

**IN THE COMMISSARY COURT OF CANTERBURY
IN RE ST. GEORGE, BENENDEN**

JUDGMENT

1. INTRODUCTION

1.1 St. George's Church Benenden is a beautiful twelfth century building overlooking the village green. It boasts a splendid tower which houses an outstanding peal of twelve bells. The bells were overhauled in 1971, augmented in the early 2000s and are now, I understand from the church information sheet, much in demand by visiting ringers. The tower contains an internal spiral staircase of stone steps up to a ringing chamber and clock. The steps are narrow, slightly uneven in surface and dimensions and the route is tortuous. For many years a thin rope has hung down on the central column of the staircase which people can use to steady themselves as they ascend and descend. This provision is adequate but the result is a journey which is certainly not for the faint hearted.

1.2 It appears that, early in 2011, the idea of providing some support on the outer side of the staircase was raised. Shortly after the matter had been discussed by the church's Mission through Heritage Group (which I believe to be a sub-committee of the PCC) a handrail was installed by Mr Lebon, the Tower Captain, who is a member of that Group. The handrail was made of black polypropylene tubing surrounded by whipped rope. This action led to a great deal of contention in the church community, most of the details of which do

not need to be set out in this Judgment. I must, however, reiterate¹ that the Faculty jurisdiction exists in order that proposals for changes to churches may be properly considered, publicised and executed. Ecclesiastical law is part of the law of the land and, as such, is binding upon all citizens, irrespective of whether or not they are church officers: as Bursell QC Ch observed in the case of In re St. Ebbe, Oxford [2012] PTSR, *“It is often forgotten that ‘ecclesiastical law.....is as much part of the law of the land as any other part of the law:’ see Halsbury’s Laws of England,”* (now 5th edn, paragraph 4). This case amply demonstrates the pitfalls of not following the proper procedures. The unauthorised handrail, irrespective of its practical or aesthetic merits, was not securely fixed to the wall and therefore became the subject of proper concern about its health and safety implications and the manner of its installation led to strife in the parish. The issue has clearly become a serious distraction from the church’s mission, occupying a disproportionate amount of the time and energy of the PCC, the Priest in Charge² and, eventually, the Archdeacon of Maidstone. Our new Archbishop, in his enthronement sermon, spoke eloquently about the tasks facing the Church in the world; this kind of episode is thoroughly inimical to that work.

- 1.3 After much discussion in the parish and consultation of its appointed architect and the DAC, the PCC resolved in March 2012 to petition for a handrail of a different design from the one in place. The Registry became aware of this decision via the DAC, who issued a certificate recommending approval of the proposed new handrail and a Petition form was despatched to the church’s

¹ See Re St. Mary the Virgin, Eastry

² Canon Hill retired on Easter Day 2013

architect on 21 March 2012. The proposed handrail was to be made of cast iron. Before the submission of any Petition, the Diocesan Registrar received an objection³ to the proposal from Mr Lebon but by this time no Petition had been lodged at the Registry. Mr Lebon's letter of objection was detailed and, in the main, well reasoned. It contains one serious misconception, however, in that it suggests that the rail which he had installed was an authorised 'experiment.' I know, from material to which I shall refer later in this Judgment, that the issue of purported authorisation at parish level is contentious and there is no need for me to examine the facts in detail or to reach any conclusion on that point; this is because, for the reasons set out above, there can be no question of a lawful 'experiment', since the installation lacked the authority of this Court.

- 1.4 There was evidently much dissension and debate in the church over the unauthorised rail. It is not necessary for me to set out the details or to make any findings of fact about those matters but I have expressed the Court's disapproval of the unlawful nature of the action. In August 2012, Mr Peter Edwards, a member of the PCC, emailed the DAC secretary, Mr Ian Dodd, to enquire about having the unauthorised rail removed. Mr Dodd alerted the Registry and the Archdeacon. The Registry informed Mr Edwards that a Faculty would be required to authorise removal of the handrail and the Registrar wrote, at my direction, to the Priest in Charge, the Revd Canon Dr Charles Hill, seeking clarification of the facts. I have found Canon Hill's helpfully clear reply useful in compiling my summary of the facts up to this point of my Judgment. At this stage, the matter was due to be discussed at

³ By letter dated 8 May 2012

the September DAC meeting so that the DAC could advise the parish and the Court of its conclusion.

1.5 In October 2012, however, before the DAC report was issued, one of the fixings for the handrail evidently became very loose and it was clear that quick action was required to address the health and safety situation. At about the same time, the DAC reported that, following discussions with the parish, they *“expressed a preference for the new rail being based on flexible plastic pipe with a rope finish in accordance with a sample which had been fitted. Further discussion would be needed to identify the most appropriate fixing arrangements.”* Given the safety implications, however, the DAC secretary indicated that the DAC would raise no objection to immediate removal. Meanwhile, Mr Edwards made it plain to the Archdeacon and the DAC that he was seriously considering submitting his own Faculty Petition for removal of the existing rail and, possibly, its replacement with a cast iron one, as proposed by the PCC in early 2012. The Archdeacon sensibly suggested a meeting to try to *“break the circle.”* Mr Edwards declined the Archdeacon’s offer.

1.6 In these unusual circumstances, the Archdeacon quite properly applied to the Court for the emergency removal, on health and safety grounds, of the unauthorised hand rail. On 8 November, I gave the following direction:

“I authorise the removal of the rail which is currently unlawfully in position. It was installed without authority and is now considered, for sensible reasons, to be unsafe. It should be removed. As I understand it, there will still be the original rope in place which ringers have been using for many years. If I am wrong about that and there is no support, then plainly the parish should prevent entry to the tower for the time being. That would mean that the bells would not be rung,

which would be a very sorry outcome in what is already a very sorry tale.

I expect the rail to be removed pursuant to my authorisation forthwith and, in any event, before the church is next open for public worship (presumably Sunday). As a condition of my authorisation I require the Churchwardens to notify the Archdeacon of Maidstone by email as soon as the rail has been removed.

In the event that the rail is not removed forthwith, I am at present minded to ask the Archdeacon to initiate an application for a restoration order pursuant to the Faculty Jurisdiction (Injunctions and Restoration Orders) Rules 1992. I would, in the unhappy circumstances of the Archdeacon having to do this, be minded to order the Court costs and the Archdeacon's costs to be met by the parish.

It is plainly desirable that the parish submits a faculty petition as soon as possible. If anyone else wishes to submit an alternative petition, I would consider both petitions together, with or without a hearing, depending upon how matters unfold. In saying that, I am not inviting a 'rival' petition and I would urge all parties to take up at once the Archdeacon's offer of a mediation meeting. In any event, a further condition of my authorisation is that a faculty petition be submitted by the incumbent and/or wardens within 14 days of today's date.*

** The priest-in-charge and churchwardens will, by now, have received a copy of the Eastry judgment and should note how useful an Archdeacon's mediation meeting can be. I strongly urge them to try one here before, rather than after, proceedings have been commenced.*

All concerned should note that I am in no way prejudging the merits of one form of support or another. I do not have the material upon which to do so and I would intend to visit the church before making any determination, irrespective of the other procedural aspects of disposal. I give my authorisation on health and safety grounds only and it is subject to the above conditions/directions in order to ensure that matters come properly before the Commissary Court as soon as possible because this situation requires resolution."

At the Archdeacon's request, I subsequently agreed to extend the deadline by a few days to accommodate the date of the PCC meeting.

- 1.7 The rail was duly removed on 8 November.
- 1.8 The DAC issued a certificate on 22 November recommending for approval *“the fixing of a hand rail on the tower stair between the ground floor and the point of access to the ringing floor, to be based on plastic tube with an outer rope covering in accordance with two photographs of a sample section which accompany this certificate.”* This recommendation was subject to the following provisos: first, despite a suggestion that the rail might be continued to the top of the tower access stair, the recommendation only related to fixing the rail as far as the ringing floor; second, details of the fixing arrangements were to be agreed on site with a representative of the DAC. The DAC further certified that, in their opinion, the proposal was not likely to affect either the character of the church as a building of special architectural or historic interest, or any archaeological interests.
- 1.9 On 26 November, the PCC resolved to apply for a Faculty for a polypropylene tube rail, the voting being recorded as 12 in favour, 2 against and 1 abstention. There are 16 members of the PCC. The Petition was submitted to the Registry on 28 November.

2. THE PETITION

- 2.1 The Petitioners are the Revd Canon Dr Charles Hill, Priest-in-Charge, Susan Elizabeth Fisher and David Richard (Dick) Hill, Churchwardens. They seek a Faculty to authorise: *“The fixing of a hand rail on the tower stair between the ground floor and the point of access to the ringing floor, to be based on plastic tube with an outer rope covering in accordance with two photographs*

(attached) of a sample section.” The photographs are the same as those which were the subject of the second DAC certificate and they show the unauthorised rail in position. The method of fixing proposed in the Petition is the use of *“extended fixings and resin.”* The Petition also records that the church dates from the twelfth century and is listed at Grade II*. The estimated cost of the works is £550 plus VAT, to be met from PCC funds. A short Statement of Needs apparently written by the church architect was submitted in support of the Petition, adapted from an earlier one relating to the anticipated previous proposal. It says: *“The provision of a safe and reliable handrail is mandatory in the construction of any new staircase, and eminently desirable in any existing staircase, particularly when the going, rising and width do not comply with modern standards.”* The Statement of Significance includes an extract from Newman and Pevsner’s ‘The Historic Buildings of England’ which records the west *“tower and a higher battlemented turret with a big plain pinnacle’* and, interestingly, notes that a detached 134 feet high timber belfry was destroyed in a storm of 1672 which did much damage to the church itself.

2.2 The Petition was duly advertised and attracted one objection, from Mr Peter Edwards. The Registrar wrote to Mr Lebon to ask whether he was objecting to the Petition and he replied by email saying that he did not wish to do so.

3. THE OBJECTION

3.1 Mr Edwards set out the history of the matter in his objection letter dated 13 December 2012, appending various documents. He noted, fairly, that the church architect, Mr John Underwood of Le Fevre Wood and Royle (now

known as 'Clague') had looked at the unauthorised rail in March 2011 and criticised it, particularly because he found the brackets "clumsy" and advised that the fixings were of the wrong sort. He recommended examination of iron rails of which he was aware in other local churches. A subsequent email from Mr Underwood dated 19 July 2012 stated that his earlier reservations about slipperiness had been overcome following modifications (I think that this is a reference to the addition of whipped rope to the tube) but that he still found it "unsightly" and he continued to have reservations about the fixings. He said that the DAC shared his view following the Chairman's visit and he noted that the earlier DAC certificate supports an iron rail. Despite the amended Statement of Need, I shall therefore determine this Petition on the basis that the evidence before me is to the effect that the church architect does not support the proposal in the Petition.

3.2 Mr Edwards lists his own objections to the proposed rail as follows:

1. *The rail will be too close to the wall which is uneven - you can catch knuckles on the wall. It cannot be moved further from the wall due to the thickness of the pipe and the fact that it would push people further from the safest part of the stairs.*
2. *Due to its size and construction it can only be used as far as the ringing chamber. This is no use to those of us who correct the clock every week or visitors going to the top of the tower.*
3. *The plastic rail flexes and gives no sense of security especially if one stumbles.*
4. *The plastic rail is ugly and not in keeping with the church fabric. Everybody is agreed on this fact but the DAC gets round this by saying the tower is a working space. As the church wishes to continue opening the tower and increasing the times it is opened this is not correct.*

5. *The proposed rope whipping will become wet and is likely to become slippery with time.*
6. *It is generally agreed the plastic rail will not be long lasting."*

He continues that he believes that the metal rail designed by Mr Underwood is preferable, noting that it was the subject of a positive DAC certificate. He wishes such a rail to go all the way up the tower for the benefit of those (including himself) who attend to the clock on a regular basis. Mr Edwards draws to my attention the beauty, interest and popularity with visitors of the church, which has a sundial at the top of the tower as well as the clock and bells. He says that the tower is opened to visitors on special occasions and that the PCC wishes to allow such access more frequently. He has supplied photographs of the suggested iron handrail. His objections also include a copy of a letter which he sent to Canon Hill in August 2011 setting out the unfortunate history of the matter, including his opinion on the question of whether or not the Mission through Heritage Group had purported to authorise the installation of the unlawful handrail. Whilst he clearly holds strong views about the way in which this matter has unfolded, as well as firm opinions about the right choice of rail, all his correspondence with Canon Hill and the Registry has been courteously, clearly and sensitively expressed, for which I, and I am sure others, are most grateful. I have already expressed the Court's disapproval for the unauthorised nature of the original installation and I sympathise with Mr Edwards' feelings about that aspect of the matter.

3.3 The Registrar wrote to Mr Edwards on 19 December 2012 asking whether he wished to become a Party Opponent, explaining the implications and sending

the necessary form. Mr Edwards did not reply so the Registrar confirmed by letter dated 24 January 2013 that his original objection would be submitted to me and taken into account. I saw no need to impose on those involved the burden, cost and stress of a hearing in this matter. I visited the church alone on 15 March and was conducted round by Canon Hill. I inspected the tower, climbing the staircase right to the top. Canon Hill also showed me the dismantled rail. Before my visit, I made it clear that the purpose was not to discuss the merits of the case but was simply to inform myself of the locus in quo and there was, indeed, no such discussion.

4. DISCUSSION

- 4.1 As I have noted above, the church is listed. The listing description was not included with the Petition or objection but I have downloaded it from English Heritage's website. It is in the following terms:

"BENENDEN TQ8032 THE GREEN 1350-0/7/125 CHURCH OF ST GEORGE 02/06/67 GV II Parish Church. C14 and C15, damaged after storm of 1672 and restored 1676 and in 1862 by David Brandon. Built of sandstone ashlar, south aisle of sandstone rubble with plain tiled roof. Nave and chancel without a break, north and south chapels, north and south aisles and north and south porches with parvises. West tower of 3 stages. Square with stepped buttresses, octagonal turret with spirelet to south west and crenellated parapet. Double round-headed window to south. West face has double round-headed window to top stage and small rectangular window below. Pointed arched 4 light window with cinque foiled heads and intersecting tracery. Pointed arched door with dripmould and C19 door with decorative iron hinges. Nave and chancel have crenellated parapet and stepped buttresses. Four 3 light cinquefoiled windows with dripmoulds. Large east window with 3 tiers of cinquefoil-headed lights. North porch has round headed arch and parvise with trefoiled lancet windows. Vaulted with 8 ribs and a salamander carving on the boss. South porch has C19 crenellated parapet, offset buttresses, rectangular window and pointed arched doorway. Interior 5 bay nave with*

octagonal columns and arches. C19 nave roof with 2 tiers of purlins, crenellated tie beams and C19 foliated corbels. C19 octagonal stone font. Coat of Arms of George II over north door. C19 aisle roofs. C19 chancel arch with angel corbels. C19 stained glass windows, octagonal stone font and octagonal stone pulpit on marble piers. North chapel has monument to Sir John Morris of Hempstead (d. 1750) Admiral of the Fleet by P. Scheemakers, a marble beast with obelisk behind, inscription tablet below and family shield and crest. Also standing wall monument to Thomas Hallett Hodges d. 1801, an urn bearing sarcophagus in front of truncated pyramid. (Buildings of England; "West Kent and the Weald":- John Newman: P.147)."

4.2 Since the church is a listed building I need to assess the proposal in accordance with the framework of questions recently articulated by the Court of Arches in Duffield, St Alkmund, paragraph 87:

- "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 (see **Peek v Trower** (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in **In re St Mary's White Waltham (No2)** [2010] PTSR 1689 at para 11). 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 (see **St Luke, Maidstone** at p.8), 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 1 or 2, where serious harm should only exceptionally be allowed.”*

4.3 In answer to Question 1 I conclude that there would be no harm to the significance of the church as a listed building for the following reasons. The tower only features in passing in the listing description and in Newman and Pevsner. The staircase is essentially functional, facilitating access to the ringing floor, to the bells themselves and to the clock, sundial and roof. Although the church architect, who is very experienced in such matters, does not favour the current proposal, the DAC has recommended it for approval. Having regard to the combined expertise of that Committee and the representation on it of both English Heritage and other heritage bodies, I give considerable weight to its advice, whilst noting that Mr Underwood has a different opinion. The fact that the DAC has also recommended an iron rail as a solution is not relevant to the assessment of harm or appropriateness of the proposal in the Petition, which is the only one before the Court. I therefore proceed, in accordance with Question 2 of Duffield, to consider on general principles whether or not the Faculty sought should be granted.

4.4 All parties appear to be of one mind that a handrail is required to make access easier, especially for the elderly and visitors. I agree. As to visitors, the church has clearly seen in its own heritage assets opportunities for mission and this endeavour is worthy of support. Because of the outstanding feature of a set of twelve working bells, it is to be hoped that ringers from elsewhere will continue to visit and avail themselves of such a beautiful way of proclaiming the church's presence in the village. The fact that this activity might be

described as a hobby does not detract from the enrichment which it brings both to the life of the church and to the lives of those who undertake it; opening up such opportunities is part of this church's call to employ its heritage assets in mission to others. Having regard to all these matters, I am persuaded of the advantages of allowing some change in this instance. Fixings must clearly be very carefully considered, as the DAC has advised, but I bear in mind that the installation of a handrail is a reversible change. The decisive questions are therefore whether the proposed handrail is fit for its purpose and a decent and appropriate addition to the fabric of this historic church. Mr Edwards' objections touch on these two questions and I shall use them as a framework for consideration, though departing from his ordering of points.

- 4.5 Point 2 : I am considering the Petition solely on its own merits. There is no proposal for the upper staircase before me. My decision on the current Petition will not prejudice consideration of any such future Petition on its own merits.
- 4.6 Points 1, 5 and 3 : Since the rail was not in place when I visited the church, I was unable to test it myself but I note that the idea for such an arrangement was originally borrowed from churches elsewhere in the country. There is no evidence before me of such problems having been experienced in other churches or, indeed, during the period when the rail was unlawfully in place at Benenden. If dampness is a problem, then it seems to me that it would be likely to be worse with a non-absorbent metal rail than a rope-covered one.

4.7 Point 6 : I have seen no other evidence to suggest that the rail will not last but if that proves to be the case, then the matter can be reconsidered in due course. The cost of providing it is not high.

4.8 Point 4 : This is a subjective point; it is well known that 'beauty is in the eye of the beholder.' I recognise that the church architect is not a supporter of the current proposal, though some of his objections were evidently addressed by the addition of rope around the tube which, as well as serving to reduce slipperiness, masks the plastic of the underlying tube. For my own part, I would not describe the proposed materials as ugly, on the strength of the photographs which show the rail against the background of the rough, creamy coloured tower wall and from my own observation of the dismantled rail in the church. As I have said, I also give considerable weight on this aspect to the advice of the DAC which includes several heritage experts of great experience and sensitivity.

5. CONCLUSIONS

5.1 Drawing all these matters together, I conclude:

- (a) that installation of a handrail as far as the ringing floor is justified
- (b) that the proposed handrail would be fit for its purpose and would not harm the significance of the historic building
- (c) that the proposed handrail, provided that it is properly fixed to the wall, would make a decent and fitting addition to the church tower.

5.2 Accordingly I order that a Faculty shall be issued for the works as set out in the Petition, subject to conditions limiting the life of the Faculty to twelve months from the date of issue, requiring proof of insurance cover both for undertaking the works and for future use of the handrail, requiring details of the fixing arrangements of the proposed rail to be agreed on site with a representative of the DAC and making provision for the protection of bats during the works.



Registrar

 MORAG ELLIS QC
2 April 2013