

**IN THE CONSISTORY COURT**  
**of the DIOCESE OF LIVERPOOL**

**Re St Anne's Aigburth, Liverpool**

**JUDGMENT**

**Introduction**

1. By a petition dated 3 May 2018, the vicar and wardens of St Anne's Church, Aigburth in Liverpool, which is a grade II\* listed building, seek a faculty for the substantial internal reordering of the church in accordance with a detailed specification provided by Robin Woolley, architects, who have also undertaken regular quinquennial inspections. It is an ambitious project which was first conceived in late 2016 and incorporated into a feasibility study by the architect in early 2017 enabling the parish to prepare statements of need and significance and to engage in early consultation with the amenity societies and the Diocesan Advisory Committee.

2. This early engagement led to indications from Historic England, the Victorian Society, the Georgian Society and the Churches Buildings Council as to what was likely to be acceptable in terms of internal structural alteration, and replacement seating, and gave some guidance to the petitioners as to how they should approach their application for a faculty and indeed whether any significant modifications were required.

3. The DAC provided its advice on 1 May 2018 after considering the following summary of the reordering:

*“To create a new meeting space by extending the upper gallery at the West End of the nave forward into the main body of the building; to raise and level the gallery floor and install a lift; to create an area for functions and meetings on the ground floor below the gallery: this to include a new kitchen and accessible toilet facilities. Ground and gallery floors will be separated from the worship area by a glazed partition;*

*To remove the pews from the nave and replace them with chairs, retaining the pews in the side galleries and chancel; to install a dais to the Chancel extending into the Nave.*

*These works to be undertaken according (sic) the details provided by Robin Woolley (architect) including the specification dated January 2018 and drawing refs A16:00 - A16:05 and A16:50 – A16:71.”*

4. The DAC recommended the work for court approval expressing the opinion that it was not likely to affect the character of the church as a building of special architectural or historic interest.

5. Subsequently the papers were submitted to my predecessor, Sir Mark Hedley in July of last year. He noted that this was a substantial proposed reordering and made several observations, in particular questioning whether planning permission was required, seeking a clearer financial picture as to the source of funding for the proposed works (which were estimated at over £750,000) and asking for an indication as to the extent of any disagreement with the heritage bodies/amenity societies in relation to the west gallery and columns, pew removal and replacement seating. He also indicated that a visit to the church would be beneficial, but that as his retirement was impending this matter should be considered further by myself as his successor, then deputy and subsequently acting Chancellor until my appointment in October 2018.

6. I was able to visit St Anne’s on 10 October 2018. This provided a very helpful discussion with the vicar, Rev Greenwood, Mr Crowe, deputy warden and the main driving force behind the proposed works, the curate, Rev Dr Matthew Davis, and Archdeacon Mike McGurk who was also in attendance. It became clear that the extensive nature of the works would require careful planning and phasing, which would involve the raising of funds and obtaining grants not yet in place, with the likelihood that if a faculty were granted for the works in their entirety it would be several years before final completion, with the possibility of amendments and alterations if funding could not be achieved. Further there was an absence of specific costing related to the different aspects of the project. The most sensible way forward, it was agreed, was for the faculty petition to be considered in stages when the phasing had been finalised. It would also avoid multiple faculty applications and additional and unnecessary cost.

7. I provided my directions which included the costing of the phases, the proposed timescale and the provision of contractors’ estimates. I also required confirmation from the amenity societies (at that stage it was not considered that formal notice was necessary because they had already been involved extensively in the early stages and appeared to be informed) as to whether they had any continuing

objection to the pew removal and the proposed replacement chairs, which had been proposed by the petitioners in those early discussions as the Theo un-upholstered timber chair. Historic England who had set out their position in correspondence and had maintained an objection to several aspects of the proposals were invited to indicate whether they wish to become parties opponent, or simply to have their written observations taken into account.

8. At the end of January 2019, the petitioners, principally by Mr Crowe, provided an impressive document described as the *Space2grow phasing strategy*". This sets out very helpfully how it is proposed that the works will be undertaken, assuming faculty grant, over the next 2 to 3 years, broken down into three phases. It may be that the timing represents a degree of wishful/prayerful thinking and is a little ambitious in anticipation of the funding which will be required.

9. The first phase, representing that for which a faculty is presently sought, is described as "flooring, chairs, toilets and dais". In other words, it does not include any work to the west gallery, or major structural alteration. In this period the petitioners seek to remove the pews and the plinths on which they are placed, and to relay the floor or restore as appropriate. They also intend to install two toilets, one of which will be disabled, to construct the new dais in the chancel and to provide carpeting. The final aspect of the work which is described in the phasing document is the provision of 300 new chairs. It is here for the first time that the chairs are shown as the SB2M upholstered chair with a chrome frame provided by Alpha furniture (which I shall simply referred to as the SB2M from here on).

10. Mr Crowe's document also provided a breakdown of the costs for this phase (and others) which were said to be just under £130,000 including fees and VAT. The cost of the SB2M supply was £26,286. Helpfully an indication was given as to how this phase would be funded, which included a combination of chair sponsorship, pews sale, grants, and general fundraising. Mr Crowe provided emails to indicate that the amenity societies (Victorian and Georgian Societies) had withdrawn their objections to pew removal, although Historic England had maintained its position as expressed in earlier written communication. I shall deal with this later in my judgment. Nevertheless, Historic England did not wish to become a party opponent on the basis that the representations which were made in that written communication "*were given due weight by the Chancellor.*"

11. It is important to note that when the responses of the heritage body and the amenity societies were elicited, the petitioners had not produced their current phasing strategy document, and it is to be

assumed that all were under the impression that the replacement chair was that indicated in the earlier material, and provided as an integral part of the feasibility study, mainly the Theo un-upholstered timber stacking chair. This becomes significant as will be seen shortly.

12. After this new material was sent to me by the Registry I raised some further queries about costing and funding, but in particular asked for clarification on the chair choice. I said this:

*“Whilst the objection of Historic England remains, their fall-back position should faculty approval be given for the removal of the pews endorses the use of the Theo un-upholstered chair as replacement. The Churches Building Council have approved the project on this basis and will provide support. This is a timber stacking chair. The most recent material in the strategy documentation indicates an upholstered stainless steel chair (step 7). The petitioners should explain what their proposals are here, and in particular whether the costing has been made on the basis of the chair depicted, or the Theo as previously indicated (whether with or without upholstery). I will need to know their plans before considering my decision....”*

13. Subsequently and in response Mr Crowe provided further detail in a letter dated 18 March 2019. He justified the choice of the chair on the basis of cost, comfort, and the preference of the PCC who had tested a number of chairs.<sup>1</sup> Further, he gave more details on potential funding sources, in particular indicating that two major building contractors had agreed to complete the bulk of the phase 1 building work at no cost which was considered to be a sign of God’s blessing on the project.

14. The papers were then returned to me for final determination on the petition for faculty in respect of phase 1. The Registry have confirmed that the petitioners are happy for me to deal with this on the basis of written representations, and that the heritage and amenity bodies are content for me to take into account their observations. Essentially, and on the face of it, if the amenity societies have no objection, this is only Historic England, but as will become clear there may be an absence of understanding as to precisely what is now proposed.

15. I make no apologies for setting out the chronology to date in some detail. A potential difficulty has arisen in relation to the choice of replacement chair in the SB2M, a significant departure from that which was originally included in the consultation, and this will have to be addressed in the context of the

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<sup>1</sup> I will consider his justification later in the judgment.

faculty grant which is sought for phase 1. I had considered whether I should *not* embark upon any determination but instead refer the matter back for further representations and statutory consultation, but on reflection in view of the fact that the petition has now become somewhat pressing with the proposed timescales, and the promise of funding which may be lost, it is appropriate that I address insofar as I can the major element of the works which are sought in respect of phase 1.

### **St Anne's church, and its significance**

16. The church appears to have been built over two years, between 1836 and 1837. This straddles the end of the Georgian era, and the beginning of the reign of Queen Victoria and unsurprisingly the influences of both eras are evident in the architectural design of John Cunningham and Arthur Hill Holme, who are also responsible for another church construction in Birkenhead which had a similar Romanesque style. It is described in the Historic England advice as being constructed at an interesting phase in church architecture, where the Victorian Gothic correct style was yet unestablished, and the church represented a typical Georgian perching box with some use of Romanesque Gothic forms. Its original layout was characteristically Georgian, with a central raised pulpit in front of the chancel, and galleries on three sides of the nave, with box pews in the nave. Eventually by the mid-19<sup>th</sup> century the box pews were removed, and replaced with pew benches, and the pulpit was repositioned. Side galleries were removed to all but the North and South wings, creating the large open worship space which exists today in the nave beyond the chancel arch which allows clear views of the repositioned altar.

17. The church is located approximately 4 miles from the city centre, now part of the suburb, but originally a significantly more rural and peaceful area. It is positioned on a busy arterial road which has always provided the main access route to and from the south-east to the city centre. In the 19<sup>th</sup> century there had been a congregation drop when the church of St Matthew and St James Mossley Hill was founded with attendant concerns about the financial viability of the church, but as the urban community extended southwards with increasing population it became once again a focal point for community and worship.

18. Although the remodelled chancel, which had been damaged by fire, may be plainer than that originally constructed, the West Gallery frontage has some splendid motifs/carvings and plasterwork to the balcony panels. The external stonework is considered to represent a magnificent example of the

Romanesque style with corbel grotesques with heads both internally and externally. The cast iron gallery pillars are original.

19. Undoubtedly the church has been the subject of significant reordering on a number of occasions over the years, as it adapted to changing styles of worship, and in particular as the chancel was opened and greater access to the sacramental aspect was provided.

20. In addition to the statement of significance, this petition is supported by extensive photographic and diagrammatic evidence demonstrating the nature of the worship area, and the particular features of interest (most of which will remain unaffected by any of the proposed phases of work), with an assessment of the harm significance levels of each item. I have also had the advantage of seeing the church for myself on my visit, and noting how it is proposed that the reordering works will affect the interior.

### **Why the reordering is required**

21. A comprehensive statement of need has been provided. This describes a broad range of worship and fellowship activities in which the church is involved, across a variety of ages. There is an expanding involvement with younger families, children and young people, and some community engagement, whilst an older and more traditional congregation is maintained, explaining the typical pattern of two services for worship on Sunday morning, one at 9.15 for a predominantly elderly congregation, whilst there is an 11 o'clock service providing a more contemporary style. The statement describes the church's own dynamic mission in these words:

“Since the arrival of the new vicar in June 2013 the church has seen a significant change in the delivery of its mission. This has resulted in the development of a more contemporary means of worship, greater community outreach and a more dynamic and involved congregation. Examples of these changes are a new worship band, state-of-the-art AV system, a creche, youth groups, men and women's ministry groups, and meals ministry.....

The PCC... are driving forward a very positive and appealing program that will engage and speak to the predominantly working age and youth community that it serves; as well as ensuring that the needs of the older generation are also respected. To achieve this has required a blend of the contemporary and traditional which has been embraced by the vast majority of the congregation. However, this development is in danger of being stifled because the building cannot provide what we need.”

22. The problems are identified in relation to the physical layout of the large open area, which makes it difficult to provide separate meeting space, limited catering facilities and the absence of facilities for the disabled. There are no accessible toilets and there is no clear access route or room for wheelchairs. A separate letter was provided for my consideration from the curate, Dr Davies, who recounted an experience at the end of last year when a new member of the congregation who had been visiting St Anne's and looking for a local church where she could bring her severely disabled son who was in a wheelchair, and reluctantly decided to stop coming because of the impossibility of joining in with the rest of the congregation. The raised plinths on which the pews were placed made it impossible to put a wheelchair other than at the back of the church, thus physically separating them both from fellow worshippers, and causing stress and embarrassment.

23. I noticed on my visit to the church how little space there was between the raised plinths at both sides of the nave and the wall, where access would have been very restricted, and the somewhat incongruent effect of the low-level transept/chancel area from where the worship is likely to be led. (Undoubtedly the raising of the pews on plinths or platforms would have been appropriate when there had been an elevated and central pulpit, although its subsequent purpose is a little less easy to understand.)

24. The statement of need goes on to make this telling observation: –

“An under- utilised asset

Presently, the very poor facilities do not encourage people to see the church as a “go to space” and for the majority of the time it sits idle waiting for the next service to give it some life. The PCC wishes to develop a welcoming and dynamic space that fully supports its mission and makes best use of an expensive resource that consumes most of its finances in upkeep yet fails to deliver even some of the most basic functions beyond standard worship.”

25. The petitioners have therefore identified three main areas where the substantial reordering they seek can address the needs for greater access and inclusivity, the delivery of a dynamic mission that integrates community and regular worshippers, and a flexible space for meetings, worship, and a broad range of activities which are currently denied to them. These are the removal of the pews and the levelling of the floor to provide a flexible worship area which can also be multi-use, the adaption of the main West Gallery to an enclosed meeting room, and the separation of the area underneath the gallery at the back of the church where facilities can be provided for catering, toilets et cetera. Of course there are a number of other aspects to the reordering, which are ancillary and set out in the specification provided by the architects which do not require to be separately identified in this judgment.

26. As I have indicated in paragraph 9 above, for present purposes a faculty is sought in relation to the first tranche of these works, namely pew removal with the replacement by chairs, the levelling/replacement of the floor, the construction of a chancel dais, and the installation of two toilets, one of which will be accessible.

### **The nature of the objections**

27. Although now it is only Historic England who are maintaining an objection which would impact on Phase 1, it is important to consider how the other heritage bodies/amenity societies had been engaged and expressed their own views. The Church Buildings Council in a detailed letter dated 28 September 2017, before it had had sight of the statement of need relied upon by the petitioners, expressed the provisional view that the church had not made a sufficiently robust case for total pew removal. This letter also referred to the issue of replacement seating, providing a link to its own guidance (which I deal with later in this judgment). The council agreed with the early views expressed by the Victorian Society that the acceptability of complete pew clearance depended on the quality of the replacement seating. After the initial proposals for the reordering were revised, and the statement of need was supplied, the CBC accepted that a case had been made for complete pew removal, although once again stressed the importance of the quality of the replacement seating. The CBC was satisfied that the major structural alterations (now in a later phase) would retain the important historic and architectural features. The CBC was clearly under the impression at the time that the Theo un-upholstered chair was to be utilised.

28. The Victorian Society adopted a similar approach. On being reassured as to the way in which the West Gallery and the columns would be incorporated in the reordering it was indicated in March 2018 that no further objection would be raised. However, it is to be noted that this was in response to an email from Mr Crowe where he had indicated that the “*chairs to be introduced are those suggested would be in keeping (sic) with this listed building*”. (ie the Theo chair). The Georgian Society did not have any direct input in relation to the pew removal, deferring to the Victorian Society because the pews in the West Gallery and the nave had dated from 1894.

29. Historic England appear to have had the greatest engagement with the petitioners over the proposals. The first response, from Marie Smallwood was in a letter dated 5 July 2017. As with the other



stakeholders, the principal focus was in relation to the major structural alterations and the gallery repositioning. There was no objection in principle to this. In relation to the pew removal, whilst acknowledging that the bench pews were installed in the late 19<sup>th</sup> century, the view was expressed that they “*form part of the significance of St Anne’s depicting an important and influential period in ecclesiastical history, and their total removal would cause a level of harm to the significance of the building as a whole.*” Ms Smallwood expressed a preference for the retention of a percentage of the pews, but if this could not be achieved it was expected that a “*clear and convincing justification*” would address the harm caused by the loss, with mitigation considered in the quality of the proposed interventions (in other words the replacement seating).

30. After the proposals had been revised, Historic England were consulted once again and responded in a detailed letter dated 19 March 2018. This repeated much of the advice from the earlier letter, and addressed, as before, the scheme in relation to the gallery. In respect of pew removal, the following advice was given:

“... Within the provided statement of need it is set out the pew removal is necessary to provide a flexible space to allow a much broader range of community users to be undertaken in the building.... It is not detailed however, why total removal of all pews is necessary to facilitate the creation of a space for these uses, with particular consideration of the large size of the nave. As a consequence we cannot support the proposal to the total loss of the pews, as we believe it has not been fully justified. We can advise, however were the decision taken to allow the removal of all the pews, despite our stated concerns, we agree that the proposed un-upholstered wooden chairs could represent a sensitive introduction to the building as they would provide structure to a space which would be a considerable volume if unrelieved by furniture.”

31. It seems to me that these observations represent the kernel of the objection raised by Historic England, who unlike the VS and the CBC have not been completely reassured by the original choice of replacement chair (Theo), but instead adopt as their primary position partial retention, with the use of the Theo as their full-back position.

32. Of course none of the heritage bodies or the amenity societies were aware of the more recent change, as I have indicated, but for the purposes of my determination it is a reasonable assumption that their objection to the SB2M is clearly maintained.

### **The Petitioners’ argument**

33. I have already set out the basis upon which the church has identified a need for this new flexible space, the dais and the toilets which will form part of the phase 1 works. In respect of the choice of the chrome framed red fabric upholstered chair, the SB2M, as I have indicated in paragraph 9 above Mr Crowe sought to provide a justification for this in his letter dated 18 March 2019. His response is incorporated in these paragraphs on the second page of his letter:

“The chair judged to be the most comfortable was the SB2M from Alpha furniture.....

At this stage the PCC faced the dilemma of wishing to choose the chair that was both the most comfortable and considerably less expensive, but which it was realised may not be regarded by some as a suitable replacement for the pews in a grade II\*listed building. In an attempt to reconcile this conflict, a further study was undertaken to ascertain if the SB2M chair was in use in other churches with a listed building status. The research identified that the SB2M chair has been purchased by a number of churches with such status as a replacement to existing pews (see appendix 2 – SB2M research findings).

Having completed this extensive and detailed work, the PCC believed that the views of the parishioners are to be given weight and that it could not justify the significant additional expenditure (circa £43k) that would be required in purchasing the Theo chair. The PCC felt very much guided by the need to be good stewards of the funds that the Lord has seen to provide and that to divert such a large amount of money to satisfy largely aesthetic arguments was unconscionable and contrary to the mission aims of this project.

The PCC therefore concluded that the SB2M chair should be the preferred option and subsequently the cost of this chair is reflected in the updated cost plan.”

### **The Duffield questions and the relevant legal approach**

34. If changes to a listed Church building are to be authorised by the grant of faculty, a series of questions should be addressed. These were commended as an approach by the Court of Arches in **Re St Alkmund, Duffield [2013] Fam 158**, and it is an approach now followed almost invariably.

- (1) *Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?*
- (2) *If the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable and can be rebutted more or less readily depending on the particular nature of the proposals (see **Peek v Trower [1881] 7PD 21 26-8**, and the review of the case law by Chancellor Bussell QC in **In re St Mary’s White Waltham (no2) [2010] PTSR 1689** at para 11). Questions 3, 4 and 5 below do not then arise.*
- (3) *If the answer to question (1) is “yes”, how serious would the harm be?*
- (4) *How clear and convincing is the justification for carrying out the proposals?*

*(5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5) the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed grade I or II\*, where serious harm should only exceptionally be allowed.*

35. If these questions are addressed, there is a framework provided within which any harm caused by the building alterations may be assessed against the benefits which are achieved by those alterations. Essentially this involves a balancing exercise.

### **Determination**

36. It is appropriate to deal first and foremost with the least contentious aspects of the phase 1 reordering. The two new toilets are to be placed to the right hand side of the west porch on the ground floor. They will be discreetly positioned and the only significant disruption to the external fabric would appear to be the replacement of an existing stained-glass lancet with a clear leaded window to match the parallel window in the North porch. This has caused no concern to the heritage body or the CBC and I am satisfied that it does not impact in any way on the architectural or historic significance of the church. The provision of new toilets, including an accessible toilet provides a straightforward rebuttal for the presumption of leaving the fabric in its existing state. It is essential that toileting facilities are provided if any meaningful contemporary use of the church as a worship or community space is to be achieved. I have no hesitation in granting the appropriate faculty.

37. Turning to the chancel work, which involves the creation of a raised dais (and resultant carpeting), what is proposed is a platform accessible by two shallow steps at the front of the chancel which will enable the communion table to be brought forward, and accessible visually for the congregation, as well as providing a slightly raised area for those who participate in leading services or events to be observed in the congregation space. Again it is an alteration which has caused no concern to the heritage body, and I am quite satisfied that it does not represent any harm to the significance of the church in the relevant context, applying the first Duffield question. Clearly it is an appropriate enhancement and justified. The chancel has undergone many changes over 150 years, and as originally conceived in its Georgian design was intended to be far less accessible to worshippers because of the

position of the pulpit, and that which was intended, but probably not achieved, by the subsequent changes in Victorian times. The proposed change does little more than bring the chancel forward and extend it. I am satisfied that it can be included in the faculty grant.

38. The removal of the pews and the reconstruction of the floor go hand-in-hand, in the sense that once the pews are taken out, the plinths will also have to be removed, and a significant floor levelling is required. It does not appear to be in issue but that the existing wood flooring will require replacement/restoration if the plinths are removed, to create a level floor.

39. The point is validly made, in my judgment, by both the CBC and Historic England that the pews represent a significant aspect of the evolution of the church as it adapted in late Victorian times to developing liturgical styles, and the accommodation of the congregation in these more open bench pews which are now over 100 years old, is an important historic feature. The nave provides a very large and open space in which the wooden pews provide an integral and component part breaking up what would otherwise be a cavernous hangar-like area.

40. In this respect, the suggestion that partial removal of the pews would preserve the historical and architectural heritage whilst freeing up some space for greater flexible use may appear to be illogical and amount to little more than a passing nod to its Victorian association. It might be considered that the appearance created in such a large open space by half pews and half movable seating (chairs) is incongruous, and neither one thing nor the other, causing more harm than complete removal when it was originally intended that the nave was a space which would be filled with worshippers seated in pews.

41. Having said that, I have little doubt, in answer to the Duffield question 1, that pew removal would amount to a degree of harm to the significance of this grade II\* listed Church building as one of special architectural or historical interest.

42. In answer to the third question, which involves a degree of evaluation and is less than straightforward, I have come to the conclusion that the harm caused by the removal of the pews would be significant, and for the avoidance of doubt not be allayed by retaining some pews. However, it would not amount to *substantial* harm, not least bearing in mind that the bench pews themselves were a Victorian replacement for the previous box pews in the original design of the church.

43. It is then necessary to consider both the justification for the proposal, and to carry out the balancing exercise which I have referred to above. The justification here is clearly and firmly based on missional need. I have identified at paragraph 24 above the petitioner's own assessment of the situation which has been succinctly and neatly expressed; the layout of the church at present provides little more than the functions for standard worship. Whilst the term "*flexible space*" is often glibly used as a justification for contemporising older historic buildings with little thought as to what purpose such space would be put, I am satisfied that the church and the PCC have a clear and dynamic vision of combining community integration with greater congregation fellowship, mission-based activities and a range of contemporary liturgical worship which would suit the wide variety of church membership. Put simply, little or none of this vision could be fulfilled with the church as it is presently laid out.

44. Evidence is also provided that the restrictive seating area makes it almost impossible for involvement in worship and fellowship of those with disabilities, whether wheelchair users or the generally immobile. The raised plinths and narrow side aisles contraindicate any form of flexibility for the use of the nave.

45. Of course, although only concerned with phase 1, it is intended that in creating a large open space without pews the congregation or wider community use will in fact be occupying a smaller area into which the new seating will be provided, because of the screen separation which is proposed at phase 2/3. However, I am not concerned with that for present purposes.

46. Accordingly, the petitioners have provided a compelling justification for the proposed works of pew removal. Does this justification, which bestows a clear benefit outweigh the harm to the historic and architectural significance? The context, of course, is that this is a grade II \* listed building, and accordingly the threshold should be a high one. It should not readily be assumed that even if a compelling benefit is identified, a faculty will be granted in such circumstances. However, here I take into account the level of harm, which as I have indicated is significant but not substantial. The benefit, on the other hand, is substantial, and such a major internal reordering of the seating is probably the only way in which this church can continue in its dynamic mission growth rather than remain static. Thus I am satisfied in carrying out the balancing exercise and addressing question 5, that a grant of faculty for the total removal of the pews is appropriate.

47. In so far as it always remains a concern that some aspect of the heritage should be preserved when there is a large-scale internal change, it is my present understanding that the petitioners intend to retain some pews in the north and south aisles. In such circumstances it is unnecessary to impose any condition in relation to retention/disposal, other than that the petitioners shall use their best endeavours to ensure that the pews are sensitively sold or donated, and that the provenance of the removed pews is recorded.

48. The final and perhaps most troublesome issue concerns the choice of replacement seating. The reason why it is particularly troublesome, is that the whole process of early consultation, DAC advice, and the faculty petition as indicated was based upon an acceptance by the petitioners of the Theo chair which is 100% timber, and which has no upholstery. It is a commonly used chair in listed churches where pews have been removed, and was the reluctant fall-back position of the CBC, Historic England and the Victorian society. The preferred choice of the SB2M, which I acknowledge is also widely used,<sup>2</sup> appears to have emerged only within the last few months, and when consultation with the heritage bodies had effectively come to an end. I do not suggest that the church have acted with anything other than integrity and sincerity in their desire to find a cost-effective and comfortable chair. Nevertheless, the effect of presenting this new material at the stage when a decision is to be made on the faculty petition without affording Historic England or the CBC an opportunity to make representations is that a “*march is stolen*” on what is likely to be a robust objection.

49. Mr Crowe makes reference to the fact that the SB2M may not be regarded by some as a suitable replacement for pews in a grade II\* listed building. He may or may not be aware of the CBC guidance on a new seating:

[https://www.churchofengland.org/sites/default/files/2019-01/ccb\\_seating\\_guidance\\_2018.pdf](https://www.churchofengland.org/sites/default/files/2019-01/ccb_seating_guidance_2018.pdf)

## **6. Selecting new seating**

### **The view of the Church Buildings Council:**

With many years of experience and having seen a range of completed schemes, the Church Buildings Council generally advocates the use of high quality wooden chairs (i.e. unupholstered) and pews where seating is necessary.

The Council’s experience is that wooden chairs have the greatest sympathy with historic church environments, present the best value for money with long life-spans, and that a well-designed, ergonomic wooden chair can provide as much comfort as an upholstered design.

Upholstered seats are not considered to be appropriate for the following reasons:

- They have a significant impact in terms of colour, texture and character which is not consonant with the quality of a highly listed church;

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<sup>2</sup> A review of decisions within the last three years from other consistory courts has shown that these chairs continue to cause controversy and are unacceptable to the heritage bodies and amenity societies. In some instances, they have been allowed (e.g. **Christchurch, Surbiton Hill, Petchey Ch [2018] ECC Swk 2**) and in others they have been refused (e.g. **All Saints, Lindfield Hill QC Ch [2016] ECC Chi 4.**)

- Experience demonstrates that upholstered seating needs more regular refurbishment (wear and tear, staining) than seating without upholstery. This is especially true of multi-use churches where it will be normal to eat and drink regularly on the chairs;
- They are heavy and therefore more difficult to arrange and stack;
- The addition of soft furnishings can alter existing acoustics;
- Wood tones and textures fit well within church buildings and have been used for centuries in this context, whilst some colours have associations with other types of buildings such as offices.

50. Mr Crowe also refers to the additional cost of the Theo chair, which is of course substantial, adding a further £43,000 to the phase 1 works which in the opinion of the PCC was not justified to satisfy “*largely aesthetic arguments*”. Whilst anticipating what was likely to be the objection or preference of the heritage body, with the utmost respect to Mr Crowe and the PCC, the question which has to be addressed on any faculty application and as defined in the Faculty Jurisdiction Rules is whether or not the alteration is likely to affect the character of the church as a building of architectural or historic interest. This goes far beyond “aesthetics” which suggests a preoccupation with a pleasing or acceptable appearance. In determining whether to grant a faculty, a chancellor or his deputy is required to undertake a careful balancing exercise which reflects a number of competing interests. Further, I cannot be influenced by the fact that other listed buildings may have utilised this chair, without knowing the prevailing circumstances in which faculties were granted for those churches or cathedrals.

51. Quite apart from the fact that I would most likely decline to grant a faculty before potential objectors had been afforded an opportunity to see what was proposed in the context of replacement seating (even though the position of HE and others is likely to be highly predictable), the material which the petitioners have provided at present is insufficient to meet the necessary justification for what would be an exceptional course of action, that is significant or serious harm to a building of special architectural or historic interest. Whilst good stewardship of resources is a commendable attribute for church leaders, and those managing a reordering project, it is also indicated that the substantial cost of phase 1 will be met by others, and in such circumstances, there would be additional funds available. It should be stressed that stewardship applies not simply to managing money, but also to the heritage and history with which the petitioners have been entrusted.

52. I have given this matter careful consideration. On reflection I do not believe that it would be appropriate to refuse the final element of the faculty outright in the absence of more compelling justification for the use of a controversial chair. It is sensible, in my judgment, for this matter to be deferred, to afford the petitioners an opportunity either to provide that compelling case, or after their

own period of reflection to suggest alternatives which might be less expensive than the Theo chair, and more acceptable to the heritage bodies and amenity societies. There has simply been no engagement on this aspect. It is not appropriate for me to suggest precisely what might be relevant or the nature of any additional material which could be provided by Mr Crowe and the PCC, but factors which may impact on the balancing exercise between substantial harm and the benefit from the reordering would include the extent to which more expensive seating might affect other aspects of the reordering, the range of chairs including different types and less vibrant shades of upholstery (if that is what is desired) which is available, or alternatives to the Theo all timber chair, and the cost projection of replacing upholstered chairs which would undoubtedly be necessary if they become soiled or damaged.

53. The further advantage which an adjournment of this issue would achieve is that the views of Historic England (and others) could be obtained after a further period of consultation. These bodies will now have my determination that the pews can be removed and do not need to be retained in the nave, which may lead to alternative suggestions or potential compromise if there are costs implications. The petitioners may also wish to obtain the advice of the DAC on the issue of replacement chairs. There is enormous experience vested in the members of the DAC who have had to address this issue on many occasions. As indicated above, their advice here was based upon the petitioners' acceptance that Theo chairs were to be acquired.

### **Summary and conclusion**

54. Accordingly I confirm the grant of faculty in relation to: (1) the installation of new toilets, including an accessible toilet facility on the ground floor in the West End porch area, (2) the provision of a raised chancel dais, and carpeting, such works to be carried out in accordance with the plans and specifications provided by Robin Woolley architects within six months of the issue of this faculty; (3) the removal of pews to the nave, the levelling of the floor with the removal of plinths, and the replacement/restoration of the flooring as appropriate to the nave, such work to be carried out within six months of the date of the grant of faculty. It is a further condition that the pews are disposed of sensitively by sale or donation, with the provenance recorded and notified to the Registry in due course.

55. The pews shall be replaced by chairs, the identification by make and model of which shall be the subject of further determination by myself in no less than three month, on further submission of the faculty papers, after the petitioners have had an opportunity to provide additional material (if they



choose or are so advised) of their chair choice, and Historic England, the Church Buildings Council and the Victorian Society have been provided with a copy of this judgment and faculty determination and afforded an opportunity to make any further representations.

56. I appreciate that declining at this point to extend the faculty grant to the preferred chair choice may be disappointing for the petitioners who wish to proceed with phase 1 as soon as possible. However, I make it clear that I am not ruling out altogether the SB2M chair as a replacement for the pews; instead I am requiring the petitioners to provide a significantly more compelling justification for the exceptional course which is sought.

57. I add two things by way of footnote. First of all, the balance of the petition, as I have already indicated, which deals with the phase 2 and 3 works in relation to the extension of the West Gallery and floor levelling, partitioning to create meeting rooms and the construction of kitchen facilities, as well as a number of other works which are not presently included in the petition (heating, lighting, lift construction, work to the entrance area) are deferred for consideration at some stage in the future. Clearly it is desirable to keep costs to a minimum, which is why in discussion with the petitioners phasing was suggested, but it may be necessary if the timetable is adhered to that an amended petition to cover the non-included works is provided, to enable early consultation with the DAC, or alternatively a fresh petition is issued. On the basis of the engagement with various interested parties which has already taken place, it is unlikely that much of this additional, but costly work will be objected to.

58. Second, whilst it would have been open to me to decline approval of the entire works sought in respect of phase 1, on the basis that I am not yet satisfied in respect of the chair choice, it seems to me that aspects of the petition were divisible, and there is no reason why work cannot be commenced in relation to the chancel and the disabled toilets. However, it would be an unacceptable outcome were the petitioners to commence the removal of the pews, the plinths and the reinstatement of the floor before the issue of the replacement chairs had been resolved. Accordingly I propose to make it an additional condition of the faculty grant that the pews are not removed until a determination has been made in relation to those chairs. In the event that a chair is identified that is acceptable to the interested parties and the DAC, my further determination can be relatively straightforward by way of a short addendum to this judgment.

59. If there remains an issue, or an adherence to the SB2M chair choice, I will carry out a further evaluation on the basis of any additional material provided in accordance with the Duffield questions. I trust that this is clear.

60. In accordance with the usual practice and procedure of this court, the petitioners shall pay the costs of determining this petition.

His Honour Judge Graham Wood QC

Chancellor of the Diocese of Liverpool

25<sup>th</sup> April 2019