

In 2014 Zinsser Grade 1 paint (ZS) had been applied to the walls of the church in breach of the terms of a faculty which required four coats of limewash to be used. The paint failed, leaving an unsightly mess, and the archdeacon applied for a faculty for a restoration order in relation to the works. The chancellor found that the architect was solely responsible for the breach, which had been deliberate and avoidable. The need for a change in wall covering had become apparent during the works and the architect had, despite protestations from the contractor, required the ZS to be applied in place of the limewash. Queries had been raised about the need to seek an amendment to the faculty, but no such amendment had been sought prior to the application of the ZS, despite the architect indicating to the Parochial Church Council (PCC) that he would make the necessary arrangements with the Secretary of the Diocesan Advisory Committee. The PCC were not made aware of the contractor's concerns about the suitability of the ZS.

The chancellor concluded that the architect had, out of a desire to avoid delay, simply decided to press ahead without the necessary amendment in the expectation that a confirmatory faculty would be granted in the fullness of time. This was not acceptable. A restoration order was made requiring the church to be put in the position it would have been had the faculty not been breached. The architect would meet the costs of those works and was ordered to pay the court costs of the hearing.

The chancellor gave guidance in his judgment reminding professionals involved in the faculty jurisdiction of the heavy responsibility that came with the trust placed in them as professionals. He considered whether the architect should be removed from the diocesan list of approved architects. Taking into account the architect's acceptance of responsibility and apology and his long experience and previously unblemished record, the chancellor did not direct his removal from the list, but indicated that that would be the likely consequence should any repetition occur. [RA]

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Re St Michael and All Angels, Pelsall

Lichfield Consistory Court: Eyre Ch, 5 November 2017

[2017] ECC Lic 5

Exhumation – exceptional circumstances

At the time of the interment of the deceased's cremated remains in the churchyard in 1991, her family was unhappy with the arrangements for the burial as parish policy required that plots were marked with stones placed in columns, two abreast with no space between the stones. It was felt that this gave the

unseemly appearance of a paved path. By the time that her husband's remains were interred in the same churchyard in 2017, policy had changed and the interment of cremated remains took place in slightly larger plots marked by separate headstones. The chancellor inferred that the reason for the change in policy was that others had formed the same opinion as the deceased's family about the appropriateness of the earlier arrangements. The deceased's son petitioned for the exhumation of his mother's remains for their re-interment with the remains of her husband. The faculty was granted on the basis that special circumstances existed which justified an exception to the norm of permanence. This was not a case where there had been a change of mind by the family; the subjection of the family's personal preferences to the collective approach of the Parochial Church Council and incumbent was commendable and ought not to be held against them. The creation of a family grave also militated in favour of the petition. [RA]

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Re St Philip and St James, Whittington

Worcester Consistory Court: Mynors Ch, 12 November 2017

[2017] ECC Wor 1

Extension to church – impact on ‘veteran’ yew – balancing exercise

The petitioners sought a faculty to extend the church to accommodate an accessible lavatory, a store, a kitchen and a meeting room to provide facilities for children and general community use – uses for which there was currently inadequate space and some of which had had to stop as a result. Following the abandonment of two earlier sets of proposals for building in different locations (which had proved controversial), the current proposal had been designed to minimise the impact of the extension on a 750-year old ‘veteran’ yew tree situated to the north of the existing church. A curved elevation to the extension would ensure that no part of it came within 6.5 metres of the trunk of the yew, while pile-and-beam foundations would minimise interference with the roots. Planning permission had been granted by the local planning authority. Their tree officer was satisfied that the potentially damaging impact of the extension on the yew would be minimised. Historic England and the Victorian Society supported the overall principle of the extension but raised concerns as to aspects of its design and its relationship to the existing church building. The Diocesan Advisory Committee recommended the proposals for approval. The Church Buildings Council (CBC), which provided two reports on the impact of the proposed extension on the yew, did not support the proposals on the basis that they