

In the matter of All Saints, Bingley

Judgment

1. This is a petition dated 15 December 2015 brought by the incumbent and churchwardens of All Saints, Bingley. The incumbent was installed as Archdeacon of Richmond and Craven on Sunday 17 January 2016 whereupon the benefice fell vacant. The petition continues in the names of the churchwardens.
2. The petition concerns improvements to the entrance and pathways to the church. This includes improving access to the principal entrance via the south-west porch, the south east corner entrance and the west gate. It is also proposed to re-site several memorial stones which currently form the footpaths.
3. The papers reveal a lengthy period of consultation with various interested persons in compliance with the provisions of both secular planning permission and the faculty jurisdiction. It is always complex in dual jurisdiction cases and the parish is to be commended for the careful and meticulous manner in which it has navigated both processes and responded to observations from consultative bodies.
4. As the matter had developed considerably from when it was first mooted, I considered it prudent to conduct a site visit which took place on the afternoon of Saturday 6 February 2016. The petition is not formally opposed and I followed the guidance of the Court of Arches in *Re Holy Trinity, Eccleshall* [2011] Fam 1 and *Re St Peter, Shipton Bellinger* (19 November 2015) in relation to informal viewings. I met the inspecting architect, Mr Stuart Beaumont, together with Ms A Parker (churchwarden) and Mr J G Hardman (project manager). I was walked round churchyard and the two separate burial grounds. The registrar was not present, since he has properly excused himself from any involvement in this petition because he is a regular worshipper at the church.
5. At the conclusion of my site visit I indicated that a faculty would issue for reasons which are now set out in this judgment.

The proposals

6. All Saints is an attractive Grade II* listed church which dates, in part at least, from the sixteenth century and lies within the Bingley Old Main Street Conservation Area. The churchyard was closed by Order in Council in 1904. This coincided with the construction of Keighley Road which was built through the former churchyard to the east of the church building. This is a major thoroughfare carrying a heavy traffic load

and it leaves an isolated rectangular section of closed churchyard on the opposite side of the road from the church.

7. Many of the headstones from section of the churchyard used for the public highway were laid as paving around the churchyard. This may have been an imaginative use of memorials but the consequence has been to create footpaths in the churchyard which are extremely slippery and hazardous when wet. There have been several accidents with people suffering injuries. In the current age of health and safety concerns, it would be irresponsible for the incumbent and the PCC not to provide a safe means of access through the churchyard both for those attending worship and others using it as a convenient shortcut. To be fair, there is no objection to the proposed introduction of footpaths and landscaping and the parish has acted closely with the planning authority to produce a scheme which does justice to the setting of this attractive church, including re-siting a gate which lies to the north.
8. What proved controversial, however, and generated local interest was what was to be done with the headstones (effectively now little more than paving slabs with a history) which would have to be moved to make way for the paths fabricated of tamped air entrained concrete, together with associated landscaping works. Originally it was proposed placing them in what is referred to as a rose garden to the south of the churchyard. This lawned area, whilst not particularly attractive in itself, is valued as a community open space, and there were concerns that the installation of the headstones would be used by local youths for anti-social purposes. Accordingly the parish has looked for other places to which the displaced headstones could be relocated and it is to this contentious aspect that I will return later in this judgment.

Planning permission

9. Planning permission was granted by the City of Bradford MDC on 21 April 2015. I established during the site visit that the works covered by the planning permission are coterminous with those proposed in the current petition. The senior planning officer, in giving authority for the issue of planning permission noted that the revised proposals which omitted works in the rose garden had attracted fewer objections from local residents and stated that 'the relocation of gravestones is a matter for separate legislation/procedures' which Mr Beaumont takes to be a reference to the faculty jurisdiction, and I tend to agree with him.

Historic England

10. Historic England were consulted at an early stage and corresponded with Bradford MDC when the application for planning permission was under consideration. It indicated constructive support for the proposals mindful that they affected the setting of a listed church but also recognising, quite properly, that a major consideration is ensuring continuity of mission by providing a long term sustainable future for the church. The correspondence indicates broad agreement for the proposals, subject to a reservation as to the security of stone tablets during temporary storage, which seems to have been addressed to its satisfaction by Mr Beaumont.

Church Buildings Council

11. The CBC expressed support for the plans for improving access and landscaping when first consulted in July 2014. It has commented further as the plans have developed and remains supportive, being content to defer to the DAC on matters of detail on the more limited works now proposed.

Victorian Society

12. The Victorian Society indicated by email on 29 September 2015 that it did not wish to comment on these proposals.

Response to public notice

13. Public notice of the petition elicited letters to the registry from Mr Paul Taylor and from Mr and Mrs S Smith, although the latter was addressed to the Planning Service in Bradford. They live in Bailey Hills Road which lies to the north of the church and proximate to the local authority cemetery where it is proposed certain of the headstones be sited. Their concern is that the siting of a large number of headstones would detract from the 'park' appearance of the cemetery identified as Site 1 of the map where Cemetery Road performs a U-turn. I have some sympathy for their views but believe that steps can be taken to eliminate or mitigate their concerns.

Discussion

14. There is an overwhelming case for the paving and landscaping to be undertaken, and it is a cause of regret that procedural issues have delayed their commencement. They are necessary for access purposes under the Disability Discrimination Act and for health and safety concerns. The parish is fortunate not to have been on the receiving end of legal proceedings for people who have been injured. I can attest to the treacherous surface of these headstones in the rain. Considerable weight must be given to the fact that planning permission has been granted following public consultation and the obtaining of expert opinion.
15. I am content for the works to commence forthwith and I am further content for the headstones to be placed temporarily in the separate part of the churchyard on the far side of the Keighley Road while plans are put in place to find permanent homes for the displaced headstones. It is impossible to know how many there are as in places they may be several deep. Only when the works are under way will the number be definitively established.
16. Mr Beaumont had reviewed the documentation and come to the view that there may well be fewer headstones needing re-siting. He had conservatively estimated at an earlier stage as being in the order of 160. In addition, the parish has the advantage of assistance from Mr Ian Roberts concerning the options for the various memorial tablets. His most recent report, dated 28 November 2015, contains an assessment of the options for the memorial tablets.
17. Having authorised the commencement of the essential works in relation to the footpaths and landscaping, I need to address what is to become of the displaced memorial tablets. They have long ceased to be associated with any grave and

therefore in being absorbed into the surface of the churchyard for pedestrian traffic, such rights of ownership as the heir-at-law may once have had are to my mind extinguished, or at least significantly curtailed. No claim to ownership has resulted or objection from an heir-at-law as been voiced in response to significant public notice in pursuance of both the secular and the ecclesiastical jurisdictions. Nonetheless, having regard to their former use as grave markers, and to their value as objects of historic interest, the deployment of these tablets must be seemly and appropriate, as must their safe and secure storage in the interim. I particularly want to avoid the memorials being temporarily stored only to find that the parish lacks the funds to facilitate a permanent solution.

Temporary storage and future plans

18. With those observations in mind, I am prepared to authorise the temporary safe storage of these memorials in the Old Churchyard to the south of Keighley Road. This authorisation will be for twelve months in the first instance. The parish can request an extension to this period for up to one further year, but that request will need to be accompanied by a full progress report of work undertaken and a summary of future proposals.
19. As soon as is convenient, and within nine months in any event, the parish is to report on the progress of the pathway and landscaping work and make proposals for the permanent re-siting of the memorials. I do not wish to be overly prescriptive at this stage but make the following observations in the hope they will assist.
 - i. Attempts should be made to place as many memorials as possible in the churchyard within the immediate vicinity of the church, particularly the area identified as site 2 and hatched blue on the plan;
 - ii. Every effort should be made to locate as many memorials as possible in the Old Churchyard identified as site 3 and similarly hatched blue on the plan;
 - iii. If at all possible, the use of site 1 at Bailey Hill should be avoided and, in any event, treated as a last resort. Further discussions with the local authority will be necessary if memorials are to be placed here;
 - iv. I would look favourably on an application to dispose of a certain number of memorials, particularly those which are damaged, illegible and of lesser intrinsic worth;
 - v. it will be for Mr Beaumont, in collaboration with Mr Roberts, to categorise the memorials into classes, graded in accordance with the desirability of their retention.
 - vi. Mr Roberts, in his careful report has made some helpful suggestions with regard to formulating a disposal policy and I would encourage further work in this regard and for the Petitioners to seek further Directions from the Court. No memorial is to be disposed of without prior authority of the court.
 - vii. Detailed photographic records must be retained together with appropriate archaeological monitoring.
20. It therefore follows that a faculty will issue in this case, and the petitioners are to be at liberty to return to the court at any time for further Directions once the works are underway. As stated above, the parish is to report on progress within nine months

by which time it is anticipated that the paths and landscaping will be substantially complete, such report to include proposals for the deployment of memorials thereafter, including any proposals for disposal.

The Worshipful Mark Hill QC
Chancellor

9 February 2016