

## PRESS SUMMARY

### *The Arches Court of Canterbury*

Spitalfields Open Space Limited and others (Appellants) v The Governing Body of Christ Church Primary School and others (No 2) (Respondents) [2019] EACC 1

*On appeal from [2017] ECC Lon 1*

#### NOTE

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document, which will shortly be available at**

[www.ecclesiasticallawassociation.org.uk/index.php/judgements](http://www.ecclesiasticallawassociation.org.uk/index.php/judgements)

**References in square brackets are to paragraphs in the judgment**

The Arches Court of Canterbury (the Court of Arches) is the appeal court of the Province of Canterbury. It determines appeals from diocesan consistory courts, principally in relation to matters concerning Church of England buildings and churchyards. The appeal was from the judgment of the consistory court of the diocese of London.

1. The litigation concerned the future of a building (“the Nursery”), erected in 2012/13 on land to the south-east of Christ Church, Spitalfields, in the diocese of London. The Nursery was erected on part of a disused, but still consecrated, churchyard, lying to the south and south-east of the Grade I listed church. The Nursery was erected by the Governors of Christ Church Primary School, and paid for by the London Borough of Tower Hamlets [20].
2. The appellants were a newly formed limited company, Spitalfields Open Space Limited, and a group of local residents, led by Mrs Whaite.
3. The Respondents were the Governing Body of Christ Church Primary School; the Reverend Andrew Rider, Kim Gooding, William Spring and Richard Wasserfall (Rector, Church Wardens and former Church Warden); the London Diocesan Board for Schools; and the London Borough of Tower Hamlets.
4. There was and is no dispute that the erection of the Nursery was unlawful, because such buildings are prohibited by section 3 of the Disused Burial Grounds Act 1884, and that the court had power to make a restoration under (a special form of mandatory injunction) under what is now section 72 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 [87].
5. In December 2017 the acting deputy chancellor of the diocese of London (Chancellor June Rodgers) issued a confirmatory faculty in respect of the Nursery, and refused to make a restoration, requiring the demolition of the Nursery. She also held that Spitalfields Open Space Limited did not have a sufficient interest to take part in the legal proceedings.
6. By its judgment of 28 January 2019, the appeal court (comprised of Charles George QC (Dean of the Arches), Geoffrey Tattersall QC (Chancellor of the dioceses of Manchester and Carlisle) and David Pittaway QC (Chancellor of the diocese of Peterborough) allowed the appeal and held:
  - (1) that Spitalfields Open Space Limited had a sufficient interest to take part in the proceedings [48-51].
  - (2) that the consistory court had not had the power to grant a confirmatory faculty, whether under section 18A(1) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 or otherwise [56-60].
  - (3) that for this reason, and others, the application by Mr Ouvry to intervene in the appeal should be refused [81-82].
  - (4) that it was appropriate to make a restoration order, requiring the demolition of the Nursery [117]. This was not merely because its erection had been unlawful, but

because the erection had taken place despite all concerned having been formally notified in Autumn 2012, before the start of its erection, of the statutory prohibition in section 3 of the Disused Burial Grounds Act 1884, but, notwithstanding this, having proceeded with the building works [21-22].

- (5) that to allow time for the occupants of the Nursery to relocate, and in view of undertakings given by the Rector and Church Wardens and by the Governors of the school, and by the London Borough of Hamlets, in respect of landscaping and public access to other parts of the churchyard (including the site of the Nursery itself after demolition), restoration of the site need not be completed until 1 February 2029 [139].

28 January 2019