

RUSHALL: ST. MICHAEL THE ARCHANGEL

JUDGMENT

- 1) The church of St. Michael the Archangel in Rushall is a Grade II listed church. Although there has been a church on this site since 1220 the current church is Victorian. It contains wall paintings of national significance together with stained glass of historic note. The Petitioners seek a faculty for repairs to the stone work together with repairs to the stained glass and works of conservation in relation to the wall paintings.
- 2) The Diocesan Advisory Committee has recommended approval of the proposed works and has certified that they will neither result in a material change of appearance nor affect the church's historic or architectural significance. The Diocesan Advisory Committee added commentary to its recommendation saying that "*members were pleased to support the proposals which were of a high conservation standard*". There has been no objection in response to the public notice. However, in an e-mail of 16th May 2013 the Church Buildings Council expressed considerable reservations about the proposals in relation to the wall paintings and the stained glass.
- 3) It was those reservations which caused me to issue directions for the provision of further material to the Church Buildings Council, English Heritage, and the Victorian Society and for further clarification from the Petitioners. That exercise led to clarification of who it was proposed should perform the work on the wall paintings and on what basis. This has resulted in a considerable measure of agreement. The Victorian Society has no objection to the proposed works. The Church Buildings Council is now supportive of the proposed work on the wall paintings but continues to express concerns about the work on the windows and continues to advise that a faculty should not be granted for this item. I will return to those concerns below. English Heritage echoes and supports the approach taken by the Church Buildings Council. However, it is to be noted that English Heritage has made an offer of grant funding for the works and that the proposed works to the windows of the South Aisle which have caused such concern to the

Church Buildings Council are set out in the Schedule of Works which has been approved by English Heritage.

- 4) The position now is that the works proposed on the stonework and the wall paintings are supported by all the concerned bodies. Important though those works are I need not dwell on those aspects of the matter. It is clearly right that a faculty should issue for those works.
- 5) There remains dispute about the repairs proposed to the stained glass. I have concluded that I have sufficient material to enable me to determine that issue and that the representations of the Petitioners set out by e-mail adequately summarise their position. The Petitioners' consent to the determination of this matter on the basis of written representations is not set out in clear terms but is evident from the e-mails in which further representations are made and in which I am urged to resolve the issue as a matter of urgency. The potential urgency arises from the need for the Petitioners to be in a position to accept the time limited grant offer which has been made by English Heritage.
- 6) The Church Buildings Council sets out two reasons for its advice that a faculty should be refused. The first is essentially procedural. The Statement of Significance is in short terms and there is no detailed conservation report in respect of the windows setting out the condition of the glass, leadwork, painted surfaces, and ferramenta. The Church Buildings Council takes the view that such a report is necessary for it to be able to understand "*the condition of the glass, the causes of its deterioration, and the proposed repair strategy*". The Council says that it requires such a report before it considers supporting proposals involving work on historic glass and implicitly contends that the Court should adopt a similar approach. The second reason is substantive. The Council notes that the proposed works provide for the replacement of damaged painted glass. It says that this does not appear to be a conservation based approach and opposes it for that reason. In this respect the Church Buildings Council is referring to item 30.04 of the Schedule of Works which refers to the first and second windows from the west in the South Aisle and provides for the following works "*replace two damaged sections of painted glass – remove, repaint, and re-fit*". The current

state of those windows appears a little more fully from the Art of Glass quotation which describes them as having suffered “*missile damage*”.

- 7) Andrew Hayward is the church architect and on behalf of the Petitioners he has set out detailed responses to the Church Buildings Council’s concerns. Mr. Hayward accepts that the document from Art of Glass is a quotation rather than a conservation report. However, he says that it was prepared by window specialists who are familiar with conservation principles. In addition he explains that the origin of the proposed works lies in comments made in his Quinquennial Inspection report. In a further response Mr. Hayward emphasises that the intention is not to replace historic glass but rather to replace the lead comes holding the pieces of glass together. He says that many of the comes have reached the end of their useful life and contends that a failure to replace them would endanger the glass. The glass will all be retained and the pieces of glass which have been cracked will be repaired using techniques approved by English Heritage. I note that Mr. Hayward does not address in terms the question of some of the glass being repainted as is suggested by the quotation from item 30.04 above.
- 8) I deal first with the procedural point made by the Church Buildings Council. It is that body’s view that a faculty should not be granted for works such as this unless a detailed conservation report has been obtained. The benefits of having such a report are self-evident. All concerned can be clear as to what is being proposed. The scope for misunderstanding can be reduced. Moreover, there is an improved prospect of the works being done in an appropriate manner. While such a report is clearly desirable I am not able to say that it is an absolute precondition if the works proposed can otherwise be seen to be appropriate. Here the Diocesan Advisory Committee has recommended approval of the proposed works and the Victorian Society has stated that it has no objection to them. It is apparent that those bodies take the view that they have sufficient material on which to form a proper assessment of the proposed works and the need for them. The conclusion I have reached is that although a detailed conservation report is highly desirable its absence is not a bar to the grant of a faculty provided that the Court has other material which enables it to accept that proper account has been taken of the

relevant conservation principles. Here the fact is that the Diocesan Advisory Committee and an amenity society have been able to comment on particular proposals and to recommend support (in the case of the former). This is a powerful indication that sufficient material has been provided for a considered view to be taken and this is particularly so given the detailed comments which have been made by Mr. Hayward. Accordingly, although the absence of a detailed conservation report is regrettable it does not, of itself, operate to prevent the grant of a faculty.

- 9) What of the substantive objection? The Church Building Council's direct concern relates to the works proposed in respect of the windows to the western end of the South Aisle. As item 4 of the Art of Glass quotation and item 30.04 of the Schedule of Works indicate two sections of painted glass have been damaged and proposed works involve repainting of these.
- 10) There appears to be no difficulty about the other elements of the works proposed in respect of the windows. A need for such work has been shown and is generally accepted. The issue would be whether the works proposed are appropriate or go beyond what is needed. Although the Church Buildings Council expresses a general reservation to the effect that the absence of a conservation report means that it cannot be confident that any of the works are based on an appropriate conservation approach it does not take issue with any other specific item despite having clearly perused the Schedule of Works closely. I have already explained that the stance of the Diocesan Advisory Committee and the Victorian Society combined with the further information provided enable the Court to be confident that the works generally are founded on an appropriate approach.
- 11) There is a substantive dispute as to the works to the South Aisle. There are a number of possible courses open to me. One would be to decline to authorise any of the window works until there has been a determination on the question whether the works in the South Aisle are appropriate. Another would be to authorise the window works with the exception of those in the South Aisle. Yet another is to seek to address the questions in relation to the South Aisle by imposition of a condition. None of these would be entirely satisfactory and each has disadvantages. There is a particular difficulty in attempting to remedy the

difficulty here by the imposition of a condition because there would be a degree of contradiction between authorisation for the works and the imposition of a condition which might mean that part of the works would not be performed. Nonetheless, I have concluded that I should take account of the Diocesan Advisory Committee's support for the proposed works and the assurance given by Mr. Hayward that what is intended is not the replacement of the historic glass but its conservation. In those circumstances the contradiction is apparent rather than real and in reality the likely effect of the condition which I would impose would be to require the enunciation of principles which have already been taken into account. These factors enable me to address the difficulties by way of a condition.

12) A faculty will issue authorising the proposed works but it will be subject to a condition that the works in relation to the windows of the South Aisle shall not be performed until the Petitioners have both:

- a) Provided to the Court a report in respect of those works which shall be accompanied by photographs showing the windows and which shall explain:
 - i) The extent of the damage to the windows.
 - ii) The works proposed.
 - iii) The other approaches which were considered in respect of the windows and in particular the scope for less intrusive works.
 - iv) The reasons why those other approaches were rejected.
 - v) Whether it is the Petitioners' contention that the proposed works are the minimum necessary to conserve the windows and, if so, why.
 - vi) If that is not the Petitioners' contention then why is it contended that works going beyond that minimum are appropriate.

and

- b) Received the Court's authorisation to proceed with those works.

13) I envisage that it may be necessary for the Court to receive further advice from the Diocesan Advisory Committee and possibly the Church Buildings Council on receipt of that report and it may be that the authorisation to perform the works will not be granted. I anticipate, however, that the report will operate to make explicit what is implicit in the approach being taken and that an appropriate justification for the works will be made out.

STEPHEN EYRE
CHANCELLOR
17th July 2013