

IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE

In the Matter of St. Martin's Church, Brampton

Determined on the papers and without a hearing

THE PETITION OF:

- (1) The Reverend Canon Patricia Anne Rogers**
- (2) Frank Peck**
- (3) Lilian Jennifer Hopkins**

DETERMINATION – APPLICATION FOR PERMISSION TO APPEAL - REASONS

Dated 9 November 2025

1. By a Form 22 dated 29 October 2025 the Petitioners apply for permission to appeal under rule 23.1(1) Faculty Jurisdiction Rules (“FJR”). The proposed appeal concerns my judgment dated 12 October 2025 (“the Judgment”).
2. The purpose of this document (which is to be appended to my determination in Form 23) is to set out my reasons (FJR rule 23.2(3)(b)) for refusing permission to appeal.

The Test

3. FJR rule 22.2 states that –

“Permission to appeal to a provincial court may be granted only where the judge to whom the application for permission to appeal is made considers that—

(a) the appeal would have a real prospect of success; or

(b) there is some other compelling reason why the appeal should be heard.”

4. An appeal in this jurisdiction may succeed where a chancellor's evaluation of the facts taken as a whole is erroneous. There is no practical difference between that test and the one prescribed by Part 52 of the Civil Procedure Rules ("CPR") in the context of civil litigation. Therefore, an appeal may succeed if a chancellor errs in law, errs in fact, or errs (to the appropriate extent) in the exercise of his or her discretion. The authority for these propositions lies in the decision of the Arches Court of Canterbury in the leading case of *In Re St. Alkmund, Duffield* [2013] Fam 158 (Arches Court of Canterbury) at paragraph 53.
5. As to the requirement that the appeal should have a "*real prospect of success*" I take that to mean that there should be a realistic, as opposed to a fanciful, prospect of success (by analogy with the caselaw concerning CPR rule 52.6).

The Application for Permission to Appeal

6. The Form 22 in this case is supported by Grounds of Appeal running to 11 pages. Those Grounds refer to 6 plans drawn by Countryside Consultants Architects and Planners with references SK31 to SK36. Plans SK35 and SK36 are dated 20 October 2025, and plans SK31 to SK34 are dated 26 October 2025. In other words, they were all produced after the date of my Judgment.
7. The Petitioners propose 3 grounds of appeal, framed in the following terms as to the first 2:

"Our Grounds of Appeal are that integral to the Alternative Proposal (the Victorian Society suggestion) there is:

- 1) A very significant inequality of access and associated provision for those with mobility problems compared to those with no such problem or disability; and*
- 2) The creation of an unprecedented new opening or breach in the external wall of the church which represents a most significant alteration to the original design and both externally and internally the cramped and awkward insertion below one of the key original windows detracts from the setting of that important window and destroys the balance of the design at the west end of the south aisle. This is*

particularly unfortunate as an important feature of the design is the placement of the windows which are highlighted by being framed by plain unbroken wall around them.”

8. The third proposed ground of appeal is “*The lack of equal access for all is making the church increasingly unfit for its design use*”.
9. I respectfully observe that the grounds of appeal do not engage with the test for the grant of permission to appeal as set out above. It is not contended, for example, that my evaluation of the facts taken as a whole is erroneous, or that I made an error of law, or that I erred (to the appropriate extent) in the exercise of a discretion. Rather, on the strength of newly produced evidence, the Petitioners explain why they disagree with my decision. That is different from making a case that my decision was wrong: which is the necessary exercise on an appeal.
10. Nor do the Petitioners say that there is some other compelling reason why the appeal should be heard.
11. These factors alone, in my view, form a sufficient basis for dismissing the application for permission to appeal.
12. Nonetheless, for completeness, I make the following further observations about the 3 proposed grounds of appeal. So far as necessary, they amount to additional reasons why permission to appeal is refused.

First Ground of Appeal

13. As to the first ground of appeal, this is a submission, as I understand it, that the Alternative Proposal (as that expression is defined in my Judgment) is intrinsically objectionable because it would entail inequality of access. To support that submission the Petitioners now produce the further plans to which I have referred.

14. In that regard I refer to paragraphs 45 to 47 and 91 of my Judgment. In those passages I explain why I accept the principle, that where reasonably possible, equal access to a Church should involve a single entrance, used by all visitors.
15. As to the newly produced plans, at paragraph 97 of my Judgment I referred to the possibility of there being a further examination of the merits of the Alternative Proposal. Since this Petition has (as to access proposals) being dismissed, that exercise cannot take place within the (now concluded) proceedings. I reached my final decision on the materials available to me, and upon which the DAC had advised, and the Victorian Society, as party opponent, had made its submissions.

Second Ground of Appeal

16. I read the second ground of appeal as the further articulation of the Petitioners' case regarding the harm that would result from implementing the Alternative Proposal. These further arguments rest on new plans SK31 to SK35.
17. In so far as these arguments and evidence are new then I do not consider it was wrong of me not to take them into account when reaching my decision. In so far as the Petitioners' case rests on the arguments and evidence previously put forward, then my Judgment explains my approach to them, and the Petitioners do not make any case with a real prospect of success that the determination I reached was erroneous.

Third Ground of Appeal

18. The third ground of appeal is a further iteration of the Petitioners' understandable concerns over the difficulties caused by the present access to the Church. In my Judgment at paragraphs 64 to 66 I explained why I accepted their case that there is a "*compelling need for improved, and equal, access to this Church*".
19. Again, however, while I readily acknowledge the care and persistence with which the Petitioners have pursued their application, the arguments now advanced do

not identify any error of law or fact in my earlier assessment. The same reasoning as set out in paragraph 17 above applies equally here.

Concluding Remarks

20. Section 4 of the Grounds of Appeal is headed “Concluding Remarks”. Since it is not put forward as a ground of appeal I do not consider that I need to deal with the submissions made there.

Decision

21. For these reasons I do not consider that the proposed appeal would have a real prospect of success or that there is some other compelling reason why the appeal should be heard. That being so, I refuse permission to appeal.

JAMES FRYER-SPEDDING

Chancellor

9 November 2025