

this were possible, or if the petitioners were to decide to introduce chairs of the kind suggested by the DAC, then a further petition could be considered without further formalities other than consultation with the DAC.

Per curiam: in applying the *Duffield* guidelines, the court had to consider whether the same or substantially the same benefit could be obtained by other works which would cause less harm to the character and special significance of a church. If the degree of harm to the special significance which would flow from proposed works is not necessary to achieve the intended benefit because the desired benefit could be obtained from other, less harmful, works then that is highly relevant. In such circumstances it would be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, *ex hypothesi*, cause more harm than is necessary to achieve the desired benefit. [DW]

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Re St Mary and St Ethelburga, Lyminge

Canterbury Commissary Court: Ellis Com Gen, 4 July 2019

[2019] ECC Can 1

Excavations – land ownership – rights of way – planning permission

The petitioners sought a faculty for extensive works to paths in and adjacent to the churchyard to improve safety and accessibility, together with archaeological investigations of an Anglo-Saxon church, adjacent to the existing church, believed to have been constructed by Queen Ethelburga and containing her tomb. Following objections concerning the ownership and use of a lane adjacent to the churchyard, which were the subject of an existing dispute with the Diocesan Board of Finance, the petitioners withdrew those elements of work from the petition. The court emphasised that it had no jurisdiction to determine disputes as to land ownership or the existence or extent of public highway rights. The court considered that the Method Statement for the proposed works sufficiently dealt with the objections of neighbours concerning the inevitable disruption during the course of the works. It therefore granted the faculty.

Per curiam: the petitioners had informal advice from the local planning authority that the removal of paths and excavations would not require planning permission but that the construction of new and replacement paths would. Normally, petitions for projects requiring planning permission would not be determined until such permission had been obtained; in general, the ecclesiastical courts act in a spirit of comity with tribunals of different jurisdictions (*Re St Mary's Churchyard, White Waltham* [2010] Fam 131). However, there is no rule of law forbidding the grant of a faculty in advance of planning permission. In this case, it

was unfortunate that secular permission had not yet been obtained, but there was a reasonably reliable indication of the likely outcome and the court did not consider it proportionate to hold up or frustrate the project by refusing to grant a faculty at this point. Instead, appropriate conditions would be imposed. [DW]

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Re St James, Bulkington

Coventry Consistory Court: Eyre Ch, 8 July 2019

[2019] ECC Cov 3

Exhumation – permanence of burial – maintenance of graves

The petitioner sought the exhumation of the remains of her daughter and husband. Her daughter had died aged just one day in 1979. The petitioner's husband had died 21 years later, aged 50, and his cremated remains had been interred with their daughter in Bulkington. Seven years prior to issuing the petition, the petitioner had moved to Norfolk. She had continued to visit the grave every four to six weeks, making an eight-hour round journey each time. She sought to exhume the remains and re-inter them near her new home, because ill health had prevented her from visiting or maintaining their grave since 2016. The re-interment would also create a family grave where she planned to be buried herself. If the exhumation was not possible then the petitioner wished to be buried in the grave at Bulkington, but that would entail a long journey for her family to visit and maintain the grave. The incumbents of the respective churches had consented to the petitioner's requests.

The court in *Re Blagdon Cemetery* [2002] Fam 299 made it clear that the fact that visits to a grave are prevented by 'advancing years and deteriorating health and change of place of residence due to this' was not something which could be an exceptional circumstance justifying exhumation. In order to amount to exceptional circumstances, medical problems would have to be related to the location of the grave in question. The petitioner had intended to bury her daughter and, later, her husband in Bulkington churchyard. While there had been plans to move to Bacton with her husband, before his premature death, she had not in fact moved until 11 or 12 years after her husband's death. Although not maintained by the petitioner, the grave was nonetheless in a well-maintained churchyard which remained a fitting resting place for those interred there (the same churchyard having been considered in judgments at [2018] ECC Cov 2 and [2019] ECC Cov 1). There was no basis for finding an exception to the principle of the permanence of burial and the petition was dismissed. [Catherine Shelley]

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