**Neutral Citation Number: [2024] ECC B&W 2**

**In the Consistory Court of The Diocese of Bath and Wells**

**Re: The Church of Saint Julian the Hospitaller, Wellow**

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**Judgment**

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1. Although the present petition, brought by the Reverend Matthew Street, minister of the church of Saint Julian the Hospitaller, Wellow together with Jane Rees and Pam Pike, churchwardens of the parish, is formally unopposed it gives rise to an important issue of principle. The proposal is to create a doorway in the North wall of the mediaeval tower of this Grade I listed church for the purpose of providing access to kitchen and lavatory accommodation yet to be built against the external wall.

Procedure

2. The Petitioners' proposal is controversial. The Diocesan Advisory Committee does not recommend it, whilst of the amenity bodies involved in the consultation the Society for the Protection of Ancient Buildings considers intervention in the mediaeval fabric to be unjustified. Thus if there is to be no breach in the North wall of the tower the entire project, as currently formulated, is doomed to failure.

3. In an informal approach to the Court for procedural guidance, the Petitioners explained that if a decision against the provision of the doorway is postponed until all aspects of the wider scheme are finalised, there will be a significant waste of time, effort and expenditure on the part of the parish. Conversely if their preferred means of access is to be permitted, it will be possible to proceed with further detailed work in the confidence that the scheme will not fall at the first hurdle.

4. Fortunately, Rule 1 of the Faculty Jurisdiction Rules 2015 sets out an overriding objective "to enable the court to deal with cases justly." More specifically, Rule 1.1(2) provides that the overriding objective includes,

> ……." *(b) saving expense;*
> *(c) dealing with the case in ways that are proportionate to the importance of the case and the complexity of the issues; and*
> *(d) ensuring that it is dealt with expeditiously and fairly."*

5. In applying these principles, in particular the saving of expense and the need for expedition and fairness, it was clear that the issue of the doorway in the tower had to be resolved promptly. Since the Petitioners were not ready to present a comprehensive petition covering the entire scheme, it was not practicable simply to

direct the question of the doorway to be determined as a preliminary issue. Instead a direction was given on June 17th 2024 to the effect that a petition should be lodged limited to the creation of a doorway in the tower wall for the purpose of giving access to future kitchen and lavatory facilities. Should this petition be successful, the Petitioners will be at liberty to present a second petition in due course dealing with the balance of the scheme. It is this first petition, dated June 26th 2024, with which the present judgment is concerned. The petition has the unanimous support of the Parochial Church Council. No objection or written representation has been received from the parishioners at large.

The Church and Churchyard

6. In "The Buildings of England, North Somerset and Bristol" Nikolaus Pevsner described St. Julian's church as,

*"A proud, little altered, stylistically very uniform church, masculine rather than refined."*

Almost any alteration to it would have to surmount major obstacles. The following features are of particular relevance to the current proposal. The nave, with its 15th century panelled roof and seating, is an important survival, the coherence of which has not been disturbed by the Victorian work to the chancel or the post-war rood screen. While parts of the nave and chancel may date from a consecration in 1372, much of the fabric is associated with a major renovation in about 1430. The age of the tower, at the West of the nave, is more difficult to establish although it is doubtless mediaeval. Discrepancies between the stonework of the tower and the adjacent walls suggest separate periods of construction; moreover at a height of about two metres the roughly-finished hardstone of the exterior is succeeded by a better dressed surface, probably of Bath stone. The thick walls of 1.2 metres at the base of the tower, are formed of exterior and interior facing stones separated by an infill of rubble. Internally, the base of the tower is an open space entered either by the substantial West doors or through an archway at the end of the nave. Its blank North wall is the element presently under consideration. A trapdoor in the ceiling allows the bells to be lowered when necessary. More generally, the ground floor of the tower provides an assembly point for weddings and funerals; in addition it serves as a convenient place for children to gather during all-age services.

7. A door in the North wall of the nave gives access, across an open drain and up a series of stone steps, to an extensive area of churchyard known as the North Field. It affords fine views of the church and in addition to its open aspect is an important archaeological site containing early burials.

The Need for Change

8. At present kitchen or lavatory facilities at the church are virtually non-existent. This gives rise to inconvenience when congregations of the order of 100 can be expected at weddings, funerals and major festivals, quite apart from falling short of the needs of

regular worshippers. The lack of such modern amenities is rightly perceived by the PCC to be an obstacle to growth as well as failure to make effective use of an attractive historic building. The requirement of a kitchenette and two lavatory cubicles (one for disabled use) is, in itself, unchallenged. Furthermore, the grant of planning permission on March 28th 2023 by Bath and North East Somerset Council for an extension adjacent to the tower (while not addressing the issues before the Court) is an implied recognition of the Petitioners' case on need. For present purposes the Petitioners have established a compelling need for these facilities, at least in some form.

Options Considered by the Petitioners

9. The process leading to the present petition began in 2017 with the preparation by the parish of an options appraisal preceding a DAC delegation visit in October of that year. Of the four options then under consideration, the location of the facilities at the West end of the nave was rejected as spoiling the harmony of the important historic interior, including the displacement of some of the 15th century seating. Furthermore, the DAC delegation correctly advised against the use of the vestry, with its limited means of access through the chancel. Neither of these options can now be viewed as practicable.

10. A fresh options document was formulated in 2022; this impressive exercise, illustrated by drawings, listed points for and against each potential strategy. Each displayed drawbacks as well as advantages. There remained in realistic contention what is described in the 2022 appraisal as Option A (the interior base of the tower) option C (a new building in the North Field connected to the nave doorway by a glass corridor) Option E (the Petitioners' preferred proposal, the subject of the petition) and Option F. The latter would place the kitchenette within the tower and the lavatory block against its exterior North wall; but access would be through the West doors and across an open paved area.

11. Although Option A has the benefit of minimal intrusion into historic fabric, its disadvantages include cramped facilities coupled with a serious reduction in the utility of the tower space and impairment of the impressive entrance through the West doors. It amounts to an uncomfortable compromise, both visually and practically. Option C, while having the advantage of access through the North nave door, necessarily involves a major impact upon an important archaeological site, with a probable disturbance of graves. Unless the new structure were to be designed with exceptional sensitivity, it would disfigure both the views of the elegant North elevation of the church and the uncluttered appearance of the North field. Expense is another factor which militates against Option C.

12. The detrimental effect of creating a doorway in the tower wall in order to facilitate Option E was appreciated from the outset. By contrast the insertion of a new structure fitting neatly between the projecting nave wall and a tower buttress provides an unobtrusive and architecturally satisfying solution. It is for this arrangement that planning permission was granted. In an attempt to preserve the integrity of the tower wall Option F for external access was included in the 2022 document and considered

by the PCC with their advisors. The respective merits of Options E and F are considered in paragraphs 28 to 30 below. The 2022 series of options included, for completeness, the vestry (Option B) and the West end of the nave (option D) although by then these two arrangements were recognised to be inappropriate.

Structural Considerations

13. The insertion of an opening in the base of a tower of three stages, equipped with a heavy ring of six bells, is liable to have serious structural implications. The necessary investigations, including the drilling of trial holes, were accordingly carried out in 2019. Mr Patrick Stow on behalf of the DAC reported on the outcome. He wrote,

*"the walling in the tower is built in two distinct phases, the lower section being especially hard possibly local (Chilcompton?) stone roughly dressed and prone to damp issues at low level but entirely competent. The upper section in which the lintel zone is anticipated to reside is a much softer possibly a Bath stone, dry, competent and with a well-filled core. There is no structural objection to making a hole in this walling to create a doorway……..the writer is now content with the notion of creating a doorway through this wall only to serve as the minimum access width required for disabled access to the proposed new facility to be located externally to the tower."*

14. Notwithstanding his favourable structural report I am informed that Mr Stow has on other grounds concurred with members of the DAC in giving their negative advice in respect of the Petitioners' preferred option.

15. A further question is whether, in the event of a future change of circumstances, it will be possible to close such an opening and reinstate the wall. The Petitioners sought appropriate advice from Mr Philip Harrison of Abbey Masonry Limited, the company engaged to bore the trial holes. As well as concurring with Mr Stow's structural assessment, Mr Harrison indicated in his response of July 5th 2024,

*"If for some reason it was ever decided to close the new opening this would be achieved by simply rebuilding the stonework in a similar way as the exploratory core holes were reinstated."*

Thus the creation of a new opening is reversible, albeit without the use of the original stone if that material ceased to be available.

The Advice of the Consultees

16. Opposition to the tower doorway has been expressed consistently by the Society for the Protection of Ancient Buildings. The Society's final position, set out in Rachel Broomfield's message of October 19th 2022 and confirmed on August 1st 2024, is that whilst the provision of a structure against the North tower wall is unobjectionable,

*"… we cannot support the formation of the proposed new door at the base of the tower as this would cause an unacceptable level of harm to the historic fabric of this grade I listed building."*

The Society in its advice points to the need for great weight to be given to the conservation of the building, irrespective of the degree of potential harm involved in the proposal.

17. The effect of the Society's advice is to favour what is described in paragraph 12 above as Option F. In the event of an opening in the tower wall being permitted, clarification is sought concerning the formation of the lintel.

18. By contrast the Church Buildings Council was cautiously receptive in its reaction to the Petitioners' preferred scheme. In her letter of October18th 2018 Jacinta Fisher, the Church Buildings Officer, commented,

*"The Council….. was supportive of the proposed location but expressed concern regarding the penetration of the north wall of the tower which is estimated at 1.2m thick. This option will have archaeological and structural implications as well as challenges in handling the design of the opening."*

The Council's 2018 advice was confirmed on October 9th 2024. Meanwhile the structural implications had been investigated, as detailed in paragraph 13 above.

19. Recent advice from Historic England dated August 26th 2024 is supportive of the Petitioners' case. The following is an extract:-

*"The preferred option would involve an extension in the north west corner of the building, in the angle of the tower and the north aisle. There would be a small visual impact externally on the west window of the north aisle. More seriously, an entrance would be created through the masonry of the north wall of the tower in order to access the new facilities, through what is likely to be mediaeval fabric albeit plain walling. This would result in a degree of harm. It has been suggested that accessing the new facilities externally would be preferable in order to avoid this harm. I have sympathy for the case that the parish has made that this would make the use of the WC (and to some degree the building as a whole) inconvenient. It would also involve the kitchenette being placed in the base of the tower, resulting in a degree of harm through the resulting visual clutter. Despite the harm caused by the loss of historic fabric through creation of the new opening, a convincing case has been made here that the harm would be justified."*

20. Finally it must be added that on October 18th 2019 the Ancient Monuments Society, while not offering a detailed analysis of the matter, commented,

*"… we raise no concerns over the proposed breach of the tower shell…"*

<u>The Advice of the Diocesan Advisory Committee</u>

21. It has been helpful to receive from the DAC detailed reasons for their advice, set out in extracts from the minutes of meetings held on September 20th 2023 and May 15th 2024, together with the Chairman's notes, one (concerning procedure) sent to the

parish and the other dated June 23rd 2024 to the Registry. The essence of their evaluation of the Petitioners' proposal appears in the first of these minutes:-

*"the DAC decided that they would not recommend approval for this intervention which would compromise the historic fabric of this grade I listed building. Further the DAC consider that the placing for servery and toilet facilities together in the extension, accessed by one door does not serve the parishes' expressed need for a better community gathering space. Drinks and food will need to be served in the tower area."*

22. The advice of the DAC, as the body most familiar with the parish churches of the Diocese, and whose involvement with the present project has extended over the past seven years, commands particular respect. Their advice, in conjunction with that of the Society for the Protection of Ancient Buildings is in purely conservation terms unimpeachable. In the present case, however, some aspects of the reasoning of the DAC give rise to hesitation. Most significantly, at the relevant times the DAC did not have the benefit of the advice of Historic England dated August 26th 2024, quoted in paragraph 19. The content of that advice might have affected their views, especially as in September 2023 the parish was encouraged to consult, amongst others, Historic England.

23. The comment in the September 2023 minutes that,

*"… the DAC do not believe that the parish has considered all the options carefully enough."*

is inconsistent with the contrary observations of the Church Buildings Council (letter, October 18th 2018) and Historic England (advice, August 26th 2024). Historic England put the matter in this way,

*"a considerable amount of preparatory work and thought has clearly gone into these proposals. Alternative options for the accessible WC and kitchen have been considered in depth."*

24. The parish may have done itself a disservice in failing to engage more constructively with the DAC. Moreover, the tenacity with which it has pursued its preferred option perhaps disguised the extent to which other options had been weighed in the balances and found wanting. In any event, it is doubtful whether returning to the well-trodden path of the options appraisals would yield any fresh insights.

25. The practical concern of the DAC about serving refreshments in the tower area applies equally to Options E and F as described in paragraph 12, save that under Option F the tower kitchenette would be a permanent feature, occupying floor space. Under Option E, a kitchenette in the extension might enable refreshments to be taken within the tower from a trestle table or some other purely temporary arrangement, preserving the integrity of the tower space for its other purposes.

Conclusion

26. In approaching cases of this nature a Consistory Court will have regard to the assistance given by the Court of Arches in Re St. Alkmund, Duffield [2023] FAM 158 as explained in Re St. John the Baptist, Penshurst [2015] WLR (D)115. The issue here, however, diverges from the well-known Duffield questions which are designed to balance the public benefit arising from a desired change against the detriment to the significance of a listed church resulting from that change. Instead the benefits associated with the introduction of the lavatory and kitchen facilities are both obvious and undisputed. The difficulty lies in identifying the means of introducing them which best respects the integrity of this important historic building. Underlying the exercise is the need to minimise harm to a Grade I listed church, some harm being associated with whichever outcome is selected.

27. Returning to the 2022 list of options, the use of the vestry (B) was rightly discarded as being impractical. Option C, a new building in the North Field (even if affordable) amounts to a visual blight upon a sensitive location which would also disturb historic archaeology and human remains. An incursion into the nave (D) was at an early stage recognised to be inappropriate through diminishing the quality of a largely unspoilt interior. Similar considerations apply to the interior of the tower (A), itself a dignified and useful space which would be impaired by modern encroachments. All these options carry with them unacceptable levels of harm.

28. The external tower extension (both E and F) has planning permission and is, of itself, uncontroversial. Its means of access, however, remain problematic. The creation of a new doorway involving disruption to, and loss of, mediaeval fabric must be viewed unfavourably on the advice of the DAC and the Society for the Protection of Ancient Buildings. For their part, however, the Petitioners have advanced various submissions favouring internal access (E) as against the external route (F).

29. The external approach from the church interior to the extension leads first through the West doors. These heavy double doors are of some antiquity; both leaves have to be open for the purpose of disabled access while a person with any degree of physical impairment could not move them unaided.

    The fitting of mechanical opening systems to such historic doors is itself a harmful interference. Outside the church the pathway, uninviting in the darkness, would be exposed to inclement weather. The extension itself would require an external door, with the consequential enlargement in its footprint causing it to be more obtrusive. Even when enlarged, the kitchenette could no longer be accommodated in the extension, its inevitable transfer to the tower leading to a harmful diminution in the extent and quality of that space.

30. Each of the above factors, taken individually, might not be decisive; but collectively they amount to a combination of harm and inconvenience which is hard to justify. When compared with the internal access, which gives rise to no equivalent problems, the creation of the doorway (notwithstanding the impact upon historic fabric) Is less detrimental. It follows that the Petitioners' selection of Option E is, on balance, correct. The decision in favour of the Petitioners, made in the face of competent

specialist opinion, is not reached lightly. It is, however fortified by the assessment of Historic England which arrived at a similar conclusion.

31. Accordingly, a faculty will issue upon the present petition. It will be subject to the condition that no work shall be undertaken under it (save preliminary archaeological investigation) until a further faculty for the construction of the associated extension has been granted. There will also be two technical conditions. First the size of the doorway shall be restricted to the minimum extent practicable for the purposes of disabled access. Secondly, the Petitioners shall provide the Society for the Protection of Ancient Buildings with details of the design and material of the lintel, and shall have regard to any advice given by the said consultee in that respect.

32. It is implicit in the directions which have already been given that, when the second petition is presented, no objection shall be admissible in respect of the provision of the tower doorway.

Timothy Briden
Chancellor

Dated this 20th day of November 2024