

DIOCESE OF GLOUCESTER

ST MARY THE VIRGIN DYMOCK

JUDGMENT

1. This matter comes before me as an application by two Respondent objectors to amend/set aside or stay the granting of a Faculty in respect of St Mary's Dymock. The First Respondent, Mrs. Sime applies to stay/set aside the Faculty by reason of her alleged withdrawal of her formal objection not having been made (and, in the event, for leave to object out of time). The Second Respondent, Mrs. Sterrett applies for leave to object out of time. There are also other various informal objectors, one of whom is now, sadly, deceased, to whom I shall refer in the course of this Judgment.
2. In the course of hearing argument from the Respondents on 26th November 2012 at a Directions hearing, I have been concerned about the sad history of misinformation in respect of the proposed Faculty application. Neither of the Respondents sought a further hearing in open Court in the light of any decision I might make in respect of their preliminary application, and so I also heard their substantive evidence against the application itself. All Parties present at this hearing agreed to this way forward, and accepted that they could use this hearing to voice their objections. The other objectors had written formal/informal letters of objection which they each wished me to consider, as I have done.
3. By reason of the somewhat unusual history of this Petition and as to how it has

resulted in the two applications before me, I consider that this Judgment should be displayed for 28 days in the parish church of St Mary the Virgin Dymock, and placed on the Parish website. I so order. It is a public document, and, as such, can be placed in the Parish magazine. I make this order to ensure the widest dissemination as possible. It will also be available from the Diocesan Registrar's office. I do all this to ensure that, within this Parish, there is full knowledge and appreciation of what has happened in this matter. In the light of the evidence before me I find that there has been too much misinformation as to facts which now must be openly and publically clarified. For this reason I have set out in greater than normal detail the background history to this matter, both from the documents and the oral representations made to me during the November 2012 hearing.

4. HISTORY OF THE MATTER

St Mary the Virgin Dymock is the parish church for a village whose inhabitants, the Respondents estimated to me, are about 1500 or so, including outlying areas. Those on the Parish roll were some 53, and it is on those that the heat and burden of the day falls in maintaining the Church. The incumbent said that there were some 3,500 in the benefice as a whole. Of course, I have no doubt that the Church is used by all in the village for the occasional wedding or funeral and support is given for the famous Daffodil walks used in the spring as a fund raising and social enterprise, as well as the occasional concert, and the annual literary festival which celebrates the early 20th century group of Dymock poets. However, it is mainly those on the Parochial roll, regular Church goers and on the PCC on whom the day to day financial burden and decision making rests. The Church is surrounded by a large churchyard which stretches down to the north. It is bounded on the South by a village green or open space, on

one side of which is a public house which has, of course, lavatory facilities. In the village, but a little way from the church are public lavatories, but these, were about to be (or just had been) refurbished, having been, the objectors told me, vandalised by youths in the village. The Church itself has no lavatory provision.

5. St Mary's Dymock is one of nine churches (all of whom have to be provided for) under the care of the Revd. Mr. Lomas, its Vicar. I reject the allegation of one of the objectors that this was not a "busy church". There is a regular Sunday service, together with a regular weekday one. There is a family service once a month and provision for a Sunday school, together with additional services for Christmas and Easter. There is a weekly choir practice, and bell ringing practice. Throughout Lent there are daily lunches and teas for the Daffodil walk. The Church is used once a term for the primary school, and regularly for Parochial Church Council (PCC) meetings. In addition there are the usual weddings, baptisms and funerals. The PCC hope that better facilities will encourage more use. The pressures on a Vicar with that number of parishes to cover makes it difficult to spend exclusive time with one of his parishes, so much day to day work has to fall on the parishioners themselves, headed by the Parochial Church Council.
6. The Church is situated in a Conservation area, and is itself listed Grade 1. Notwithstanding that, in the churchyard under a tree has been placed a large green metal container, like those one sees on container ships, which is currently being used for storage of a motor mower, trestle tables and other bits and pieces. It is referred to as a "cabin" in the Faculty petition. This is a somewhat unusual item to find in the graveyard of a Grade 1 church, and, not surprisingly, caused the civil planners some consternation as well.

7. The Parochial Church Council (“PCC “which is elected annually at a meeting open to all both residents in the parish and/or on the Church’s electoral role) had, apparently, discussed the absence of a lavatory over a number of years. Such a facility would allow more flexibility in use of the Church buildings, for children, the elderly, visitors, concert goers etc. In the absence of vandalised public lavatories, or out of public house opening hours (or other special arrangements for which, I was told, a charge of £5 was made by the public house) it would mean that the (I am afraid not unknown) habit of public urination in the grave yard might be avoided, at least during time of church use. It was at first thought that the lavatory could be sited in the Church, and this was discussed with the Diocesan Advisory Committee, but, by reason of its design and Grade 1 listing, this was not possible, as disruption and damage to fabric made this positioning impossible. Even if that were to take place, there would have been greater disruption through walls and grave yard grounds over a longer run to have had the lavatory (with disabled access) installed internally.
8. Various discussions took place with between the PCC and the Diocesan Advisory Committee (DAC) with a view to seeing how/where such a facility might be sited. Such a facility would replace the metal “Cabin” which could be sold and the proceeds from its sale go towards the costs of this. During 2009 the Church’s then inspecting architect provided preliminary designs for a small single storey building which would provide storage for machinery as well as a toilet, which would have disabled access. I say at the outset that only one person has objected to the design of this construction, who did not comment on the green container at present there. The Respondents themselves agreed that they had no dispute with the design in itself. The design is innocuous, and does not intrude. It has been approved by the DAC, and I find to be in keeping with its surroundings. I need say no more in respect of its design.

9. Following these discussions with representatives of the DAC (as was sensible and normal) as to the site of the lavatory, the PCC began discussion with the Forrester of Dean District Council (FDDC). By now the plan for a lavatory included storage space as well. The planners were positive about the proposals, but were insistent that the “cabin” should be removed as not being appropriate for a conservation area. The original plans now submitted to the Council had been drawn up in 2009. The application for planning was made to the FDDC on 7th September 2010. Mrs. Sime and her husband objected, and possibly another of their neighbours also living in the adjacent old Vicarage (but Mrs Sime was unsure as to whether or not there had been a third objector). **No point was raised now by the current objectors that this had not been fully and properly advertised at that stage, and that the civil process for planning applications had been properly carried out. I note the then deafening silence of other objectors, who, for whatever reason, did not chose to exercise their democratic and free right to object at that stage. As I understand it, no effort was made to rally opposition, to lobby Councillors or the local MP against it, or to seek to change the collective mind of, or makeup of, the applying PCC or to do any of the ordinary actions of a concerned body of objectors are able to do. To this apparent public apathy must be set the objection of Mr. and Mrs. Sime, properly made at the time to the FDDC planners.**

10 On 8th October 2010 FDDC granted full planning permission granted, but conditions were attached (with reasons contained in the document):

* The works hereby permitted shall be commenced not later than the expiration of 3 years beginning with the date of this consent (that is before 8th October 2013)

* The development hereby permitted shall be carried out in accordance with the approved plans listed in the table attached (which are the location and block plans (N09-23); elevations and floor plans (N09-21) and the tree or landscaping details)

* The existing store building shown on the submitted plans (the “Cabin”) shall be demolished and the site cleared prior to the use of the new disabled w.c./storage building hereby permitted

* Unless otherwise agreed in writing by the Authority, no works shall take place within the area indicated (the site) until there has been carried out a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority

Reasons approval was granted:

* **the proposed development will not give rise to any visual amenity, residential amenity concerns and will not give rise to any harmful impact upon the character and setting of the Listed Building**

* **the decision notice grants planning permission only and does not constitute a Listed Building Consent**

* **all arboricultural work shall comply with British Standards (detailed in permission document)**

I set out above in full (as the current objectors may not have been familiar with it) the state permission for what the PCC proposed. In ordinary planning applications, that would have been an end of the matter, unless any dissatisfied objector sought (for whatever reason) to judicially review the decision of the

FDDC. Neither Mr. nor Mrs. Sime did so (nor the other objector if there was one) did so. In ordinary state planning, if people do not see or notice the statutory advertisements in respect of planning applications, or do not object, they have had their chance. (That is why many areas have amenity or conservation societies to “keep an eye” on local planning applications.) Anyway, only Mr. and Mrs. Sime, very properly, took it upon themselves to object at that time on, as I understand it the same or very similar grounds as Mrs. Sime’s current objection.

11 Having obtained the necessary state permission, the PCC then turned their mind to obtaining a Faculty from the Diocese, the grave yard being consecrated ground, so, as it happened, potential objectors had another chance, if they so wished, to make their objections now to the Diocesan Chancellor under the Faculty jurisdiction. In fact for financial reasons the PCC delayed making this application as other matters involving repairs of the Church had to be dealt with in the mean time, and, in any event they had three years from October 2010 during which time the state planning permission would be current.

12 By late 2010, the PCC decided that this current plan might be advanced, at least to the stage of obtaining quotations, and so on 16 February 2011 G.S.M. Construction Ltd provided a quotation for building the w.c./storage facility for the sum of £20,809.00 ex VAT. Two other estimates from other firms were also obtained. Enquiries were then made of various grant making bodies who might donate to the project. On 26 September 2011 the PCC passed unanimously among those present and voting, a resolution relating to the works proposed. The PCC decided (having considered three estimates):-

- the proposal was financially viable

- it was proposed by Roger Parker and seconded by Robert May

that the PCC proceeds with the design from Mr. Goom (the then church architect) and the estimate from GSM Construction Ltd, the faculty request to be put in hand.

A subsequent objector, Mr. Ian Brown, although on the PCC, did not attend that meeting, but sent apologies for absence. As a PCC member he would, of course have had full access to all minutes of decisions taken about the lavatory, and so would have been “on notice”. He might, if he had wanted, have encouraged fellow objectors to stand at the following AGM for the PCC so that the proposal for a lavatory could have been at least re-considered. Anyway as he was not at this hearing, I know not what he did or did not do.

On 8 December 2011 a letter from Gloucestershire Historic Churches Trust was sent to Robert May of the PCC notifying him of their award of £9,000 towards the cost of repairs to the church and the construction of a building for a w.c. The Trust asked for a notice about the grant (provided with the letter) to be displayed in the church reflecting their contribution when the works were complete.

13. Thus far the process had been running smoothly. There then followed a chapter of unfortunate incidents. For some reason, wrongly and with no justification or legal permission, in late January 2012 the PCC organised work to commence on the footings for the lavatory. Mrs Sime, who lives in a flat on the old rectory overlooking the churchyard, was incandescent, and telephoned the Bishop and the then Archdeacon of Gloucester to object and complain. The Archdeacon took steps immediately to have the work halted. This was followed on 7 February 2012 with a letter from Mr. and Mrs. Sime to the then Archdeacon of Gloucester saying that, having been assured that no permission had been sought from the faculty for toilets to go ahead (and that they would

be notified if permission was sought), Mrs. Sime was "astounded" to see a digger excavating for the toilets on 30 January. This latter made it clear that Mr. and Mrs. Sime were opposed to the new toilet building on a burial ground. "No" she wrote "I don't want a toilet situated by my back garden" Photographs of the excavation work were enclosed. Although signed by Mrs. Sime alone, the letter is headed from both Mr. and Mrs. Sime (as, I understand was the objections they made to the FDDC). In her evidence before me, supported by a Doctor's letter, which said that Mr Sime's "understanding of what is happening is limited". Mrs. Sime explained that her husband had for some years suffered from dementia, but that she had always wanted to make him feel that he was taking part in everything, and so had included him in her letter of objection. While completely understanding her reasoning and her laudable efforts to include her husband, it is very unfortunate that her efforts unintentionally misled the outside world (namely the Diocesan Registrar) who had no reasons to know that her husband was, apparently, unable to give coherent answers in a later conversation which I refer to below.

- 14 On 9 February 2012 the Archdeacon of Gloucester wrote to Mr. and Mrs. Sime saying that he had telephoned the Rev'd. Mr. Tony Lomas to tell him that all work should stop pending the granting of a Faculty. That letter explained the procedure for the granting of a faculty. "Once a faculty application has been received it will come to the Diocesan Advisory Committee and will be processed in the usual way with local notices and the opportunity to comment or object to what is being proposed".
- 15 On 14 February 2012 by Email from the Church's insurers, Direct Commercial-South Team, confirmed approval for the proposed works for a toilet and storage facility at the church, subject to fairly standard terms and

conditions.

- 16 On 26 March 2012 the Petition for Faculty was formally applied for; the Petitioners were Anthony David Lomas (Incumbent); Anthony John Eagle (Church Warden); Rosemary Jean Eversham (Church Warden). Details of the proposed work (and reasons for it) were as follows:-

Permission was sought to construct a combined external store and toilet in the churchyard, separate from the church building but conveniently opposite the west exit door in the tower.

The building will replace an existing metal 'cabin' which stores the lawnmowers and trestle tables for open-air functions. It will be sited next to that cabin, which will then be sold off and any cash returned to church funds.

The new building will have

-single storey lime-washed brickwork with tile roof

-toilet with Trench Arch foul drainage

-mains water and electricity extended from the existing church supply

-disabled access and nappy changing facilities

-replacement storage (as above, the 'cabin' facilities)

It has not been possible to find a space inside the medieval building for a toilet with disabled access (this has been discussed with the DAC).

The FDDC's requirements for both archaeological and arboreal surveys were complied with and their full

planning permission has been granted.

*The church is a medieval, Grade 1 listed building It is
in a conservation area.*

The estimated cost of the proposed works is £20,809.

The proposals are to be paid for as follows:

£4,564 - the PCC's current balance of general funds.

£5,400 - a special appeal

£1,095 - a gift or legacy

*£9,750 - other grant making bodies (Allchurches Trust
£750; Gloucestershire Historic Churches Trust £9,000).*

*The Local Planning Authority was consulted. Planning
permission was granted.*

*It is anticipated that the work will take 2 months to
complete and will start immediately after the faculty
is granted.*

*The land in question is consecrated. It was almost
certainly used for burials (the church is medieval), but
this was a long time ago.*

In the accompanying Statement of Need, the Church set out its reasons for wanting this facility. That document I find to be thoughtful, and shows that many of the potential subsequent objections had been considered at an early stage. That was for **one** toilet with storage attached. It spoke of the needs of visitors for concerts, weddings and funerals. “Some elderly regulars have

stopped coming because of the lack of a lavatory”.

- 17 On 29 March 2012 the DAC wrote to Roger Parker (PCC Chairman) saying that the matter had been put on their agenda for the meeting on 11 May 2012. At that meeting the DAC (who had been consulted about the proposals from an early stage) agreed to recommend the scheme to the Chancellor with the qualification that work should not commence until the DAC had confirmed that it was content with the technical details of the scheme; again not an unusual situation. Technical experts on the DAC would check over the proposals before final approval could be given. As this kind of work had been done before in the Diocese it was not envisaged that there would be any technical problems. Other Churches in the Diocese had had this kind of lavatory installed and, indeed the DAC had published a paper on trench arch foul drainage. (In passing I note that neither of the objectors had read these papers or visited other local churches in the Diocese which had installed, satisfactorily, a lavatory using this type of waste disposal). Again, for the avoidance of doubt, I have set out in some detail the amount of care, worry and oversight which is put into this kind of proposals by the DAC before making their recommendation to the Chancellor.
- 18 On 23 May 2012 the DAC wrote to the PCC stating that they are content with the design of the w.c./storage shed in principle, but would have an architect member of the DAC review the details. There was some concern expressed by the DAC about overhanging foliage and how difficult it would be to maintain the building. The DAC were also aware that there had been some concern from a neighbour and there was a possibility of formal objection. The DAC said that it "seems best to forward the Faculty to the Chancellor, subject to conditions about technical detail". Therefore, on 28 May 2012 the DAC

certificate was issued with the recommendation that work shall not commence until the DAC has confirmed that it is content with the technical details of the scheme. Otherwise the DAC had no objection, to the Petition, subject to the memorandum dated 28 May 2012 to the Chancellor. This made it clear that the DAC are generally content with the design being worked up in detail by an architectural technician. Those detailed proposals had not yet been fully reviewed by a technical member of the DAC, but no difficulties are anticipated. However, it was anticipated that a neighbour might make an objection. The DAC also made it clear that the parish had been informed that no further work was to be carried out until a faculty had been granted. The Chancellor was informed that the Church obtained civil planning permission and a condition of this was that an archaeological evaluation had been required, but that this had been carried out (wrongly) by the Parish without waiting for faculty consent. At the same time, the parish laid in concrete footings, under the erroneous impression that their planning consent would expire unless an early start was made.

- 19 On 31 May 2012 the Public Notices were sent to the Rev'd. Mr. Lomas and these were displayed from 5 June 2012, giving notice that an application was being made to the Consistory Court of the Diocese for permission to construct a w.c./store shed to the south west of the church. These were on display for the requisite 28 days, the Rector so certified. On 5 July 2012 the Faculty Petition and accompanying papers were forwarded by the Diocesan Registrar to me as Chancellor, confirming that Public Notice having been issued and **no objections had been received**. However, in the light of the history of this matter, before taking any decision, I instructed the Diocesan Registrar to telephone the Simes to enquire as to their position. Although they had not made any objections, formal or otherwise, during the statutory period for such

objection (the 28 days of public notice), given the ill judged early work in January 2012, I considered it but polite, although not legally necessary to have the Registrar check with them as to their position .The Registrar spoke to Mr. Sime by telephone, who, to him, appeared to be fully conversant with the reason for the call, and who told the Registrar that they (Mr. and Mrs Sime) were now not making a formal objection to the Petition. The Registrar confirmed that to me. Having reviewed the documents before me including Mrs Sime's early letter of opposition, I granted the Faculty with the following conditions:-

-Any (insurance) terms to be complied with

-No work to commence until DAC has approved
technical details of scheme

On 11 July 2012 the Diocesan Registrar wrote to the Rev'd. Mr. Lomas, stating that the Chancellor had granted the faculty subject to the above conditions after establishing through the Registrar that Mr. and Mrs Sime were making no further objection. He also conveyed the Chancellor's annoyance that the work had been commenced earlier that year without a Faculty, and her expectation that Mr. and Mrs Sime would receive a formal apology. Subject to confirmation by the DAC of the technical details, it might have been expected that the "planning" aspect of this petition was at an end, and that work could now properly commence. In July 2012 a sensible letter was sent out by the incumbent, in, I think, the parish magazine. It set out the above history of the application (including the mistake of beginning the work without consent) and the reasons for it. It invited people to come to see the plans, the restoration work and to ask for further information if they wanted. It ended: "***We are very keen to make St Mary's more useful and welcoming for the village***

and we believe that the provision of these facilities will be of real benefit”.

SUBSEQUENT DEVELOPMENTS

20. On 24 July 2012 Mrs. Sime wrote, recapping the action she has taken in objecting to the w.c. construction:

- she had contacted the Bishop in 2009

-in Jan/Feb 2012 she had contacted the Archdeacon when workmen started digging

-spoke to Rev Lomas

-since heard of approval, she had started a petition with over 70 names

Mrs. Sime also said that on 21 July, the Archdeacon of Gloucester had e-mailed her to say that Mr. Sime had said that they (the Simes) had no objections. Mrs. Sime said that Mr. Sime suffers from dementia, and that Mr. Sime says he did not speak to anyone, and Mrs. Sime thinks he would not have made coherent conversation. (That was not the experience of my Registrar). I appreciate that people with dementia can have good or bad days, but I accept my Registrar's reporting of his conversation with Mr. Sime, and Mrs. Sime did not, at the later hearing seek to challenge the Registrar's reported conversation). Mrs. Sime also complained that the Public Notice was in the porch where no one sees them and this does not constitute "outside" the church. Attached to this letter was a petition which Mrs Sime had collected, containing 75 signatures. Of these only some 20 actually troubled to write with their objections, and this out of a parish of 1,500 or the wider benefice of 3,500 people. Mrs. Sime had, subsequent to

the Faculty being granted, taken a petition round the village. I am concerned that those signing the petition were misled by a rather important inaccuracy, in that the petition claimed that the lavatory was to cost £35,000. There was no indication that that was not the real cost not that virtually half the necessary money was in hand by way of grants, a legacy and careful stewardship. I pressed Mrs. Sime as to how or why she had put this figure at the opening of her Petition. She was evasive in reply, saying only that she had heard of that sum from a Mr. Duffield, who was not on the PCC. She accepted that before taking round her petition she had not enquired of the incumbent nor of any church warden as to what the actual cost was to be. Neither of the Respondent objectors were on the Church roll, nor attended St Mary's. She told me she had taken her petition from door to door in the village. She told me she thought there were about 1,500 people in the village. She garnered only 75 signatures. If any petition is to be relied on, certain matters must be clear:-

1. Are people signing up to or against any proposals being given an accurate statement of the truth?
2. Have the individual signatories satisfied themselves as to the details of what is being proposed?
3. Have they actually looked at the plans exhibited in the Church or made such other sensible inquiries to justify to themselves the objections (or support) to which they are signing?
4. Are they on the Church roll and/or are they resident in the parish?
5. Have they any connection with the parish, or are they just visitors /tourists who were asked to sign something, for instance, in the local pub, when they might just sign anything for peace and quiet?

In the petition before me people have signed with no address. I do not know (with the exception of the signed letters of objections who form some 20 of the 70 signatures) from where these other signatories come, nor on what basis they object. The opening sentence of Mrs. Sime's petition is misleading, and downright inaccurate in respect of costs.

On 31 July 2012 the Registrar returned to me the Petition, supporting papers and this letter from Mrs. Sime containing her signed Petition.

21. Public interest appeared, only now, to be aroused. On 3 August 2012 in Online post reported : "villagers' anger as toilets built on top of graves in Dymock". I note in passing here that the plural "toilets" had now crept into the public domain, but the Faculty petition was only ever for **one** lavatory. The archaeological examination (now concluded) had found traces of four inhumations, all either ancient or from the early modern era, and unidentifiable.

On 9th August the website for St Mary's set out, with a diagram and drawing, their plans for the lavatory. It sets out the history but inaccurately said that the planning consent lapsed in September 2012. This may have explained the precipitate start of excavations in January 2012

Objectors now began to appear by way of letter, almost a month after the close of the proper objection time, which I list below, and I summarise their objections:

19 August 2012 G. D. Sayce (it is disrespectful to have a soakaway toilet over graves, public toilets 200m from Church, no need)

21 August 2012 D Capewell (managed without a toilet for hundreds of years flow of effluent over graves, effect on the donating public)

22 August 2012 D Prout (it is on top of graves, next to peoples' accommodation with no mains sewer, would look like a, monstrosity, any toilet should be inside the church; other village facilities available)

24 August 2012 Mrs Fletcher (close to burials, waste of money, not necessary, good toilet facilities near, disruption)

24 August 2012 M. Alexander (no need, old graves, modern technology could surely trace the relatives)

letter (undated) Ian Brown (Member of the PCC but unable to voice concerns as he had been told permission had been already granted) ***I presume he is referring to the planning permission of 2010*** (not aware until Archdeacon stopped the work that a faculty had not been applied for, would prefer w.c. in entrance to church, local facilities, adverse comments from parishioners, should not be on old graves)

Letter (undated) D Hale (toilet on a “heap of graves”, good facilities nearby, cost better spent elsewhere)

26 August 2012 Pete Evans and Sue Wright (no need in past 600 years , adequate provision in village. It is a graveyard, should be inside church)

27 August 2012 J A Williams (money better spent on upkeep of fabric of church, toilet should be inside church if necessary, there are public toilets, could be disruptive to church services if people go to outside toilet)

28 August 2012 Mrs. P Pavely (do not need w.c., should not spend money on it, public toilets are available). On the same date Mr. Pavely

also wrote with the same objections, and stressed the exorbitant cost and lack of public discussion.

28th August 2012 Patrick Good and Nicola Ford complaining of lack of consultation and alleging that the Chancellor had apparently refused to accept the petition against the proposal, thus contravening a basic democratic right “ (I should say here that I am bemused at the suggestion that I had “refused to accept a Petition” from objectors, and do not know where that idea came from. This is yet another instance of misinformation. By then the petition had been sitting on my desk for a month .)

However, on 30 August 2012 there was a letter in support of the Faculty Petition from Dorothy Brooke, saying that there are lavatory facilities nearby but these are too far for young children and the elderly, that although the public house and parish hall have toilets, parishioners had every opportunity to complain, plans were advertised in the church porch, plans to the FDDC were on display at the PCC meeting, planning was advertised in local press and the Church magazine, and that a toilet is essential)

Even later on 3 September 2012 Catherine Williams emailed the Diocesan Registrar, wanting to lodge a formal objection (her objections being consecrated ground, views of local residents being ignored).

On 3 September 2012 the Registrar emailed Catherine Williams requesting a formal letter of objection, albeit it was out of time

10 September 2012 Patrick Goode and Nicola Forde repeated their objection (disrespect to graves, not clear that other options have been

considered, lack of consultation, the Chancellor has refused to accept the petition against the proposal this “contravening a basic democratic right”, concerned about costs of formal objection).

An undated letter of objection was received from Mr. and Mrs. Foxley (objecting to toilet in a graveyard, the earlier works the drainage. “Would you like a toilet built on top of you?”, “although toilet facilities in Dymock are not perfect for everyone, ... adequate”

Letter from John Pavely saying that he wishes to make an informal objection and not a formal one (bones have been disturbed, there are 3 toilets in easy reach, potential health problems of soak away and smell nuisance, cost of toilet when £60,000 is needed for fabric of church, no real discussion, w.c. can be inside

When asked if they wished to continue to object formally at what would be a Consistory Court, many of the above letter writers said they wished to be regarded as informal objectors, which I have done. I have summarised the contents of the letters of objection for the avoidance of any doubt that these views have been considered, notwithstanding that they are all out of time.

Taking their objections over all, I have to balance these against the Church's position of ministry to the living, and the provision of suitable facilities for the 21st century congregation. I have no doubt that for hundreds of years Churches did not have electric light or heating ; inserting the latter may well have disturbed burials in the crypt, but it is not a justification to say, in effect, there shall be no change ever. Buildings evolve, expand and build, and must cater to the needs and expectations of their current users. Many, many churches install lavatories, build kitchen or church halls over their grave yards

to provide useful buildings for the current generation of church goers, and others (such as concert goers or play groups) who use of the building helps to finance the Church and keep it open. I ask myself whether the dead buried at St Mary's would not rather encourage an open, functioning church than face the possible alternative of a closed church, wholesale exhumations and the site being sold for what ever use. As I deal with below, the possible provision in the village for a lavatory for Church users are less than convenient.

On 19 September 2012 Formal objection to the w.c. from David and Nicola-Jane Sterrett, who had objected by a letter on 28th August 2012, on 18th September 2012 on the grounds that :

- Dymock has public lavatory facilities
- the Parish Hall and Public House are adjacent to the Church and both have lavatory facilities
- the costs would be disproportionate to any perceived need and raise questions of further cost for maintenance and security
- it is inappropriate, if not sacrilegious, to erect soakaway lavatory on consecrated land where bodies have been interred

I do note here that the various complaints made out above did not deal with their individual reasons for not objecting at the time of the original state planning application, a more than available opportunity for all the democratic objections which any of them could have then made , nor did any of them give any reasons for why they were late in making their objections under the Faculty jurisdiction, nor did any of them consider that they might have attended an AGM on the Church each year from 2010 onwards to raise

objections about what the people who were and are trying to run the Church are doing. Complaints are made about lack of consultation and the democratic process, but these objectors appear to have just ignored all the opportunities when their voices could have been heard. However, they have, unlike many of the other (often illegible) signatories of the petition taken the trouble, albeit late, to express their views, which I have noted

22. As I have said on 11 October 2012 all objectors (who had not already made it clear that their objections were informal) were contacted to see if they wished to become formal objectors (with a view to a public Consistory Court hearing being held). Only formal objections from Mrs Sime and Mr and Mrs Sterrett, as well as the informal ones, as I have listed above, remained.

23. Given that there were formal objections, this matter had moved into formal Court proceedings. On 26 October 2012 Directions' orders for a hearing were given in respect of the applications that the Faculty be stayed; that there be leave for the First Respondent to object out of time; leave for the Second Respondents to object out of time; if any of the above be granted, further Directions; Mrs. Sime to deal (with supporting medical evidence) with the issue of apparent consent of Mr Sime. The Sterretts, being out of time, were ordered to attend this Hearing to justify and explain why they were out of time with their objections, and provide reasons why they should be granted leave to apply out of time. All the Respondents were ordered to give full details of any objection they had made under the secular planning system, together with copies of communications from the Local Authority in response

24. On 26th November 2012 I held a Directions hearing in this matter at the Diocesan Registry in Gloucester. Mrs Sime and Mrs Sterrett appeared as formal objectors and the Rev'd. Mr Lomas appeared on behalf of the petitioners. The

history of the matter as I have set out above was gone through, which I do not need to rehearse.

25. I dealt first with the fact that both objectors were out of time. In evidence, Mrs. Sime set out the history of her involvement; her objections to the Archdeacon and that he had told her that she would have to lodge a formal objection to the Faculty. She said that she had not seen any Notice, but had only heard of it from a neighbour. Because she had not seen the notice, she had not made a formal objection within the necessary 28 days . Mrs Sterrett said that she had not taken part in the civil planning process as she did not live near the Church. Both objectors agreed that the civil planning process had been properly conducted and made no complaint about that. Mrs. Sterrett went on to say that she had not been aware of the Faculty application until Mrs. Sime had turned up on her doorstep with her Petition for objectors to sign. She had signed , and then written to the Registrar. This Petition, I remind myself, was only got up by Mrs. Sime after the Faculty had been granted . Mrs Sterrett accepted that she did not worship at Dymock, and that she was out of time. As a solicitor. she agreed that she was aware of the need to comply with regulations as to time, but the reason that she and her husband objected late and out of time was that they had not seen the Notice of Application for the Faculty. They objected to it being displayed on the Church Notice board in the porch (as well as inside where the full plans were displayed), as neither of them ever went inside the church.
26. The Rev'd. Mr. Lomas gave evidence about the Church activities and the history of the application as I have set out above. He said that the plans had originally been mooted in about 2009, having been discussed on and off from about 2006/7, but put on hold as there were other more pressing things to do

in respect of the Church fabric. He had come to the Church in about 2010. He fully accepted that the initial trenching work had, wrongfully, been begun in late January 2012. Test trenches had been dug with an archaeologist in attendance, who had reported that some traces of ancient remains had been found. (As it happened, had this not been done, I would have imposed such an archaeological condition, but I am satisfied that this has been sufficiently carried out). At the April 2012 PCC AGM the plans for the lavatory had been discussed, and no objections was made.

I remind myself that any annual general Meeting of the PCC is open to all residents in the Parish as well as those on the Parish electoral roll. Had the 70 odd objectors availed themselves of their democratic rights, they could have attended that meeting, and swept the old PCC out (there being only 54 on the electoral roll), together with any plans for a lavatory they might have had. No one was forcing them to go on with the proposal just because they had planning consent. It was purely promissory. To have stopped then would only have lost the costs of employing the services of an architect for the designs. The objectors would then have been in a decision making position, but that would have entailed them in the work and worry of funding a church and keeping it open. Every spring there is another annual opportunity for those interested in their parish church to step forward to help to bear the heat and burden of the day. Churches do not run themselves. Without local active involvement and work, they become run down, close, and are sold for development or housing, rather like the declining number of village pubs or shops. In the absence of local interest, the existing PCC take the decisions they have to with a view to extending, as they must, parish mission.

The Rev'd. Mr Lomas went on to say that the lavatory plans had been put on the Church website in June 2012 , and also in the parish magazine, which was sent to all subscribers . There had also been word of mouth discussions, and that he had spoken at least twice to Mrs Sime in February 2012. He amplified the alterations to the site and design of the lavatory which had taken place following discussions with the FDDC, so that the proposed entrance to the lavatory had been turned round and would not face Mrs Sime's flat.

In respect of the advertising of the Faculty, it was as required advertised in two places; inside the church with full details and in the church porch. As I saw for myself on the visit I made to the Church on the morning of this hearing, the porch is completely open with no gates or doors, and the church yard is criss-crossed by paths used , as I saw , by people walking their dogs or taking a short cut. I am more than satisfied that there was a satisfactory public display for anyone with any interest to see. The more so, as this Faculty petition followed a planning application which had appeared on public notices, and in the newspapers . I reject the complaint that the Notice board on the village green should have been used. That notice board does not belong to the Church, but to the civil parish. I remind myself that until the last war even the Inland Revenue used Church porches to advertise public notices.

24. OBJECTORS OUT OF TIME

I remind myself as to just what powers a Chancellor has to set aside/amend a Faculty once issued.

In Halsbury on Ecclesiastical Law at paragraph 1105, on Amendment of faculty it states:-.

Whenever it appears to the chancellor that it is just and expedient to do

so the chancellor may order that a faculty be: (1) set aside; or (2) amended, provided that the amendment will not constitute a substantial change in the works or proposals already authorised by the faculty¹.

¹ Faculty Jurisdiction (Appeals) Rules 1998, [SI 1998/1713, r 33\(2\)](#). In *Re All Saints, Eccleshall* (1994) 17 CCC 13 McLean Ch said: 'The first matter concerns the power under rule 30(2) [now rule 33(2)] to amend or vary a faculty. This is a very useful power, not least in cases involving complex projects where changes of plan are sometimes discovered to be essential as the work proceeds. A feature of the exercise of this power is that there need be little delay in approving an amendment as no fresh citation is required. For that reason, however, it is a power which is to be exercised with some care. A chancellor must always ask himself whether the subject-matter should not be handled under a fresh petition. Where the original petition attracted opposition or involved special citation on, for example, one of the amenity societies, the chancellor must consider whether it is necessary to have further inquiry made as to the reactions to the proposed change of plan. I do not think there would in fact have been any difficulty or delay, in dealing with the repeated variations in the present case, though the issue of the transept floor and, the burials beneath it would have required careful attention. All this does, however, mean that a failure to seek the approval of the court for the variation of approved plans by way of amendment to the faculty cannot be treated as a matter of little concern.'

Here the formal objectors argument is not to amend, but, in effect to grant then time to apply out of time to oppose the granting of the Faculty

Why are they out of time? Mrs Sterrett accepted that if this had been brought

under the civil planning she would have no grounds to apply for leave out of time. She heard about the proposals, and decided to "have a go" at objecting. I have found that the Faculty was properly advertised in accordance with the regulations, and Mrs Sterrett just did not see it until it was months too late. I reject her application for leave.

Mrs. Sime's position is different. She made her objections known at an early stage, but failed because she did not go near the church to see the Faculty application notice. In the event she was *ex gratia* given the opportunity to object by the telephone call from the Diocesan Registrar at the close of the period for objections. It is most unfortunate that Mr Sime took that call as I have said. Given that unfortunate combination of factors I consider it right to grant Mrs Sime leave to object out of time.

25. OBJECTIONS

I therefore turn to the objections raised by Mrs. Sime (and Mrs Sterrett which are also mirrored in the objections raised by the informal objectors) which I now consider: Mrs Sime confirming to me that she did not want a Consistory Court but for the matter to be heard that day. Mrs Sime objected to the cost of the proposal. As I have already said above, the majority of the costs were in hand, and the PCC acted properly in waiting before they proceeded with their scheme. Her exaggeration that this work was £35,000 rather than £20,000 (of which much had come in by way of charitable third party donation) does her no credit and went to discrediting the petition she had asked people to sign.

Mrs Sime in her evidence accepted that she had no objection to the design itself of the lavatory in itself. Her real objection was the fact that it was going to be there. She (as did many of the written objectors) could see no need for a church to have a lavatory (or if it had to have to be, why it could not be inside).

Mrs Sime agreed in her evidence before me that she did not realise the amount of discussion which had already taken place with the DAC and English Heritage as to the impossibility of fitting it within a Grade 1 Church. She had to admit that, even if it was so placed, the amount of disruption to the fabric would be detrimental, and that recent graves would have to be disturbed if a lavatory anywhere on the Church's grounds was to be connected to main sewage. She had to accept that her own argument of connection to main sewage would result in a large number of graves being disturbed, resulting in a much larger disruption than the present proposal.

Her real objection appeared to be to the trench arch system of drainage. However she accepted (as did Mrs Sterrett) that she had not made any enquiry as to other churches in the Diocese of Gloucester nor elsewhere who used this system, that she had not made any enquiry off the internet or otherwise about this system, nor looked at the Gloucester DAC's own guideline document about this method of drainage.

I note in passing here that when I visited the Church (which was very properly being opened at an early hour) on the morning of 26th November 2012 not only were dog walkers using the Church, but their dogs were defecating on the grass and on the graves. The objectors are objecting to what they see as a soak away in a spot where there is little evidence of burial (the more recent being on the other side of the church), yet animals apparently are regularly soiling on top of these graves and lifting their legs against grave stones, as I have seen for myself.

The majority of Gloucester Churches of age have used and re-used their church yards over several hundred years; otherwise they would have become full up long since. Many of our Church yards are actually full, and parishioners

have to be cremated, so do not the luxury of a grave space. Many parishioners in the event prefer cremation. Even in an open churchyard a grave space reservation will only reserve a grave space for 75 years. A grave may remain undisturbed if the parish does not need to extend and disturbance is not likely undertaken. Here, in the event by mischance, the disturbance had taken place and the ground is already disturbed, albeit over a minimal area. I reject the argument that such an installation as proposed by the petitioners would be “sacrilege”: an odd use of that word, when we in the Church of England are brought up in the phrase: “Dust to dust and ashes to ashes”. The Diocese has used the trench arch system of drainage for many years with no complaints.

For the avoidance of doubt I deal with the arguments sought to be advanced by Mrs Sterrett, who adopted Mrs Simes’s objection, but in addition pressed the argument that there was no need for a lavatory in the church. She stressed (as did other objectors) that there was a public house very close, whose facilities could be use, and, further away, public lavatories and a parish (but not church) hall. She said these facilities could be used or hired as needed, sometimes at a cost. The Rev’d. Mr Lomas stressed that the public house was not always open at times when the church needed facilities, and that to get to the pub lavatories in opening time one would have to enter through part of the licensed premises. I fully accept that the pub have facilitated concert and church goers, but it is a little way from the church and in dark wet nights any parents would be hesitant to allow a young child to go there unaccompanied. The objectors agree that the public lavatories in the village had been vandalised, which does not give me much expectation that, even restored they would be suitable for use by the elderly or young children. The parish hall is just too far away to be sensibly convenient. The argument raised by objectors that a Church lavatory would bring a distraction if a child (and parent) left during the

service, would occur where ever the lavatory was sited.

I find that this church has made out its case for their need to install a lavatory. The proposed site and design are acceptable. The proposals made by objectors of an internal lavatory, I reject as being incompatible with the Church's Grade 1 status and any such installation would be far more damaging to the fabric than what is being proposed. Similarly, any proposals to link the lavatory to the mains sewage would be far more intrusive to a large number of more recent graves. (Though I have already ordered the DAC is to confirm to me the technical details before any further work is done.). I reject the arguments of cost and find that the parish is sensibly in a position to finance their project.

For the above reasons having granted Mrs Sime leave to object out of time, and having considered (although out of time) the objections of all the informal objectors including Mr and Mrs Sterrett, I reject their arguments . I grant the Faculty and make the same conditions attach to it as on 11th July 2012

31st December 2012

JUNE RODGERS

Chancellor