

In the Consistory Court of the Diocese of Blackburn

In re Christ Church, Charnock Richard

His Honour Judge David Hodge QC, Deputy Chancellor

1. This is a petition by the priest-in-charge and churchwardens for a faculty to permit the complete re-wiring and the installation of new and emergency lighting within this Grade II listed church at a cost of some £21,682 plus architects' fees of some £4,470. No external works are proposed to the church building. A detailed specification and working drawings have been prepared by Overton Architects of Ilkley, West Yorkshire who will be appointed to administer the contract. Mr Mike Overton is said to be a lighting specialist who was introduced to the Parochial Church Council by the Diocesan Advisory Committee and he has advised and guided the PCC throughout this process. The petition was lodged on 29 February 2016 and it is therefore governed by the *Faculty Jurisdiction Rules 2015* ("the *FJR 2015*").
2. The PCC unanimously approved the proposal for the works at a meeting held on 24 September 2015. The DAC unconditionally recommended the works for approval by the court on 11 December 2015. The DAC also recommended that the petitioners should consult Historic England and the Church Buildings Council because in the DAC's opinion some or all of the work was likely to affect the character of this Grade II listed church as a building of special architectural or historic interest. In fact, the petitioners had previously sought pre-application advice on the proposals from both Historic England and the Church Buildings Council. In a letter dated 27 November 2015 Historic England had written that on the basis of the information provided the proposal would not lead to an application for which it would be a statutory consultee and it was therefore unnecessary for it to engage in pre-application discussions in this instance and the PCC did not need to consult Historic England again on the proposal. In an email dated 10 December 2015 a Church Buildings Officer had confirmed that the Church Buildings Council was content to defer to the DAC on the consideration of these proposals as they were likely to have a low impact on the interior of this Grade II listed church. For the reasons that follow, I do not consider that the proposed works fall within rule 9.6 (1) of the *FJR 2015* so as to require me to seek the advice of the CBC nor do I consider that its advice would be of any assistance to me.
3. Despite expressing the opinion that some or all of the work was likely to affect the character of this Grade II listed church as a building of special architectural or historic interest, the DAC did not recommend that the PCC should consult the Victorian Society. I note that rule 4.5 (7) of the *FJR 2015* (in terms corresponding to rule 3.6 (7) of the *2013 Rules*) requires the DAC to include a recommendation that intending applicants for a faculty consult the Victorian Society (as the relevant national amenity society) if it appears to the DAC that

its advice relates to works involving alteration to a listed building to such an extent as would be likely to affect its character as a building of special architectural or historic interest and that the relevant consultation has not already taken place. Likewise, rule 9.3 of the *FJR 2015* requires the Chancellor to direct that special notice is given to the Victorian Society in such a case. When the papers were first referred to me, I noted that at its meeting on 24 September 2015 the PCC had requested the appointed lighting consultant to contact the Victorian Society. I caused the Diocesan Registry to inquire whether this had been done. The response was that the PCC had decided not to contact the Victorian Society because they had not been advised to do so by the DAC. Since there has been no prior consultation with the Victorian Society, I am obliged to direct that special notice is served upon it if the proposed works involve alterations to the church “to such an extent as would be likely to affect its character as a building of special architectural or historic interest”. This is an aspect of the case to which I shall return.

4. Public notices of the application to the court were duly displayed on a notice board inside the church and outside the church on a notice board (or on the principal door) where it could be read by the public from 6 January to 6 February 2016. No objections to the proposals have been notified to the Diocesan Registrar and the petition is therefore unopposed.
5. The petition is accompanied by appropriate statements of significance and of need. The latter document states that the current lighting in the church was installed a long time ago and consists of 150 watt bulbs fitted at a height which is only accessible by scaffolding, making the cost of changing a bulb very expensive and resulting in delay in authorising a contractor to undertake the work of replacement until several bulbs need to be changed. The existing 150 watt bulbs also consume a large amount of electricity making the current system expensive to run. While it may have been well designed initially, it is said to be unsuitable in the church today, with lots of shadows and many areas of poor lighting, even with all of the bulbs working. It is said that the church would definitely benefit from a modern installation which will include up-lighting and down-lighting, plus emergency lighting. The interior of the church will be completely transformed, creating a much better environment for a variety of occasions.
6. The listing particulars of the church are as follows:

“Church, 1856-60, by Harrison of Wigan. Sandstone rubble, roof of hexagonal slates in bands of blue and purple. West tower, nave, chancel with polygonal apse. In mixed style: forms of c.1200 with late Perpendicular details. Narrow 4-stage battlemented tower with diagonal buttresses (crocketed gablets at 1st stage), deeply moulded Tudor-arched west doorway with decorated spandrels, transomed 3-light west window in moulded 2-centred arch with hoodmould; dripstone band; 3 moulded circular clockfaces; 4 transomed 2-light belfry louvres; very prominent gargoyles at the corners, Buttressed 5 bay nave with gabled porch to 2nd bay and 3-light windows in Perpendicular style; chancel has 2 similar windows and coping pierced

by mouchettes; 5-sided buttressed apse has transomed 2-light windows with cinque-foils in the heads and a battlemented coping. Interior: scissor-braced hammerbeam roof; dado of apse has Commandment (etc) tables of glazed polychrome tiles; monumental effigy in white marble of Mrs. Frances Darlington (d. 1897) by J. Nesfield Forsyth, 1903. History: built by James Darlington, J.P., D.C., coal mine proprietor.”

7. The decision I have to make is governed by the authority of the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158. Proposed changes to a listed church building need to be addressed by reference to a series of questions, namely:

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 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?

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 I or II*, where serious harm should only exceptionally be allowed.

8. The Court of Arches in *In re St John the Baptist, Penshurst* (9 March 2015) has recently reaffirmed the approach to be taken in the determination of faculty petitions affecting listed buildings. At paragraph 22 it made four observations about the *Duffield* questions:

(a) Question (1) cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church. That is why each of those matters was specifically addressed in *Duffield* paras 57-58, the court having already found in para 52(i) that “the chancellor fell into a material error in failing to identify what was the special character and historic interest of the church as a whole (including the appearance of the chancel) and then to consider whether there would be an overall adverse effect by reason of the proposed change”.

(b) In answering questions (1) and (3), the particular grading of the listed church is highly relevant, whether or not serious harm will be occasioned. That is why in *Duffield* para 56 the court’s analysis of the effect on the character of the listed building referred to “the starting point...that this is a grade I listed building”.

(c) In answering question (4), what matters are the elements which comprise the justification, including justification falling short of need or necessity (see *Duffield* paras 85-86)? That is why the document setting out the justification for the proposals is now described in rule 3.3(1)(b) of the FJR 2013 as a document “commonly known as a “statement of needs”” (italics added), in recognition that it is not confined to needs strictly so-called.

(d) Questions (1), (3) and (5) are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article.”

9. I am enjoined to consider whether the proposed works will affect the character of this church not in the abstract but rather as “a building of special architectural or historic interest”. Having carefully considered the plans and specifications, and the listing particulars of this church, I am satisfied that the proposed works will not alter this Grade II church to such an extent as to be likely to affect its character as a building of special architectural or historic interest (notwithstanding that the DAC appears to have taken a different view). No significant re-ordering of the church or its fittings is proposed. After the re-wiring and the installation of the new lighting, the church will continue to be of special architectural and historical interest to the same degree, and in the same way, as at present, with none of its special architectural and historical features being affected. It follows that I do not consider that I am required to direct that special notice of this petition should be given to the Victorian Society. It also follows that I am satisfied that the proposals, if implemented, will not result in any harm to the significance of the church as a building of special architectural or historic interest. Thus, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable. This can be rebutted more or less readily, depending on the particular nature of the proposals. I am further satisfied that the ordinary presumption in favour of things as they stand is rebutted in the present case for the reasons set out in the statement of need. Questions 3, 4 and 5 of the *Duffield* therefore do not arise and do not fall to be considered by me.

10. I will therefore direct that a faculty be issued on condition:

(1) that the works are carried out within 6 months of the date of the faculty, in accordance with the recommendations of the DAC and all applicable electrical regulations currently in force, and subject to the supervision of Overton Architects; and

(2) that the church’s insurance company is notified and approves of the works before they commence.

His Honour Judge David Hodge QC

Deputy Chancellor
7 April 2016