

IN THE CONSISTORY COURT
OF THE DIOCESE OF CARLISLE

RE ST PETER HEVERSHAM

JUDGMENT
delivered on 26 June 2021

Introduction

1. St Peter Heversham [the Church] is situated in a semi-rural location in the centre of the village of Heversham and there is fragmented woodland and farmland in the local area beyond the Church and graveyard.
2. It is a Grade II* listed church. It is the oldest recorded church in the original county of Westmorland and a church building has stood on the site since the 8th century. The Church was originally the Parish Church of a large parish which included the nearby market town of Milnthorpe until a church [St Thomas's church] was built there in the mid 19th century. It is now part of a three-parish grouping in a combined benefice with St Thomas Milnthorpe and the benefice of St John the Evangelist Levens and together the three churches are part of the proposed Kent Estuary Mission Community.
3. The Church suffered a major fire in 1601 and although much of the masonry survived, most of the roof dates from the renovation that followed. Subsequently the building underwent a major Victorian restoration in about 1897 as part of which the chancel was re-ordered and its roof together with a new tower was built by Austin and Paley, oak pews designed by them were installed and an intricate designed panelled screen in the entrance to commemorate the long reign of Queen Victoria. In fact, Mr Hubert Austin owned Heversham House opposite the Church and resided there for many years.
4. The building remained largely unchanged until recently when the interior was re-ordered.
5. The English Heritage listing of the Church sets out some of the Church's history, as set out above, and refers to:

'Gabled porch with pointed-arched openings with hood moulds, heavy oak studded inner door with early medieval ironwork, Shaft of Celtic cross in porch.'

6. I have already conducted a Consistory Court at the Church and remember the Church well. The application related to the removal of pews in the north aisle. Although that is not germane the application before me, it is helpful to set out the introductory paragraphs of the judgment I gave on 2 April 2015 to set out the context:

3. The Church remained unaltered until re-ordered some years ago when some of the pews at the west end of the north aisle were removed to form an enclosed creche. The forward altar was installed necessitating the removal of the first couple of pews, alterations were made to the Dallam Chapel situated in the south east corner of the Church to provide a kitchenette and coffee area constructed from the original pews and the choir pews were altered to provide more space in the Chancel, those removed being relocated into the ground floor of the tower at the west end of the Church.

4. The Church is rectangular in shape but the pews in the body of the nave lack symmetry in that in the central part of the nave the pews on the southern side are much wider than those on the northern side and the pews along on the southern aisle are much wider than those forming the northern aisle. This lack of symmetry is increased because the pews in the north aisle are further forward than those in the central part of the nave and the south aisle and a large part of the pews at the western end of the north aisle have long since been removed to form the choir vestry or creche.

5. The National Heritage listing of the building refers to a 'comprehensive restoration in 1868 by Paley and Austin including additional West Tower and rebuilding of Chancel Arch and North arcade' but does not refer to the pews which are the subject of these proceedings. The entry in *Pevsner* refers to the furnishings as 'mostly Paley & Austin, of high quality' but again does not expressly refer to the pews.'

7. There are two entrances to the Church, namely through a porch to the south west of the Church and a second entrance into the Dallam Chapel but neither entrance provides level access. There is single step in the porch and although there is a removal ramp used to provide wheelchair access, when such ramp is in use, the main door cannot be closed.

The Petition

8. By their Petition dated 11 August 2020 Revd Brian Kerr, the incumbent, and Richard Paul Simpson and Jane Fell, the churchwardens [together described as 'the Petitioners'] seek a faculty to undertake various works at the Church, namely:
 - 8.1. New porch door screens to create a draught lobby and a short ramp to replace the step;
 - 8.2. Alterations to oak panelling draught lobby to enclose 2 WCs;
 - 8.3. Alterations to children's pews, the wall panelling and the bread cupboard;
 - 8.4. Removal of 2 pews and creation of an area for welcoming visitors;
 - 8.5. Relocation of the Anglican cross shaft fragment and 2 grave slabs; and
 - 8.6. New electrical installation and minor alterations to heating system.

9. The Petition expressly referred to the fact that the proposed works could affect monuments in the church in that the bread cupboard, the children's pews and the grave slabs were to be re-located within the area of the proposed works.
10. The estimated costs of such works were estimated by the Church Architect at £ 67,500.
11. The proposed works were unanimously supported by a resolution of the Parochial Church Council ['PCC'] on 13 May 2019.
12. I have seen a number drawings in respect of the proposed works. In particular I note from drawing 135/10C an illustration of how the proposed works will affect the current situation, namely that access is gained to the Church by the South Porch, via a medieval door into an entrance area with a small narrow WC in the adjacent south west corner of the Church. What is proposed is that a new glazed door screen, opening outwards, should be inserted before the existing medieval door and that immediately behind the medieval door would be a further set of glazed doors opening inwards into the entrance area of the Church, that the step would be removed and replaced by a ramp and that the existing Austin and Paley screen would be retained but re-used in relation to the creation of a new disabled WC.
13. It seems that such works were in part prompted, or at the very least the need for them reinforced, by a visit by representatives of the Diocesan Advisory Committee ['DAC'] to the Church on 13 March 2017. Its report:
 - 13.1. observed that the church was active and busy with the three Sunday services and the 9.30 am service being attended by more than 40 people representing 90 regular worshippers.
 - 13.2. noted that within the western part of the draught lobby around the south door a very narrow WC had been inserted, there was a particular problem with draughts from the south door, a need to install a more efficient and environmentally friendly heating system and a pressing need to install WC facilities available to all and a desire to provide proper disabled access.
 - 13.3. opined that the south door offered the best option for disabled access, particularly since it had an easy, flagged gradient from the main entrance to the churchyard and that the arch into the south porch and the doorway into the Church were wide enough to permit wheelchair access and concluded thus:

The Paley and Austen lobby is ill-lit, restricted in its space and claustrophobic although its timberwork is attractive. If there were new glazed doors into the porch from the churchyard, then, the Victorian lobby would no longer be needed as a draught scheme. The existing WC, entered from the lobby, could be improved internally by removing the partition between the WC and wash-hand basin. However, this would not achieve a suitable standard for disabled use due to size restrictions. The best two options for providing a new, disabled WC appeared to be either within the old creche/current store ... or within the south-west entrance area close to the existing WC. In the case of the second option the Victorian timber panels of the lobby could be removed and used to form a most attractive outer wall along the eastern edge of the entrance area. A new,

disabled WC could then be set within the north-west corner of the entrance area where there is adequate room below the west window. There would be an advantage in having new and proposed cubicles close to each other by the main entrance and off a spacious gathering area which could be designed to be more welcoming and less cluttered. The second option is favoured and the DAC encourages the Church to carry its proposals forward with more discussion of the options and their implications within the congregation and the community.'

14. As hereinafter appears, the proposed works involve the adoption of the second option referred to by the DAC.
15. Prior to the Petition the Petitioners had consulted with Historic England ['HE'], the Society for the Protection of Ancient Buildings ['SPAB'] and the Victorian Society ['VS'].
16. At its meeting on 16 July 2020 the Diocesan Advisory Committee ['DAC'] recommended the proposed works subject to the following of mitigation measures as set out in the Bat Survey undertaken by Envirotech. Further, the DAC opined that the proposed works were likely to affect the character of the Church as a building of special architectural or historic interest and recommended that there be consultation with HE, SPAB and VS.
17. A Public Notice identifying the proposed works was displayed between 17 August 2020 and 14 September 2020. There were no objections raised by individuals to what was proposed.
18. As some reservations about the proposed works were expressed by HE, SPAB and VS, I directed that each of those bodies should be asked whether they wished to become parties to the proceedings but, in the event, none elected to do so. However, I have taken their views into account in determining this application.

The legal context for my determination

19. Before considering the merits of the representations made by HE, SPAB and VS, it is important to set out the legal context in which I am required to make my decision.
20. In determining whether I should grant a faculty, the burden of proof lies on the Petitioners who propose a change in the status quo by undertaking the proposed works and they are required to satisfy me on the balance of probabilities that it is appropriate for me to grant the faculty sought. Although the views expressed by the PCC as to the proposed works are of considerable weight, particularly when there is unanimity, there can be no presumption that such views will inevitably prevail because that would usurp my function as Chancellor to decide applications for faculties and the discretion which I am required to exercise in so doing.
21. In the case of a listed Church, such as this is, until 2012 the appropriate test for determining the petition was to adopt the questions first posed by Cameron Ch, as she

then was, in *Re St Helen Bishopsgate* (1993) 3 Ecc LJ256 and approved by the Court of Arches in *Re St Luke the Evangelist Maidstone* [1995] Fam 1. Such questions were:

- (1) Have the petitioners proved the necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of the parish or for some other compelling reason?
- (2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?
- (3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?

22. This approach had the disadvantage of requiring the court to determine what constituted a 'necessity'. In *Re St John the Evangelist Blackheath* [1998] 5 Ecc LJ 217 George Ch, as he then was, suggested that in the context of the *Bishopsgate Questions* 'necessity' meant 'something less than essential but more than merely desirable or convenient ... something that is requisite or reasonably necessary' and such an approach was followed by other chancellors.

23. In *Re St Alkmund, Duffield* [2013] Fam 158 the Court of Arches considered the *Bishopsgate Questions* and stated:

'87. In our opinion chancellors should be freed from the constraints of the *Bishopsgate* questions. We have much sympathy for the view of Chancellor McClean in *Re Wadsley Parish Church* (2001) 6 Ecc LJ172, at para 24, that there is a danger of imposing an unduly prescriptive framework in what is essentially a balancing process. For those chancellors who would be assisted by a new framework or guidelines, we suggest the following approach of asking:

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 (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.'

24. I shall endeavour to apply the principles set out in *Duffield* to the facts of this case.

The proposed works

25. In so far as the proposed works are contentious, they include the creation of a new draught lobby in the porch at the south-west of the Church with stepless access into the Church and a new WC accessible to people using wheelchairs. In his Statement of Significance and Impact Assessment, Paul Grout, the Church's Architect, summarises those works thus:

The proposal is to introduce a new door screen immediately below the central beam. It is an oak framed and glazed screen with double outward opening doors.... The sandstone step at the door will be taken up and dropped to form level access onto a new paved ramp that will rise internally to ground floor level. A second pair of double doors in an oak frame is set in the existing arched opening adjacent to the medieval door. These doors open inwards, away from the existing door, allowing it to close and bolt as it presently does. The medieval door will be kept in place during the work and carefully protected. The existing paved floor in the Porch is retained but the cement pointing in various mixes will be carefully removed and the floor re-bedded and re-pointed in lime-based material. There are no alterations to the walls, floor or roof of the Porch.

The existing draught lobby dated from 1897 and is the work of the architects Austin and Paley. It is an intricate and ornamental design incorporating linenfold panelling and obscured leaded glazing at high level. ... The screen will be carefully dismantled and taken down for re-use. All the existing panelling will be re-used and none is discarded. The screens will be reconfigured to form the enclosures to the new WCs and a privacy lobby below the existing west end window. The front and side screens are placed together to form a single partition that will extend across the full width of the space. The existing double doors will continue to be used as the doors to the new open lobby below the window. The inner door screen that gives access to the existing WC is reused to form its new entrance. There is obviously a considerable impact on the existing screen but it is mitigated by the re-use of all the panelling in as unaltered a way as possible.

The new WC will have an internal stud wall constructed against the panelling and finished with acoustic plasterboard to provide a soundproof enclosure. It will also have a ceiling that will step down to the sill of the high-level glazing in order not to obscure this (in the same way as the existing WC ceiling which is retained). Both WCs will be plastered internally and painted.

The Anglian cross dates from the 8th century and is of great archaeological interest. It is currently located behind the medieval door in the Porch and is not prominently displayed. The original intention was to relocate it to the west end of the South Aisle [but] it is now proposed to relocate it below the Tower, a location where it will be possible to view it from all sides.

There are two grave slabs in the corner of the entrance area which are partly hidden by the children's pews. These slabs will be carefully taken up and re-laid clear of the new WC in the same position relative to the corner pew. The existing plain sandstone slabs

in the area will be taken up to make space for them. A discrete plaque will acknowledge that the slabs have been moved.'

The PCC's justification for the proposed works

26. In its Statement of Need, the PCC stated that:
 - 26.1. the Church needed 'a more accessible and welcoming entrance without steps and an accessible toilet that is accessible to people using wheelchairs'. Because there were now fewer members of the congregation who were able to put the ramp down or take it up and the ramp 'can shift when in use and it is certainly a hazard to funeral bearers who have to take extreme care', the PCC 'was firmly of the view that the time for a permanent ramp is long overdue';
 - 26.2. the current lobby was 'ill-lit, restricted in its space and claustrophobic, a rather gloomy place before entering the church via doors in the screen' ;
 - 26.3. the 'tiny WC is useful in its way, but inadequate and impossible to use by people in wheelchairs';
 - 26.4. there was a problem with draughts from the south door because the original medieval door did not have a timber frame and thus did not fit tightly into the stone surround and that existing timber screen could not easily be draught-proofed; and
 - 26.5. 'it had become increasingly apparent that our present entrance and toilet arrangements limit the potential of the building'.
27. The PCC thus proposed to:
 - 27.1. remove the step at the main entrance and replace it with a ramp to improve wheelchair access;
 - 27.2. provide a second WC that could be used by those with mobility issues;
 - 27.3. provide a more open and welcoming circulation area adjacent to the entrance; and
 - 27.4. improve the entrance through the use of glass doors that would allow more light into the Church as well as acting as a draught lobby.
28. In carrying out such works the PCC believed that it would improve the Church building so as to provide reasonable access in accordance with the Disability Discrimination Act and to improve the arrangements for all who visit the Church. It expressed the hope that such works would make the Church building more usable and increase its popularity as a venue for a wide variety of community activities. Because such works would reduce the amount of space available as a welcome area it was also sought to remove two pews from rear of the south aisle to create more space.

29. I now turn to consider the representations made by HE, SPAB and VS, the responses thereto by the Petitioners and my determination in respect of such representations.

Historic England

30. HE attended the Church on 20 February 2020 and in his letter dated 26 March 2020 to Mr Simpson, Mr Ross Brazier, HE's Inspector of Historic Buildings and Areas, set out HE's views which may be summarised thus.

30.1. HE had no objection to the last four items of works set out in paragraph 8 above, namely in relation to the alteration of the existing children's pews, wall panelling and bread cupboard, the removal of two pews and the creation of an area for welcoming visitors, the relocation of the Anglian cross shaft and two grave slabs or the new electrical installation and alterations to the existing heating system.

30.2. As to the first two items HE was supportive of the removal of the step and the creation of the ramp to provide better access. Moreover, it had no objection in principle to the removal, dismantling and careful re-use of the Austin and Paley draught lobby so as to create a reconfigured accessible WC arrangement, nor the creation of the new toilet area. Such was notwithstanding that HE regarded the lobby to be of significance, particularly since Mr Hubert Austin had lived in the adjacent Heversham House. Neither, as appears below, did HE have any objection in principle to the introduction of glazed doors behind the inside face of the medieval door.

30.3. It follows that HE's objection was a fairly narrow one.

30.4. HE's objection was expressed in the following terms:

'However, we still have concerns in relation to the proposed screen within the porch. The south porch dates to the 14th century it contains roof beams of this period and in part has enabled the survival of the church's medieval door. The porch is deep and generous in size and also currently contains the 8th century cross shaft, apart from the contemporary notice boards this porch is an unaltered open space and part of its significance is derived from this. [HE] is concerned that the proposed screening will cause harm to the significance of the porch through its subdivision that will impact upon its relationship to the medieval door and the ability to appreciate in its original form.

We note that the proposals seek to introduce glazed doors behind the inside face of the medieval door, which we have no objection to in principle. With this proposed addition of doors we do not feel the potential level of harm caused by the introduction of the screen to the porch can be justified and that it also, in part, undermines the argument for the removal of the existing draught lobby.'

30.5. In conclusion HE asked that further consideration should be given to the proposed screening within the porch.

31. I note that in a subsequent email to the DAC, Mr Simpson stated that when Mr Brazier had expressed his concerns about the glazed doors in the porch at the time of his site

visit, he was unable to suggest any alternative solutions and that although Mr Simpson had suggested that Mr Brazier's report should include suggestions as to how the need for the glazed doors might be avoided, his letter did not contain any such suggestions.

32. I also note that because was unable to attend the DAC meeting on 16 July 2020, one member [Andy Lowe] emailed the DAC secretary to say, notwithstanding the view expressed by HE, he was still supportive of the Petitioners 'well thought out, well presented and justifiable scheme'. Moreover, he noted that over years HE had been keen to accept and encourage the installation of internal glazing in high grade listed buildings, expressed the view that 'the installation of a delicate glazed screen would not cause any undue harm ... and would still enable its character to be seen by people entering the church' and thought it significant that the HE Inspector had been unable to discuss another alternative.

Society for the Protection of Ancient Buildings

33. SPAB did not visit the Church but expressed their views on consideration of all the documentation supplied in an email sent on 9 September 2020.
34. SPAB recognised the need to create an accessible entrance to the Church and a fully accessible toilet. It thus accepted the need for some changes to be made at the South porch entrance and recognised the mitigation efforts of what was proposed, by the retention of the medieval door and the re-use of the Victorian lobby screens.
35. However, it was concerned that:
- 35.1. the present proposals would have a harmful impact on the building's significance and special interest and believed that there were alternative and less harmful and intrusive solutions that could improve access, make a more welcoming entrance and improve the problem with draughts through the south door; and
- 35.2. the proposed glazed and timber screen to the South porch would be 'very invasive and of great detriment to the simple and beautiful character and proportions of the existing space'.
36. To meet such concerns SPAB proposed, as a less invasive solution, namely that:
- 36.1. the existing Austin and Paley lobby be retained in its existing position and sensitively altered by perhaps more glazing to the ceiling, wall panels or doors and draught proofing improved;
- 36.2. the new glazed doors behind the medieval door be omitted;
- 36.3. a new fully accessible WC created in a new pod in the proposed location; and
- 36.4. draught-proofing introduced at the south door as there seems to be a frame not around the medieval door itself but within the south door opening.

37. SPAB concluded that, although it was accepted that there is a need for a fully accessible WC and level access into the Church and an understandable desire by the PCC to create a more welcoming entrance, it could not support the current proposals, particularly the proposed glazed door screen to the South porch, because it believed that there was no clear and convincing justification for the harm that would be caused.

Victorian Society

38. When initially consulted about the proposals in their email sent on 12 August 2019 VS offered no comments on the proposals. However, when they had been supplied with full details of the proposed works and plans, by their email sent on 5 December 2019 VS made no independent representations about the proposed works but stated that they were content to defer to SPAB on this proposal.
39. It would thus seem that VS is content that the existing draught lobby designed by Austin and Paley is to be dismantled and reconfigured in the way described by Mr Grout so that all the existing panelling is used and none is discarded. However, I am bound to express some doubt as to whether VS would have been supportive of SPAB's 'sensitive' alterations to the Austin and Paley lobby by the addition of glazing as opposed to the dismantling and reconfiguration of such lobby which used all the existing panelling.
40. This response from VS thus adds nothing to the representations made by HE or SPAB HE which I have set out above.

The response of the Petitioners

41. The PCC believes that the proposed works would support it in meeting the very real and future needs of those attending so as to make the Church fit for the 21st century and to further its mission whilst doing its best to conserve the aesthetics and history of the Church.
42. The Petitioners note that in broad terms HE and SPAB are broadly supportive of the proposed works and of the reasoning behind them.
43. As to the submission by HE and SPAB that the introduction of the glazed doors in the porch will result in harm to the significance of the South porch in that its subdivision by the proposed screening will impact on its relationship with the medieval door and the ability to appreciate it in its original form, the PCC strongly disagrees. It believes that the introduction of the two sets of glazed doors is a fundamental part of the South porch and entrance works in that it is the only practical way of creating a draught lobby.
44. As to the 'less invasive solution' proposed by SPAB, the PCC believes that such proposal does not bear detailed scrutiny because it ignores the following:

- 44.1. the removal and re-use of the Austin and Paley screen is necessary so that the paved ramp can rise from the porch into the Church and that the internal glazed doors can be installed. The relaying of the floor is necessary to make the Church fully accessible;
- 44.2. the omission of the glazed doors behind the medieval door would mean that the existing and unappreciated draughts from the south porch would continue. The PCC emphasise that there is a self-evident need for a draught lobby, namely to address the problem with draughts from the south door caused largely because the original medieval door does not have a timber frame and does not fit tightly into its stone surround and to retain heat produced by the oil-fired boiler, which would of course save money and reduce the Church's carbon footprint;
- 44.3. although any suggested draught-proofing is likely to be effective when the medieval door was closed, in practice it would be ineffective as at all times when the Church is open and being used, the medieval door is kept open and the other doors are used to facilitate traffic in and out of the Church;
- 44.4. it is believed that the introduction of a new pod would be intrusive and unsightly and would not constitute a sensitive addition to the Church; and
- 44.5. there is not sufficient space in the entrance area within the Church, which in itself is likely to be congested at the commencement and end of services, to accommodate a draught lobby when allowing for the necessary provision of WCs and the ramp replacing the step.
45. The PCC thus concluded that it believed that it has considered the proposed works carefully, with assistance from and in conjunction with the DAC, and that the proposals represented the only realistic way forward.

Response of the Church Architect

46. There were separate personal representations made by the Church Architect in response to the comments of HE and SPAB.
47. Mr Grout made a number of points which may be summarised thus.
 - 47.1. The medieval door is very heavy and not opened and closed on each occasion when someone enters the Church. It is not a tight-fitting door and is normally kept open when the Church is in use. A draught lobby is needed to address the problem of draughts into the Church from the South porch and the consequential loss of heating. Here the draught lobby is created by the insertion of new glazed doors: those immediately behind the medieval door opening inwards into the Church and the new porch screen in front of the medieval door opening outwards. Mr Grout did not think it was sensible to omit any draught lobby and rely on a single set of doors, however well sealed. He believed that the only possible location for such a draught lobby was in the porch if the other attributes of the scheme, deemed essential by the PCC and acknowledged by the consultees, were to be retained.

- 47.2. HE was supportive of the proposed works save for the creation of the glazed door screen in the porch to provide the draught lobby which it believed would 'cause harm to the significance of the porch through its subdivision that will impact upon its relationship to the medieval door and the ability to appreciate in its original form'. Whilst Mr Grout agreed the South porch was a significant part of the Church, he believed that any such impact on the fabric of the church would be low. He did not accept that the effect of the glazed door screen in the porch would harm the building to an unacceptable extent, bearing in mind that there was a need to create a draught lobby. It was in Mr Grout's view significant that, although at HE's site visit, Mr Brazier had offered to consider possible alternatives to the proposed works, none had been suggested by Mr Brazier.
- 47.3. SPAB had supported the idea that the South porch entrance should become the main access route into the Church and recognised the need to create an accessible entrance and fully accessible WC provision but believed that the proposed works would have 'a harmful impact on the building's significance and special interest' and the alternative solution it proposed was less harmful or intrusive. Mr Grout disagreed and observed that SPAB did not visit the Church. He also submitted that the alternative proposal put forward by SPAB was impractical and did not bear detailed scrutiny for the reasons given and in particular that the removal of the step from the porch into the Church without cutting the medieval door, which was deemed unacceptable, necessitated the round levels at the foot of the door being altered. Moreover, he confirmed that the creation of a pod to accommodate the fully accessible WC had been considered but was rejected because it was adjudged to be too visually intrusive and he believed that the glazing of the attractive and original Austin and Paley screen would adversely affect it.
- 47.4. Finally, Mr Grout emphasised that the glazed door screen in the porch was a completely reversible addition since it is only very lightly fixed to the existing building and could be removed at any time in the future without causing any damage.

Response of the DAC

48. In giving its advice the DAC observed that at its meeting on 10 September 2020, it had considered and debated SPAB's alternative proposals but rejected them. In particular, it believed that the creation of a new pod to house accessible WC facilities would look very much out of place and noticeable to all entering the Church and that inserting glazed panels into the Austin and Paley screen would fundamentally and detrimentally alter it. Moreover, it believed that the medieval porch was so robust that the glazed door screen would not be significant in its visual impact or detract from appreciation of that robust character.
49. The DAC opined that the scheme was a well thought out and practical one which enhanced the building and made the Church more welcoming and useable and supported the proposed works because they believed that:
- 49.1. they were sensitive to the character of the building and were light in impact and reversible;

- 49.2. would alleviate the discomfort of the congregation, given that the winds from Morecambe Bay blew straight into the Church through the South porch and had not been mitigated by previous attempts at draught proofing, without affecting important medieval features; and
- 49.3. the re-siting of the Austin and Paley screen [to which VS had not objected] allowed for its character to be better appreciated and would allow the entrance to appear lighter.

Conclusion as to the merits of the application for a faculty

50. The proposed works largely seek to address what the DAC report [see paragraph 13 above] referred to as the Austin and Paley lobby being 'ill-lit, restricted in space and claustrophobic'.
51. Most of the proposed works are welcomed by HE and SPAB.
52. HE's only concern, articulated in full above, is that the glazed door screen in the porch would cause harm to the significance of the porch 'through its subdivision that will impact upon its relationship to the medieval door and the ability to appreciate in its original form'.
53. Although I note that Mr Grout might disagree that any harm would be caused by the present of the glazed door screen in the porch, with some hesitation, I accept that the undertaking of the proposed works would result in some harm to the significance of the church as a building of special architectural or historic interest because of the impact of the relationship between the glazed door screen and the medieval door and the ability to appreciate the medieval door itself.
54. However, having considered all the material facts here, I am satisfied that the seriousness of such harm is low.
55. In such circumstances I am required to ask myself how clear and convincing is the justification for the proposed works which will result in a low degree of harm to the significance of the church as a building of special architectural or historic interest.
56. I have carefully considered the justification put forward by the Petitioners for the proposed works and I am wholly satisfied that they have made a clear and convincing case for the proposed works to be undertaken for the following reasons:
- 56.1. The Church should have a fully accessible entrance and fully accessible WC facilities because the current WC is inadequate for many.
- 56.2. Although there is a ramp, there are now fewer people to put it in place and remove it, and I can well understand that it could constitute a hazard at funerals and that the PCC firmly believes that the time for the removal of the step and the need to rely on a ramp, is long overdue;
- 56.3. There is a problem with draughts from the south door because the original medieval door did not have a timber frame and thus did not fit tightly into the stone surround and

that existing timber screen could not easily be draught-proofed. This leads to loss of heat and thereby the unnecessary expense. A draught lobby would save money and reduce the Church's carbon footprint. I am thus satisfied that in order to provide for the uncontroversial parts of the scheme, in particular less access entrance and fully accessible WC facilities, there should be a draught lobby. I am also persuaded that the only realistic location for such a draught lobby is in the South porch and that the only way of creating such a draft lobby is by the insertion of the glazed door screen in front of the medieval door.

- 56.4. The current lobby is ill-lit, restricted in its space and claustrophobic and provides an uninspiring welcome and departure area for those using the Church; and
- 56.5. All these matters limit the potential use of the Church and its opportunities for mission in the locality.
57. In the exercise of my discretion, I am convinced that the justification for the works to be undertaken far outweighs the low degree of harm to the significance of the Church as a building of special architectural or historic interest.
58. I am fortified in such conclusion in that, although HE and SPAB recognise the understandable desire of the Church to eliminate draughts from the South porch, provide step-free access to the Church and provide fully accessible WC facilities, which will allow the Church to further its use and mission, neither has been able to suggest an alternative means of achieving these desirable aspirations. Had there been any alternative means, I am confident that HE and/or SPAB would have identified it and conspicuously they have not.
59. In reaching my conclusion I have borne in mind that even if I was in error in my assessment of the degree of harm or the justification for carrying out the proposals, which I do not believe that I am, the insertion of the glazed glass screen in the porch is entirely reversible because it is only very lightly fixed to the existing building and could be removed at any time in the future without causing any damage.
60. Thus, in principle I will grant the faculty sought subject to the report of Envirotech.

The report of Envirotech

61. Finally, I turn to consider the Bat Survey undertaken by Envirotech dated 7 November 2019. For present purposes, it is only necessary to set out the Executive Summary and the Mitigation Strategy.
62. The Executive Summary states:

It is understood that [the Church] will have alterations to the porch to facilitate access and visitor experience.

A daytime inspection was undertaken on the 30th October and 7 November 2019. This involved a close inspection of the building for signs of use by bats and birds both internally and externally.

A desk study and data search were also undertaken to ensure the reasonable probable use of the site by bats and nesting birds could be determined.

The habitat around the site offers a moderate potential for foraging having scattered trees and fragmented woodland. There is moderate connectivity between the site and higher quality foraging areas.

Bat emergence surveys have been carried out at the site over a number of years by the local bat group volunteers including Envirotech staff, finding declining numbers of roosting Natterer's bats in the porch.

A very low number of scattered bat droppings were found in the church porch. This tallies with the recorded decline in numbers of roosting bats and time of year the surveys were undertaken. In the past, bats were found to enter/exit the roost site above the arched entrance to the porch, on the inside, and commute on the front of the church to foraging areas.

It is considered that the proposed works will impact upon any remaining bats using the roost site in the porch. The light sampling area of the porch will be reduced by 50% and bats will have to light towards the lighter porch entrance which has light spill from adjacent flood lights, rather than the darker area to be enclosed by a glass door.

On the basis of the survey work carried out, under guidance provided in respect of the Conservation of Habitats and Species Regulation (2017), and considering the plans for the site, it is considered that a European Protected Species Mitigation (EPSM) Licence for bats will be required prior to the works being carried out.

There was evidence of birds having nested/roosted in the porch. A check for nesting birds must be carried out prior to works commencing.

A mitigation strategy has been prepared and should be followed in order to ensure that the welfare of the local bat and bird population is maintained during, and following the works. This includes carrying out the work during the months November – March and looking for potential improvement of the roost with the removal or timing of the external floodlights.'

63. Recommended mitigation measures are set out in section 9 of the report and the Mitigation Summary states:

'The site survey found no evidence of bats roosting in the areas to be lost by the proposed work. There is ongoing but reduced use of the retained open area of the porch by bats. With the retention of the existing known roost but reduced light sampling area in the porch, there is a need to offset this impact with the removal of the external floodlights adjacent the roost during the time of year the roost is used.

Works will not be commenced or undertaken in such a way that active bird nest sites are disturbed.

On the basis of survey information, specialist knowledge of bat species and the mitigation that has been proposed, it is considered that on balance the proposed activity is reasonably likely to result in an offence under Regulation 39 of the Conservation (Natural Habitats, &c) Regulations 2017. We consider there to be as need for a Natural England licence at this time.'

Conclusions

64. I will thus grant the faculty sought but on condition that:

- [1] the proposed works shall be carried out during the months of November to March;
- [2] prior to the commencement of the proposed works the Petitioners shall -
 - [a] obtain a European Protected Species Licence in relation to bats and
 - [b] undertake a check for nesting birds;
- [3] the works shall not be undertaken in such a way that active bird nesting sites or bats are disturbed;
- [4] the provisions of the Mitigation Strategy set out in section 9 of the report by Envirotech dated 7 November 2019 shall be strictly complied with; and
- [5] the external flood lights shall not be used during the time of year when the bat roost is used.

65. I will give liberty to apply to the Petitioners to vary the precise wording of such conditions, if the need arises.

66. Again, I conclude this judgment by citing dicta of Sir John Owen who, when giving judgment in *Re St Luke the Evangelist Maidstone*, stated:

'Respect for the past and for the fabric of the building has an important part to play when a decision has to be made about proposed changes to any listed building, secular or ecclesiastical, but preservation does not preclude all alteration; otherwise no listed building consent would ever be given. Whilst taking full account of the characteristics of the building, which have justified the listing, it is always necessary to bear in mind that the primary purpose of a church is for the worship of Almighty God and the making of changes to meet the justifiable requirements of the present generation of worshippers can sometimes be the best way of securing the continuing use of the building for that purpose.'

67. In this case in my judgment the Petitioners are to be congratulated on overseeing a long process of discernment in the parish as to how the Church might be suitably improved to facilitate accessible access and toilets in conjunction with the DAC.

68. Since no person making representations applied to become a party to these proceedings, it is the settled practice that the Petitioners must bear the costs of these proceedings and I so order.



GEOFFREY TATTERSALL QC

Chancellor of the Diocese of Carlisle