petitioners accept that the proposed doors into the church foyer need careful design. It seems that the Architect has used a design idea from a successful door installation in a Grade II listed church in North Oxford. The proposal is based on a ladder type door, which is neither solid nor completely open needing enough woodwork to have the aesthetic effect of a trellis. I am told "*it is a definite plane, and a demarcation, but it is still see through linking one space to the other. The horizontal emphasis is intended to contrast well with the verticality of the mullions of the existing windows above.*" The Petitioners wish to avoid a "copy-cat" gothic type design. They have considered and rejected frameless glass doors because of problems of draft and soundproofing. The proposals involve 2 sets of double doors which would stretch to the same width as the West window. These proposals will of course have a significant impact upon the internal character of the church. Again I am conscious of the fact that in some quarters that constitutes harm to the entity of the church and hence its significance. However if the work is sympathetically carried out and the materials to be used are the subject of

discussions with the DAC then it seems to me that the same justification that I have found to exist in granting the Petition in respect of the foyer exists with the newly formed entrance in the West end. I am not sure that a smaller entrance would have the desired effect of enabling the foyer to be used as part of the church if the need arose and I do accept that there would be some architectural symmetry in the width of the doors being the same as the width of the window. The access to be formed is part, and an integral part at that, of the overall scheme and I am satisfied that the presumption against the work being carried out in so far as it alters the character of the church is overridden by the appropriateness of the design and the overall benefit to the church of developing its mission in the community.

23. Having granted the Faculty for the new entrance, I anticipate that it will be necessary for the font to be moved. As I have indicated in my Initial Judgment I am not persuaded that it is appropriate for the font to be removed from the church although I have not of course heard detailed submissions about that. It would seem to me to be far preferable for the Parish to look at incorporating a new position for the font in their proposed phase 2 development, even if it is not used frequently, as indeed I am told is the case at the moment.
24. I have to say that I have found the part of the Petition which relates to the re-ordering of the churchyard very difficult. The arguments against "tegula" block paving in that it is inconsistent with the curtilage of a Victorian Gothic revival church are powerful but one might counter that by saying that asphalt is not particularly satisfactory either. I hope that the Petitioners will not accuse me of ducking out of deciding the issue but I think on balance the suggestion from the DAC that I grant a Petition for the relaying of the hard surface so much as is necessary for the installation of the foyer and access to it is appropriate. Once that is completed then one can have another look at the general picture to see how best to accommodate the Parish's need for more space but at the same time retain the essential nature of a Victorian church albeit in the 21<sup>st</sup> century. I would ask that the Parish liaises with the DAC as to the precise nature of the materials to be used to achieve this and given the considerable expertise in the DAC and the evident preparedness of the Parish to attempt to follow the DAC's advice as far as was possible, I am confident that a solution can be found. Accordingly I grant the Petition for a Faculty to relay so much of the hard standing as is necessary for the installation of the foyer and forming an access to it, with a

material to be discussed with and agreed to by the DAC. To help both parties I wish to make it clear that the concept is not an issue; merely how the concept is to be put into reality.

25. Given that I have delivered these Judgments on submissions only, I am happy to receive further suggestions as to any matters that I have overlooked or any suggestions as to how the Registry can help the Parish achieve what is their most laudable aim as set out in their prospectus, of "serving our community with the good news of Jesus Christ for generations to come".
26. I would propose to attach to the grant of the Faculty a condition at least that a full photographic record, both in black and white and in colour shall be taken of the West end both internal and external to enable future generations to appreciate the original entity of this magnificent gothic revival church.

**Mark Powell QC**

**Chancellor of the Diocese**

**12 July 2013**