

CASE NOTES

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Deputy Chancellor of the Dioceses of Salisbury and St Albans

Re St Peter, Powick

Worcester Consistory Court: Humphreys Ch, 23 April 2021

[2021] ECC Wor 1

Trench arch drain – Duffield framework

The drain from the kitchen and WC facilities in this Grade I-listed church had failed, and needed to be replaced. The petition sought a faculty for a trench arch drain—a 12 metre-long, sloping, underground chamber, allowing waste foul water to run underground and to seep away into the earth. The addition of a macerator at the beginning of the trench was also proposed. The work would not disturb any marked graves, although the disturbance of unmarked remains was anticipated, both in its construction and in its operation.

The court agreed with the PCC's assessment that the alternatives of a mains connection, cess pit or septic tank were unaffordable or more potentially damaging. Applying the *Duffield* framework, the only potential harm was to the archaeological significance of the church through the construction and operation of the trench arch drain. This would be ameliorated by an archaeological watching brief, and was in any event outweighed by the need to deal with the waste from the church's necessary facilities. A faculty would issue, subject to necessary consents including from the Environment Agency. [DW]

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Re St Bartholomew, Leigh

Southwark Consistory Court: Petchey Ch, 3 July 2021

[2021] ECC Swk 6

Objectors and parties opponent – costs liability

In the course of a judgment concerning a faculty for the installation of WC facilities, the court considered the reasons given by objectors for declining to become parties opponent.

The six objectors had been given notice under FJR Rule 10.3, inviting them to become parties opponent; and setting out the procedural and potential costs consequences of the decision. Two objectors wrote complaining of the pressure imposed by the potential costs liability.

The court observed that the provisions of the Rules whereby potential parties opponent were warned of the potential costs implications dated from 2000. At that time, a party opponent could require the matter to be considered at a hearing, inevitably increasing costs. It was plainly right that a potential party opponent was informed of the potential liability for costs—which would arise not on the basis of lack of success, but of unreasonable behaviour.

Since the 2019 amendments to the FJR, a party opponent cannot insist on a hearing; and in the present case the court would have been likely to direct a determination of the petition on paper, even if a party opponent had sought a hearing. In those circumstances, there was not much difference between what had happened and what would have happened had any of the objectors become a party opponent. The one procedural difference in such a case appeared to be that a party opponent would have the opportunity to comment on the petitioners' response to his objection, whereas an objector would not; this may now be the principal reason for wanting to become a party opponent. If an objector chose not to become a party opponent and to rely on the simpler procedure of having his or her objection taken into account, it was not appropriate to describe the inability to comment on the petitioners' response as grossly unfair. [DW]

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Re All Saints, Calverton

Oxford Consistory Court: Hodge Ch, 12 August 2021

[2021] ECC Oxf 7

Memorials—Churchyard Regulations

In refusing a confirmatory faculty for kerbs and stone chippings on a grave, the court considered the position following *re St. Giles, Exhall* [2021] EACC 1, and set out the approach to be taken to such a petition:

- i. As with any petition, the burden of proof lay on the petitioner to show why a faculty should be granted.
- ii. The applicable Churchyard Regulations would be a relevant factor—often, highly relevant, and on occasions, determinative. That was because the Regulations will have been approved by the Chancellor after consultation with DAC; to ensure that memorials respect their