

**IN THE CONSISTORY COURT OF THE DIOCESE OF CHESTER**

**Saint Mary Magdalene, Ashton upon Mersey**

**009/16**

**Judgment**

**Introduction**

1. By a Petition dated the 13<sup>th</sup> February 2016 and issued on the 21<sup>st</sup> April 2016, the Incumbent and Churchwardens request a faculty for the internal re-ordering of this rather fine, Victorian, Grade II church.
2. The reordering comprises
  - Raising and enlarging of the chancel dais and introduction of ramp access
  - Construction of a new prayer room at the east end of the south aisle
  - Installation of new floor coverings to the chancel, dais and nave
  - Replacement of all the pews with chairs
  - Installation of new external and internal doors in the south porch
  - Installation of a new lighting system
  - Update of the PA and audio-visual systems
  - Update of the heating system
3. The works are currently estimated at approximately £320,000. Funding is already largely available or identified.
4. Planning permission has recently (and somewhat to the surprise of the parish and the Diocesan Advisory Committee (DAC)) been refused upon a detail relating to the south porch doors. That decision is, I gather, under appeal, or at least further discussion, with Trafford Council.
5. In the light of that, a minor variation to the petition has been sought in respect of re-use of existing door hinges (decorative iron straps) and some supplementary drawings have been submitted. The DAC supports what is now requested and I am told agreement in principle has been achieved with the council.
6. I am content to permit this (relatively minor) variation request and did not consider the petition required re-service or further consultation or delay.
7. The proposals are now (following fairly extensive consultation and evolution) largely uncontroversial, though two strongly contested issues remain to be determined: the issue of the carpeting of the church and the choice of chair to replace the pews. Each is not without difficulty.

**The Positions of Parties and Others**

8. The Parochial Church Council unanimously supported the proposals at its meeting on 25<sup>th</sup> January 2016.
9. The issues have been the subject of wide consultation in the congregation and, of over 200 congregational responses, I am told about 94% were in favour.

10. The DAC, which has had very significant involvement and correspondence about most aspects of the project since July 2011, and advised with comment and helpful feedback on a number of occasions in 2014-15, does 'not object' to the proposals. The Committee is however unenthusiastic about the petitioners' choice of chair.
11. A report of 15<sup>th</sup> July 2016, prepared at my direction, sets out something of the DAC's own struggle (and division of view) in respect of the remaining issues.
12. It was perhaps somewhat surprising that in its Notification of Advice dated 4<sup>th</sup> April 2016 the Committee had opined that the work was not likely to affect the character of the church as a building of special architectural or historic interest.
13. Public notice took place between the 7<sup>th</sup> April 2016 and 5<sup>th</sup> May 2016. No letters or indications of objection from members of the public were received.
14. I directed special notice to Historic England (HE) and to the Victorian Society (VS), both of which organisations had constructively participated at the consultation stage. I shall return in more detail to their respective objections.
15. The Victorian Society responded by notice in Form 5, becoming a party opponent, and indicating that the Society was content for the matter to be dealt with upon written representations.
16. The petitioners similarly agreed and I gave directions accordingly on 17<sup>th</sup> June 2016 for the present determination.
17. HE regretted the proposal to remove the pews and encouraged their retention, but did not wish formally to object. It was argued that the nave pews, while simple in design, were original and a notable part of the overall aesthetic composition of the church, contributing to an understanding of historic liturgical practices. Their removal was considered likely to cause 'some harm to the overall significance of the church'.
18. The Church Buildings Council (CBC) was content to defer consideration of the detail of the proposals to the DAC and broadly welcomed much of what was in mind. The Council did not oppose the removal of the pews throughout the nave, to provide the flexibility desired by the parish, not considering the pews of any particular significance.
19. However, despite the careful consideration plainly given by the parish, the Council was opposed to the seating proposed.
20. It was, I confess, not entirely clear to me precisely which specific model (or colour) of chair was in contemplation at the date of the CBC report. The Council's primary concern, however, was that in the context of the building, the introduction of upholstered seating risked creating an 'overly domestic, utilitarian character, rather than distinguishing it as a place of worship'. Seating with a 'plain timber finish, as per our usual guidance' was recommended.
21. Further, the Council's 'usual recommendation' was also 'against carpeting in churches, due to the domestic appearance that it creates and the effect on acoustics'. The Council was pleased to note the proposal to remove existing carpet from the chancel and remained content to defer to the DAC on outstanding detail.
22. I return in greater detail to the concerns of VS.
23. Objection was not taken to the removal of the pews themselves. However, it was considered important that any replacement chair selected should be a

- 'good quality wooden chair'. Examples cited were the Theo chair or the Howe 40/4. Reference was made to the helpful CBC guidance.
24. VS considered the installation of carpet in a church 'in every instance we have seen' to be 'aesthetically damaging'. It was said that the existing orange carpet installed throughout appeared 'harsh', and did not 'compliment the interior of this fine church'. Objection continued: 'Carpet is inappropriate for the interior of a historic church as it is overly domestic in character and aesthetically incongruous with the church'.
  25. In a subsequent communication VS cited HE's guidance (in their publication *New Work in Historic Places*) that 'wall to wall carpeting of an interior should be avoided because it tends to create a domestic character at odds with the interior of an historic building'.
  26. The carpet proposed 'with its bright blue and green design' together with 'blue' chairs would, it was feared, 'create a sea (?) of nondescript blue finishes which are incongruous with the aesthetic quality of the interior. Carpet lacks the character and richness that a good quality hard floor provided to an interior. This carpet, with its jarring bright blue and green colour scheme would become the dominant characteristic of the interior and would damage the aesthetic quality of the interior'.
  27. VS acknowledged the diligence of the petitioners' research of seating alternatives, but nevertheless concluded the 'chair selected lacks the character, quality and richness of the pews they are replacing and together with the blue carpet will significantly damage the aesthetic quality of the interior'. The suggestion that Theo and Howe chairs, widely used already in many church re-orderings, were as uncomfortable as the petitioners feared was challenged.
  28. VS was unconvinced by the DAC view that carpet might usefully serve as a means of introducing a common flooring in the nave and unpersuaded by any suggestion the parish had demonstrated sufficient public benefit to outweigh the likely significant harm the proposals would cause the building. The Society was critical of the DAC's apparent failure to consider the proposals in the light of the *Duffield* questions (see further below).
  29. The DAC report which I had requested was dated the 15<sup>th</sup> July 2016. It documented something of the committee's evolving thinking.
  30. The parish's initial choice of chair, the Alpha HB1WS, was considered by the DAC excessively upholstered for the context and likely, in combination with carpeting, to create an excessively 'fabric-oriented' appearance in the nave. That said, this particular chair appeared to have been introduced satisfactorily in other listed churches in the diocese.
  31. The current proposal, the Rosehill Churchill Ultra with damson fabric, was judged an improvement. A visible element of the timber frame might serve as a counterpoint both to the chair upholstery and the proposed carpet. Of a number of chairs the parish had considered, the final choice seemed in the view of the committee the least visually damaging. The committee's general preference however (in line with the bodies I have already mentioned) remained where practical a non-upholstered chair.
  32. It was noted the Churchill Ultra would not be able to provide some of the 'bench' functionality for which the parish had hoped with the HB1WS chair. The committee accepted there were positive aesthetic elements to the overall scheme (not least in the proposal to expose the tiled floor of the chancel)

which to some degree 'compensate in visual terms for the aesthetic shortcoming of the proposed chairs'.

33. At its meeting on 18<sup>th</sup> March 2016, three out of nine members present did not, for aesthetic reasons, feel able to 'recommend' the chosen chair. The (compromise) outcome of further discussion (and possibly a vote) was to 'not object'. The minute suggested the committee considered the chair 'visually unsatisfactory and likely to require replacement significantly sooner than other possible options'.
34. A note of the meeting added that, 'in all respects other than the currently proposed chairs, the Committee recommends without reservation the proposed re-ordering works'.
35. That included the carpeting proposal. Alternative (existing) underlying flooring having been explored, the DAC accepted the parish's argument for carpet throughout the nave. Following discussion as to design and the use of two colours, incorporating a cross design mirroring the cross in the nave roof timbers, the DAC was satisfied the proposed nave carpet would offer a simple but effective ordering of the nave space.
36. The Committee was persuaded that would bring practical and aesthetic benefits, and perhaps some design synergy with the nave roof trusses.
37. It was thought there would be a negative acoustic effect and the view was that the parish had perhaps overemphasised the practicalities and implications for its own sound system at the cost of evaluating this aspect.
38. It is fair to say that VS has found the DAC analysis largely unconvincing.

## **The Church**

39. The church, which is Grade II listed, was built in 1872-4 in gothic style by architects Wilson and Oldham. There is no doubt it has a certain interior and exterior quality. The current *Pevsner* refers to it as 'large...confident..'. The existing nave dais was constructed in the 1990s and will certainly benefit from re-modelling.
40. To the north of the church and attached to it is a substantial church centre incorporating offices, toilets, a large foyer and meeting rooms of various sizes. The hall portion of the centre was constructed in 1968 and the entrance and foyer cafe dates from 2008.
41. The chancel has a number of features of interest and there is some stained glass, also of interest.
42. In the section in the Statement of Significance entitled "Assessment of the Impact of the Proposals...", the petitioners have said: 'Visually the most significant new item in the interior will be the nave dais and ramping to it which is believed to be essential to meet the needs of the parish. This however will be a clearly modern addition to the church with visually light balustrades of glass. It will also be possible to remove this dais should future generations desire, without leaving any trace on the historic fabric of the church'.
43. They continue, 'Possibly the most significant re-ordering proposal for this church is the removal of the pews. However, it is intended that new chairs will be typically laid out in rows as per the existing pews. The flexibility that the chairs offer will allow cafe church, worship in the round and other

activities and events to be accommodated within the church building, which it currently cannot do’.

## **The Need**

44. The proposed re-ordering reflects the perceived need of a thriving evangelical, charismatic, church with an electoral roll which has grown from some 360 in 2007 to, I believe, 515 today. Average Sunday attendances (across St Mary Magdalene and Sale West Community Church) are some 390. About 160 children are on the books.
45. The Church Centre is heavily used as a community resource with a large number of groups and organisations using the facilities during the day and in the evenings.
46. The church’s mission is to be “A Growing Church”, overtly missional in intent and also, importantly for present purposes, a training and conference centre, a ‘place of refuge and renewal’ as well as outreach. It wants to serve the community and believes the re-ordering will further this.
47. The Archdeacon’s view, in the DAC report I have mentioned, that the church has a successful ministry in offering conference facilities alongside normal parish ministry is significant. It is said the nave has therefore to perform two distinct functions: ‘it is not a regular parish church’.
48. The DAC purported to have taken account of this in its consideration of the remaining controversial issues.
49. The parish’s hope is to provide a church building and Centre which will not only continue to be a focal point for the Christian and secular communities of Ashton Upon Mersey, but will build upon existing strengths. A Building Strategy Committee has been actively considering issues since 2009. The wish is to provide flexible and comfortable seating within the church to enable an imaginative variety of worship and conference use.
50. Some, but in my judgment not materially significant, loss of seating was implicit in the proposal. Current capacity is some 380. At present the ‘busiest’ services number around 175. Seating with a ‘bench’ link option might enable about 300 to sit. The proposed chairs would enable 240 with some 20 more on the chancel, but the option of a sound/video relay to additional spaces in the church Centre was always available.
51. ‘Stackability’ was not a defining feature of the parish’s need, though some element of that would very likely assist. There was a firm view at least a number of chairs required arms to support elderly people as they stood up.
52. Considerable emphasis was placed on the fact that training events, courses and conferences meant that individuals would very likely be seated for periods considerably longer than a typical service. For example, a recent church conference had occupied two 8 hour days. Routine courses (Alpha; Freedom in Christ) tend to run for 8-12 weeks and to involve seated sessions between 45-90 minutes in length. Termly training and other leaders’ events typically last 1-2 hours.
53. The petitioners have brought forward a certain amount of anecdotal information (to be frank, of limited real assistance to me) as to positive and negative experience elsewhere – much of it highly subjective - with various

- upholstered and non-upholstered chairs. I am myself familiar with some of the chairs mentioned and have photographs of others.
54. The petitioners have, I am satisfied, given proper thought to issues of durability and maintenance. They have (probably justified) confidence that their own (fairly sophisticated and professionally led) sound system arrangements will cope adequately with any acoustic deficit caused by upholstered chairs or indeed carpet.
  55. They reason that their 'research is sound and coupled with the specific needs (we have) for seating that is both comfortable over a long period and flexible in its use', submit they have made out a persuasive case.
  56. They describe their choice of chair as a 'strong and unanimous' one.
  57. They envisage an 'armchair' at the end of each row resulting in 'at least 10% chairs with arms'. The suggested Churchill Ultra has an upholstered seat and back panel and a beech laminate frame
  58. It has been unnecessary for me in this judgment to detail other aspects of the petitioners' justifications for the need of the works identified in the Petition, given the limited issues which remain in contention. I have, nevertheless, had regard to all the available material.

### **The Law**

59. The church is listed – in itself an indication of its importance and significance.
60. The proposed works will, without doubt, affect its interior. I consider they will affect its special character and impact an attractive and significant building.
61. My approach needs therefore to be that set out in Duffield, St Alkmund (2013) Fam 1 (Court of Arches), as modified in Re Penshurst, St John the Baptist (2015) 17 Ecc LJ 393 (Court of Arches).
62. I need to ask: (a) would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest? (b) if not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of good reason change should not be permitted? (c) if there would be harm to the significance of the church as a building of special architectural or historic interest, how serious would the harm be? (d) how clear and convincing is the justification for carrying out the proposals? (e) in the light of the strong presumption against proposals which will adversely affect the special character of a listed building, will the benefit outweigh the harm?
63. In considering that last question I have to bear in mind that the more serious the harm the greater the level of benefit needed before proposals can be permitted. Serious harm should only exceptionally be allowed to a Grade I or Grade II\* building.
64. A number of recently reported decisions have highlighted issues relating not merely to pew removal but to the court's approval being withheld to the petitioners' choice of replacement chair. Long Itchington: Holy Trinity [2016] ECC Cov 7 and Salford Priors: St Matthew [2016] ECC Cov 4 are examples.
65. Each case is, of course, fact and context specific. The former church was Grade II\* listed, the latter Grade I. Chancellor Eyre QC was rightly concerned to give effect to the guidance I have mentioned above, to reflect the expert

- advice available that properly designed unupholstered chairs can be as comfortable as those which are upholstered, to maintain, as he expressed it, 'an emphasis on quality and seemliness', and to avoid 'an overly casual appearance (which) can be incompatible with a house of God'.
66. Further, he was of the view that 'the preferences of the petitioners and the Parochial Church Council cannot prevail over the consensus of expert opinion in circumstances where the objectives justifying the reordering can be achieved without upholstered chairs'.
  67. He concluded (in Long Itchington) that he was 'not persuaded that upholstered chairs as opposed to quality unupholstered chairs are necessary in order for the petitioners to achieve their legitimate objectives of furnishings which enable flexible use of the church and which are suitable in terms of appearance for modern use'. He found 'the introduction of such chairs would detract from the appearance of the church in a way and to an extent which is not necessary and which is, for that reason, impermissible'.
  68. That the Chancellor's judgments were apparently later the subject of some gentle journalistic critique, even mockery, does not, in my view, call in question the care or wisdom of his analysis in those cases, but it does perhaps highlight the view held by at least a section of the public that the church – facing the very many serious ministry and resource challenges it does – needs to maintain a sense of proportion in relation to such decisions. John Bingham in the Daily Telegraph of 22<sup>nd</sup> August 2016 opined : '...comfortable seating has become a test of orthodoxy in real life after an ecclesiastical court banned the use of padded chairs on the grounds that they were verging on the ungodly'.

## **Discussion**

69. I have not, I confess, found this an altogether easy decision, particularly in relation to the parish's suggested choice of chair.
70. The pews themselves are of relatively little merit. Their contribution is to be found in their unity with the building and its pleasing interior. That their actual removal, though understandably regretted by HE and VS, is not significantly contested, is important. In my judgment the harmful impact of removal will be no more than modest. The benefits to be obtained from removal are real and substantial to the ministry of the church and to the community. I unhesitatingly approve their removal.
71. As is so often the case, floor covering becomes an immediate issue in the wake of pew removal. Exposure of the existing floor having been explored and (with valid reason) rejected as unsuitable, I, like the DAC, am persuaded that the nave carpet proposed will offer a simple but effective cover for the nave space.
72. I am not persuaded that carpet in this Grade II building will cause the damaging 'domestication' of the interior, or the other significant aesthetic harm, the objectors fear. The proposed design will, to a degree, mitigate that. The vast majority of the church's significant and attractive Victorian features will remain unaffected, as indeed they have done in other listed churches in the diocese where carpeting has been approved and found to be largely acceptable, even successful. Some uniformity of floor covering is required, and desirable, and I judge carpeting to be likely in this church to meet that

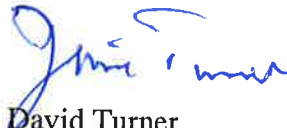
need. It will, I am persuaded, create a sufficiently warm, integrated, appealing space as to warrant approval. That it can, if necessary, be revisited or reversed in future years reduces somewhat further the overall significance of any decision.

73. I have struggled more with the choice of chair. I am, I confess, reluctant to contemplate a position where the undoubtedly wise and authoritative advice and published guidance of the amenity societies and CBC on this subject somehow necessarily confines parishes (or Chancellors) to a small list of 'approved' chairs for use in re-ordered buildings – irrespective of the reasonably held and conscientiously researched views of petitioners, the very people who are the custodians of the church, contending for the details of the reordering in order to enhance the church's mission and witness. Of course even a firmly held parish preference for any particular chair cannot of itself cause the suspension of a proper *Duffield* appraisal. But when essentially subjective issues such as 'comfort', or indeed the quantum or colour of upholstery, are in issue, dogmatic insistence on an alternative becomes more problematic.
74. There will be cases (and the two in Coventry I have mentioned are perhaps examples) where the combination of the listing of the church and the balance of expert opinion point decisively away from acceding to a parish's chosen chair. There will be other cases, perhaps, where a lesser listing and a more nuanced appraisal both of aesthetic impact and parochial need point to a different conclusion.
75. I have, of course, been concerned that the DAC, upon whose advice and considerable experience I necessarily place much weight, though plainly having a spectrum of opinion, themselves concluded they should 'not object'. The DAC was, I judge, right to voice the concern it did.
76. That said, the parish has, in its present choice of chair, chosen one where there is a significantly visible element of timber frame which, I consider, on balance, will provide an adequate counterpoint to both upholstery and carpeting.
77. In short, I conclude the choice of chair will inflict some modest harm on the visual aesthetics of the building, but conclude that this parish has demonstrated a benefit which will outweigh the harm.
78. Issues of wear, tear, staining, moving and stacking seem to me in this case to be of lesser significance. I am satisfied the parish had properly evaluated those and, so to speak, 'counted the cost'.
79. The chair itself is not, in my judgment, jarring on the eye or in any significant way 'undignified' or 'unworthy' of a church setting. It appears to be produced by a reputable maker and to have a credible track record of use in churches. It is reported by some reviewers (very possibly, I recognise, selectively chosen ones) to be of good quality, style and comfort.
80. This church is, I accept, one where, alongside conventional parochial life, there exists a growing 'conference' ministry. That in turn has plainly influenced the petitioners' choice of chair and underlined the emphasis on comfort.
81. As a matter of simple logic, conference aims could, of course, be achieved without upholstered chairs. Aesthetic questions clearly need to be balanced against parochial convictions (and indeed congregational unity) in relation to that particular aspect of the church's ministry. I cannot pretend I have much



enthusiasm for prolongation of the chair selection debate, in which the congregation appears to have been engaged for some time. I do not judge that will further the broad principles of the reordering which I judge to be entirely justified. Had I any real feeling that this chair (combined with carpeting) would result in an (objectively) off putting interior or an interior fundamentally at odds with a place of worship I would unhesitatingly have said so and, as Chancellor Eyre QC did, limited the faculty accordingly. I am not so persuaded

82. I will grant the faculty sought for the works (as amended). A good quality photographic record of the interior should be made prior to removal of the pews and preserved with the church's archive. Standard architect supervision and electrical works conditions should attach. The works should be completed in 12 months or in such period as may be further ordered.
83. There will be no order as to costs save that the petitioners shall, in the usual way, pay the Registry and court costs of and incidental to the petition. There shall be a correspondence fee to the Registrar in a sum to be agreed or as I shall direct.



David Turner

His Honour Judge David Turner QC

Chancellor of the Diocese of Chester

30<sup>th</sup> August 2016