

Neutral Citation Number: [2017] EACC 4

IN THE ARCHES COURT OF CANTERBURY

**APPLICATION FOR PERMISSION TO APPEAL
FROM THE CONSISTORY COURT OF THE DIOCESE
OF PETERBOROUGH (CHANCELLOR DAVID PITTAWAY QC)**

LONGTHORPE, ST BOTOLPH'S

Between:

THE VICTORIAN SOCIETY

Applicant/Party Opponent

- and -

(1) The Reverend Canon WILLIAM STUART CROFT

(2) Mrs YVETTE VALERIE MAGRI

(3) Mr BRIAN COURTNEY GREEN

Respondents/Petitioners

On consideration of the chancellor's judgment and reasons for refusing permission to appeal, the Applicant's Grounds of Appeal (contained in its Statement of 31 March 2017 and Further Grounds of Appeal of 12 July 2017), the Respondents' Response and the Applicant's Comments thereon

**ORDER OF THE RIGHT WORSHIPFUL CHARLES GEORGE QC, Dean of the
Arches**

1. Save as provided by paras 2 to 4 of this Order, and subject to compliance by the Applicant with para 5, permission is given for the appeal to proceed.

Reasons:

Although the Grounds of Appeal are diffusely drafted, there are four matters on which there is a real prospect of success: (1) the chancellor's express reliance on the Petitioners' Comments on Responses of 29 November 2015 (erroneously referred to as dated 23 November 2015 in para 17 of his judgment), when that document appears not to have been disclosed to the Party Opponent, notwithstanding that parts of the document were repeated in the Petitioners' reply (dated 17 May 2016) to the grounds of objection: see para 58 of this court's judgment in *In re St Peter, Shipton Bellinger* [2016] Fam 193 ("the chancellor must not take into account any written material which has not been made available to the parties"); (2) the chancellor's failure expressly to identify what was the special architectural and/or historic interest of the listed church: see para 22 of this court's judgment in *In re St John the Baptist, Peshurst* [2015] PTSR D40, re-iterated at paras 39 and 80 in *Shipton Bellinger*. There also appears to have been no consideration of the content of the list description of this Grade I church (which is not

in the papers currently before the Court): see para 80 in *Shipton Bellinger*; (3) the reasoning (or absence thereof) in relation to why the proposed works to the chancel (other than removal of the screen) would only have a limited impact upon, and would result in no harm to the significance of the church, notwithstanding the contrary views of the Party Opponent, Historic England and the Twentieth Century Society (as recorded in paras 11-13 of the chancellor's judgment): see paras 33 and 49 in *Penshurst*, and para 34 in *Shipton Bellinger*; (4) the reasoning (or absence of reasoning) in relation to why the "substantial public benefit" which the chancellor found in para 18 of his judgment could not have been achieved whilst retaining the Victorian chancel fittings (other than the screen), given the "strong presumption against proposals which will adversely affect the character of a listed building": see *In re St Alkmund, Duffield* [2013] Fam 158 para 87, correctly cited in para 15 of the chancellor's judgment. A successful appeal on matter (4) would appear unlikely, absent success on other matters, especially matter (3).

2. Permission to appeal on Ground 2 is refused (chancellor's alleged treatment of the special interest in the church as being only "historic" rather than "architectural").

Reasons:

As the chancellor explained in refusing permission to appeal, the test was correctly set out in para 15 of his judgment, and thereafter the chancellor was simply "applying shorthand to [his] description of the test". This court used a rather similar shorthand in para 48 of its judgment in *Shipton Bellinger*, as identified by the deputy chancellor in para 8 of his judgment in *In re St Michael & All Angels, Croston* [2017] ECC Bl 5. This ground is not considered to stand a real prospect of success, nor does it raise an issue falling within rule 22(2)(b) of the Faculty Jurisdiction Rules 2015.

3. Permission to appeal is refused on Grounds 7, 12 and 13 (variously relating to the removal of the screen).

Reasons:

The chancellor's reasoning in relation to the proposed removal of the screen, as set out in para 21 of his judgment, was clear, and these grounds do not stand a real prospect of success, nor do these grounds raise issues falling within rule 22(2)(b) of the Faculty Jurisdiction Rules 2015.

4. Permission to appeal is refused on Ground 14 (restriction on wheelchair users).

Reasons:

This finding was reasonably open to the chancellor on the evidence before him, and this ground does not stand a real prospect of success, nor does it raise an issue falling within rule 22(2)(b) of the Faculty Jurisdiction Rules 2015.

5. Each party shall bear its own costs of the application for permission to appeal, and the court costs thereof shall be paid by the Applicant in any event. Within 21 days of this Order, the Provincial Registrar shall notify the Applicant of the court costs; and such costs shall be paid within 21 days thereafter

Reasons:

A discretion is conferred on the Dean of the Arches under rule 23.5(1)(b) of the Faculty Jurisdiction Rules 2015 in relation to costs. On a number of the matters contained in the renewed application, permission has been refused; and the Dean has been assisted by the Respondents' Response.

DIRECTIONS

Without prejudice to the requirements of rules 24.2(1)(b) and (2), and 27.2 of the Faculty Jurisdiction Rules 2015:

1. If it intends to proceed with the appeal, the Applicant (hereafter the Appellant) shall give notice to the Provincial Registry and to the Respondents within 14 days of issue of this Order, accompanied by a revised Notice of Appeal, limited to the four matters in respect of which permission to appeal has been granted in para 1 of the above Order.

2. Any Respondents' Notice shall be filed within 7 days of receipt of a revised Notice of Appeal under direction 1 (rather than the time-scale in rule 24.4(3) of the Faculty Jurisdiction Rules 2015).

3. Any application for permission to intervene in the appeal under rule 27.7 shall be made to the Provincial Registrar within 35 days of issue of this Order, and if permission is given, further directions will also be given.

4. Within 28 days of issue of this Order, the Appellant shall file an agreed, indexed and paginated, trial bundle (limited to a maximum of 100 pages, excluding the Judgment, but including all materials previously before the chancellor which would be necessary if the court were to proceed to a re-determination of the petition).

5. Within 42 days of issue of this Order the Appellant shall file a Skeleton Argument (limited to the four matters in respect of which permission to appeal has been granted). At the same time the Appellant shall, if it so wishes, file (in a sealed envelope addressed to the Provincial Registrar and clearly marked "confidential") a short statement of any further representations it would have wished the chancellor to consider had the Petitioners' Comments on Responses of 29 November 2015 been disclosed to them prior to the chancellor's determination of the appeal. This statement will only be disclosed to the Respondents and to the members of the court in the event that the appeal is allowed on Ground 1 in para 1 above and if the court proceeds to a re-determination.

6. Within 49 days of issue of this Order the Respondents shall file a Skeleton Argument (similarly limited to the four matters).

7. Within 56 days of this Order the Appellant shall file an agreed, indexed bundle of authorities (from the law reports, wherever possible).

8. Subject to compliance with direction 1 above, the matter will be set down for hearing (time estimate 4 hours, excluding judgment) in the church of St Botolph, and at a date and time to be notified to the parties (and any interveners) by the Provincial Registrar.

9. If either party considers that the appeal should properly be determined without a hearing, and thus solely on consideration of written representations pursuant to rule 24.6(2) of the Faculty Jurisdiction Rules 2015, they should so inform the Registrar within 56 days of this Order, and if both parties so agree, the Dean will then proceed to a consideration of whether such a course would be expedient and whether he should so order.

6 October 2017

**CHARLES GEORGE QC,
Dean of the Arches**