

**NORTHWOOD: HOLY TRINITY**

**JUDGMENT**

- 1) The church of Holy Trinity, Northwood is a Victorian Grade II listed church. The church is in the midst of terraced housing with a small area of grassed open space on three sides of the church building and with a park nearby. The road on which the church stands runs downhill and the church itself is on a plinth with the grassed open space sloping away from it. The plinth extends about two – three yards from the church building and is edged by iron railings forming an enclosed yard. The plinth itself slopes away from the church building. The iron railings are crossed by a bar on which stand finials each in the shape of the fleur-de-lys.
- 2) The Petition relates to the railings. The Rector and two members of the District Church Council acting with the support of that Council and the Parochial Church Council seek a faculty authorising the placing of a bar to run along the tops of the finials for the length of the railings. For the reasons set out below I have authorised the grant of that faculty.
- 3) The trigger for the Petition was an incident on 28<sup>th</sup> August 2014. A child had climbed the railings in an attempt to retrieve a frisbee which had blown into the enclosed area behind them. He slipped and impaled his head on the point of a finial causing injury to his jaw. The Petitioners are concerned to avoid the repetition of such an incident. The Petition states that the proposed course “*has been strongly advised by the church insurers (Ecclesiastical) in order to effect compliance with the Occupiers Liability Act 1984*”. As will be seen the advice given by Ecclesiastical Insurance is in fact considerably less stark than the Petitioners assert. Nonetheless, this is a case where the Petitioners are motivated by a concern as to the potential danger to children in circumstances where one accident has already occurred.
- 4) The Petition has been considered by the Diocesan Advisory Committee. That Committee certified that the proposed works were unlikely to affect the character of the church as a building of special interest. I agree with that conclusion. It does

not appear that the railings are contemporaneous with the building of the church and no reference is made to them in the listing description.

- 5) However, the Diocesan Advisory Committee does not recommend approval of the works. The members of the Committee felt that the bar across the top of the railings would not be appropriate visually and would make the gates easier to climb. They suggested other measures namely leaving the gates unlocked; grinding down the points of the finials; or sawing off the finials at the base of the fleur-de-lys leaving smooth stubs (the Diocesan Advisory Committee suggests initially applying this course only to the gates and then considering whether to apply it to the railings as a whole).
- 6) The public notice has been displayed and has not resulted in any further representation.
- 7) I concluded that it was expedient for this matter to be determined on the basis of written representations and the Petitioners consented to that course. I made an unaccompanied site visit on 27<sup>th</sup> June 2015.
- 8) The Petitioners have responded giving their detailed comments on the Diocesan Advisory Committee's suggestions. In essence they make the following points.
  - a) To leave the gates unlocked would make the church building less secure and would leave it exposed to the risk of vandalism. In that regard I note that the area around the church enclosed by the railings contains a number of flower pots and tubs. These are planted up and add colour to the otherwise somewhat dour appearance of the church and of the surrounding housing.
  - b) Grinding down the points of the finials would have limited benefit. The Petitioners explain that the finials currently have rounded tops. It appears that the accident resulted not from the sharpness of the current finials but from the force of a fall onto a protruding metal object.
  - c) Reducing the finials to smooth stubs would provide the same result as the Petitioners seek in terms of a smooth top to the railings but would do so at the cost of removing the fleur-de-lys finials in their entirety and so markedly

altering the appearance of the railings. Moreover, it would mean a reduction, albeit a modest one, in the overall height of the railings.

- 9) A representative of Ecclesiastical Insurance Group attended the church following the accident and I have been provided with a copy of his report. He advised the Parochial Church Council to “*consider the existing hazard and any remedial action which could be undertaken to reduce the risk of future accidents.*” In addition he advised the Parochial Church Council to consider “*removal of the railings or making them safe by the removal or blunting of finials as an option but other methods of preventing injury could also be considered.*” The initial report from the insurers was sent to the Parochial Church Council in November 2014. There was further correspondence and in 13<sup>th</sup> April 2015 reference was made to the Occupiers Liability Act 1984 with the insurers saying that it was essential that the Parochial Church Council “*undertake a risk assessment of the hazard looking at remedial action which could reduce the risk to an acceptable level. ... It may be that no further action is required ...*”. It follows that the advice of the insurers is less stark than the summary of the advice set out in the Petition. The stance of the insurers is the wholly proper and sensible one of saying that as the accident has occurred consideration must be given to the degree of risk and to the measures, if any, which can properly be taken to reduce that risk.

### **Analysis.**

- 10) Thus the insurers are not insisting on any particular course of action nor are they suggesting that there will necessarily be a breach of the duties imposed by the 1984 Act. Nonetheless, an injury has occurred to a child and it is appropriate for the Parochial Church Council to take steps to reduce the risk of another such accident. This is particularly so when the church is surrounded by housing but is near to a park and immediately adjacent to a small area of open space. It is inevitable that children will be playing in the vicinity of the church and also inevitable that some of them will be tempted to climb the railings.
- 11) It is common ground between the Petitioners and the Diocesan Advisory Committee that some measure needs to be taken. It is also common ground that none of the courses being considered will affect the special character of the

church. The issue is one of how best to minimise the risk to children while maintaining the security function of the railings and avoiding unsightliness.

- 12) I have to give very considerable weight to the advice of the Diocesan Advisory Committee. That Committee as a body contains expertise on questions of aesthetics and building function of a kind which I as Chancellor do not possess. Even though I must attach considerable weight to the Committee's advice it cannot be conclusive and I have to assess the advice in the light of the competing contentions. Having done that I have found the Petitioners' critique of the Diocesan Advisory Committee's suggestions compelling.
- 13) The Committee say that the proposed bar would make it easier to climb the railings. I wonder whether that would actually be so but I think it rather misses the point of the Petition. The problem being addressed is not that of the climbing of the railings by hostile intruders but the climbing of the railings by children in play and the consequent risk of injury to such children. The bar proposed by the Petitioners addresses that difficulty while maintaining the height of the railings which is a key part of their value as a barrier to intruders.
- 14) I have considered the Committee's suggestion of leaving the gates unlocked and monitoring for any problems on site. I have no doubt that to leave the gates unlocked would create a risk of vandalism to the church building or to its surroundings. I have already referred to the contribution made by the flower pots and tubs to the attractiveness of the church and to the street scene. Sadly those pots and tubs would inevitably be at risk of vandalism. Monitoring of the situation would be likely to result in the conclusion that this risk had come to fruition. The prospects of the church or its surrounds escaping vandalism if the gates are unlocked are not sufficiently good to justify running the risk of vandalism for a trial period.
- 15) In addition the unlocking of the gates would have only a modest impact on the risk of injury. The accident in August 2014 occurred when a child was trying to retrieve a frisbee from behind the railings. It is possible that he would not have attempted to climb the railings if the gates had been unlocked but that is not

necessarily the case. Moreover, unlocking the gates will not remove the risk of children being tempted to climb the railings in play and/or in a spirit of adventure.

- 16) I find the Petitioners' response to the suggested grinding down of the tips of the finials compelling. My assessment on the site visit confirmed that the points of the finials are not particularly sharp. Grinding down the points to create a smoother finish would not remove the risk which results from the existence of a metal protrusion.
- 17) Similarly, I am unable to regard as satisfactory the suggestion of the reduction of the finials to smooth stubs. This would have the same effect as the proposal of the Petitioners but at the price of a reduction in height and of the total removal of the fleur-de-lys emblems. The reduction in height would have an adverse effect on the effectiveness of the railings and would also have a marked impact on the appearance of the railings. It is the latter point to which I will now turn.
- 18) The Diocesan Advisory Committee advises that the bar across the top of the finials would "not be appropriate visually" but envisages the total removal of the finials as a potential solution. I am conscious of the expertise of the members of the Diocesan Advisory Committee in respect of matters of aesthetics. However, I can well understand the Petitioners' preference for the appearance of their proposal as against the appearance which would result if the Committee's final proposed course were to be adopted. The Petitioners' proposal would result in railings each topped with a fleur-de-lys mounted on a bar with a further bar running across the top of the finials. There is certainly real scope for saying that this would be more attractive than straight railings simply topped by a bar. It is clear that the adoption of any approach involving alteration to the railings is likely to result in a less pleasing appearance than that of the current railings. That is regrettable but it is legitimate to give the concern about the safety of children priority over the effect on the appearance of the railings. This is particularly so given that the railings do not contribute to the special significance of this church and are not mentioned in the listing description.
- 19) In those circumstances the Petitioners have established that there are good grounds for taking action in respect of the railings. Once that is established the

Petitioners have also shown that there are sound and legitimate reasons for adopting their proposed solution in preference to the possible courses of action put forward by the Diocesan Advisory Committee. Accordingly, I direct that faculty be granted.

STEPHEN EYRE  
HIS HONOUR JUDGE EYRE QC  
CHANCELLOR  
5<sup>th</sup> July 2015