

CASE NOTES

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Deputy Chancellor of the Dioceses of Salisbury and St Albans

Re St George, Newcastle

Newcastle Consistory Court: Wood Ch, 29 November 2021

[2021] ECC New 3

Public health crisis – extension of time to complete – faculty condition concerning funding

The petitioners had obtained a faculty in April 2020 for a substantial building project ([2020] ECC New 2). It was subject to conditions that the work be completed within three years and that no contract be entered into or any work undertaken until all funding was in place. The planning permission required work to commence by 28 February 2022. The public health crisis had prevented the necessary fund-raising activities, and the petitioners now sought an extension of the time to complete and a relaxation of the funding condition. It was anticipated that 24–30 months of fundraising would be required to cover the anticipated cost (uprated by RPI). An application to extend the planning permission was also under consideration, albeit that it would not be required if work had commenced by the deadline. One discrete part of the project (the construction of a new boundary wall) could be funded from present resources; the court had no hesitation in varying the funding condition to permit that work to be undertaken now. Additionally, the petitioners sought a variation of the funding condition to the extent that they could undertake minor preparatory works (such as the digging of foundations) which would satisfy the secular planning requirement for works to commence.

The court expressed concern that merely uprating an earlier costing by inflation might represent a marked undervalue, given the rising cost of building materials; that even against the original estimate the currently available funds were very limited; and that the fundraising schedule might well be optimistic. Moreover, consideration was being given to phasing the works, although there was no application to vary the faculty in that regard.

The court was sympathetic to the petitioners' difficulties, and would extend the time for completion for a further three years. However, there would have had to have been a reasonable proportion (which the court declined to quantify)

of the required funding in place before the funding condition could be varied. The device of permitting a modest start to the work was not a proper way for the court to, in effect, extend the secular planning permission. Therefore, and save with respect to the boundary wall, amendment of the funding condition was refused. [DW]

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Re St Michael and All Angels, Berwick

Chichester Consistory Court: Hill Ch, 30 November 2021

[2021] ECC Chi 9

Stay on petitions pending appeal

It is axiomatic that, as a general rule, where permission to appeal has been sought in respect of the dismissal of a petition, no further petitions concerning the church in question should be considered by the consistory court until that application has been determined and, if permission is granted, until judgment has been given in the subsequent substantive appeal. In this case, the petitioners had applied for permission to appeal a decision of the deputy chancellor and in the meantime brought a further petition. The chancellor had stayed the second petition, with liberty to apply to lift the stay; the petitioners had now made such an application.

The present petition (for an extension for lavatory facilities) was discrete from the petition under appeal (for the removal of pews), it was uncontroversial and it would be compromised by the loss of Lottery funding if delayed until the conclusion of the appeal. These were sufficient reasons to depart from the general norm, in the interests of justice. Accordingly, the stay would be lifted. [DW]

doi:10.1017/S0956618X22000473

Re A redundant church bell

Oxford Consistory Court: Hodge Ch, 29 December 2021

[2021] ECC Oxf 11

Faculty – church bell – amendment – risk of theft

This petition concerned a 1630s treble bell in a Grade I listed mediaeval village church. A previous faculty had authorised remedial works to a ring of three bells. It was subsequently discovered that the treble bell was irreparably cracked and unfit for use; however, a replacement 1760s bell had been sourced.