

Neutral Citation Number: [2024] ECC Lon 1

IN THE CONSISTORY COURT

DIOCESE OF LONDON

In the matter of

ST MICHAEL, CHISWICK

-and-

In the matter of a Faculty *Nisi* granted to Martine Amelia Oborne (Vicar), Susan Diane White and James Martin Hawkes (Churchwardens) which is subject to Objection

-and-

In the matter of the replacement of 209 existing Ladderback Pilgrim chairs with 120 new Abbey chairs from Trinity Church furniture

Judgment of the Chancellor dated January 24, 2024

Etherington Ch:

Introduction

1. On Friday, November 3, 2023 I granted a faculty *nisi* for the replacement of 209 existing Ladderback Pilgrim chairs with 120 new Abbey chairs from Trinity Church furniture. I judged that, in the absence of objection, that the Petition should be granted. This was, however, conditional on there being no objection at the time when the period for public notice expired: in other words, a faculty *nisi*.
2. In the case of this petition, objection was received within the specified time and, it therefore now falls to me to decide whether the faculty should be refused or made absolute.

Forms of Objection in Faculty Proceedings

3. In faculty proceedings before the Consistory Court, objection to a faculty may be registered in one of two ways. They are now set out in the Faculty Jurisdiction Rules 2015 as amended ("the FJR"). The rules are set out in Part 10.

- a. First, not everyone is permitted to have their objection considered by the court and anyone seeking to have an objection considered must fall into one of the eight categories set out in rule 10 (1). I am satisfied that the Objectors in this case do fall into one or more of the categories set out and that each one is therefore an “interested person”.
 - b. An interested person’s objection will be considered by the court provided they state the basis on which they are an interested person, and the grounds on which objection is made *and* where the objection is made within the time limit set out in rule 6.3 of the FJR or such period of time as the court has directed. I am satisfied that this has happened here.
 - c. At that stage, the objector becomes a registered Objector. I use a capital ‘O’ at this point (although the rules do not) in order to distinguish an Objector (accepted by the court as validly objecting to the proposals) from an “objector” in its general sense.
 - d. All Objectors are offered two ways of proceeding. Either they may become a formal party to the proceedings, known as a Party Opponent, or they may leave me to take their objection into account without becoming a formal party. There is a third option, not specifically offered by the rules but one which obviously follows logically, namely not to reply at all. The way I deal with this third category is nevertheless to consider the objection as if the Objector had taken the second option (not to become a Party Opponent but to leave me to take their objection(s) into account) unless the Objector withdraws the objection(s) altogether.
 - e. There are differences between what a Party Opponent, on the one hand, and what an Objector, on the other, may do. A Party Opponent is entitled to take a full part in the proceedings; an Objector is not. This means that a Party Opponent may be heard in court at any stage of the proceedings, make written representations, if that is appropriate, may introduce relevant and admissible written evidence, and (in an oral hearing) test the Petitioners’ evidence and give and call oral evidence. An Objector, however, is confined to having the letter already submitted taken into account.
 - f. An Objector cannot be made subject to an order for costs. A Party opponent may be liable for costs, although only in very rare circumstances where the Party Opponent has behaved unreasonably (and, in practice, very unreasonably and usually after warnings have been ignored).
4. These are important differences, but they relate to procedure and the extent to which submissions and evidence may be made or called, explored and tested. The *force* (or otherwise) of the objection itself is the same whichever option is chosen. I can well understand why people do not want to become emmeshed (as they may see it) in an ecclesiastical court hearing but see themselves as having what they consider to be a valid objection to a faculty petition and want the judge to take this into account – particularly as the objection may relate to,

or may rely on facts associated with, matters that may not otherwise have been apparent to the court.

The Petition

5. The Petitioners wish to replace 209 existing *Ladderback Pilgrim* chairs with 120 new *Abbey* chairs from Trinity Church furniture.
6. The church is a 1909 Arts & Crafts building in Grove Park, Chiswick. It was the last parish created within Chiswick. It has a more modern hall, constructed in 1998. It is Grade II listed. The building was designed by Caroe and Passmore. Of the reviews cited by the Petitioners, Jennifer Freeman perhaps sums the building up in the most succinct terms: *the emphasis externally is on the craftwork, on careful stone dressings, on subtle variations in the tilework, on the timbering, brickwork and leadwork...*and, talking of the way the church fits sensitively into its environment, goes on to say that it is: *still leafy enough to evoke the setting of a simple country church.* Clearly, its red brick and tile composition and its tiled arches are distinctive.
7. The church has also had an eye to coherence in its modern church hall which replaced a different and less cohesive construction.
8. The existing chairs are said to be unremarkable and simply staple chairs of the late Victorian period. They have been free-standing at one time, battened together in rows at another, screwed to the floor at one stage and more lately still battened together but no longer screwed into the floor. The battening has been achieved by use of a different wood. They are, however, relatively old and were introduced into the church from the beginning. These *Ladderback* chairs (the “old chairs” of which many are fond) have an attachment at the rear, allowing the person sitting behind to place service sheets etc inside.
9. The chairs with which it is proposed to replace them are Trinity Church *Abbey* chairs (the “new chairs”) and are said by the Petitioners to be of high quality with oak veneer seats and backs and metal chrome legs. They are described as being similar to those installed in ‘many English cathedrals’. I am told that they can be fitted with “plastic glides” to enable rows to be straight and neat. They are stackable. It is said that the new chairs ‘will look beautiful and make the space more usable at times other than Sunday mornings’.
10. I have viewed photographs both of the old chairs and the proposed new chairs.
11. It is argued that the old chairs are not specifically Arts & Crafts. It is said that they are uncomfortable and, in some cases, damaged and are now well over 100 years old. They do not stack easily or at all. The Petitioners say that the new chairs will provide flexibility and kneelers will be retained.
12. The church has a current electoral roll of 163. I have not been told what the average numbers are for attendance. Services are confined to Sunday mornings for some reason, but there are a number of midweek events. The

church hall is used by a nursery but also a variety of other groups and is booked to capacity at present.

Consultation

13. I am told that discussion about this change has taken place within the congregation and the Parochial Church Council (PCC) although the progress of the proposals was affected by *Covid*.

14. The PCC resolved to consider the purchase of new chairs at its meeting held on July 17, 2023 provided the plan was feasible economically. At its meeting of September 28, 2023 the PCC resolved to purchase the new chairs. The *Abbey* chairs chosen are £7000 cheaper than the other candidate, the *Theo* chairs. I am told that the resolution of the PCC firmly to go ahead with this petition was by five votes to one with one abstention.

The Advice of the Diocesan Advisory Committee (DAC)

15. I am given advice by the DAC on most faculty petitions that come before me (there are some exceptions to do with the churchyard) and this Committee has a considerable body of expertise and experience. They may recommend the proposals to me or, alternatively, not to object to them or decline to recommend them. Within that decision, the DAC also gives me its opinion as to whether the works proposed are likely to affect (a) the character of the church as a building of special architectural or historic interest and (b) the archaeological importance of the building.

16. The DAC informed me of a proviso (that is a qualification to their recommendation) that at least ten per-cent of the new chairs should have arms.

The Objections

17. The Objectors have not elected to be become Parties Opponent and, in those circumstances, I propose to refer to them by their initials. Whilst this may mean that those familiar with the church and its congregation may identify the individuals concerned (who have not sought anonymity) it will preclude the likelihood that the wider public will do so.

18. The seven Objectors are SC, CG, JG, AN, ST, RW, LW. The 'interest' (within the meaning of the FJR) of each is as follows:

- a. SC – has worshipped at the church ("SMC") for eight years – lives (just) outside of the ecclesiastical parish – is on the electoral roll – has served as a member of the PCC, a representative of Synod and has served as Churchwarden (only resigning through ill-health);

- b. CG – is a longstanding member of the congregation – lives in the ecclesiastical parish – and has been both a Churchwarden and lay chair of the PCC;
- c. JG – has worshipped at SMC for more than 40 years – and is on the electoral roll;
- d. AN – lives in the ecclesiastical parish – is on the electoral roll – and participates in the church's planned giving scheme;
- e. ST – has been a congregant for between 40 and 50 years – has sung in the church choir – has served on the PCC many times – and has served as a Churchwarden;
- f. RW – lives in a nearby parish but is on the electoral roll for SMC – and has been attending SMC for around 40 years – serves as a 'welcomer' to SMC – and contributes to the running of the church in other ways;
- g. LW – lived for a long time in the ecclesiastical parish and now lives in a nearby parish – has been on the electoral roll for many years – was and is an active member of the congregation – served on the PCC in her youth – has been a Churchwarden twice – was the PCC secretary for 11 years until very recently – and is a member of the 'Parish Giving' scheme. LW, alone, gave her objections in two letters: the second being her request that I should take her views into account rather than her becoming a Party Opponent.

19. Some Objectors asked me to take their views into account. Others did not reply to the letter asking which option, namely (i) becoming a Party Opponent and (ii) views being taken into account that they wished to select. I will treat them as having taking option (ii).

20. Some of the Objectors say that they do not object in principle to replacing the existing chairs to make better use of the existing space – SC, AN and (to a limited extent), ST (accepts there is a case for flexibility).

21. Observations are made by the Objectors in respect of cost, although there is a different emphasis placed on this aspect within the Objections.

- a. SC says in effect that money should not be spent on new chairs. A reduction in payments to Common Fund (CF) for 2023 was in order to build up reserves and these savings are now being used to purchase the chairs without a proper business plan being in place which would take into account future payments to CF. In short, the money saved by the adjustment to CF payments, made because of the pandemic, is now being proposed for use as 'free' money rather than money earmarked to restore the church's reserves.
- b. CG makes a similar point more succinctly.
- c. JG says that the chairs are unnecessarily expensive and also insufficiently durable. He then poses a speculation that in 25 years, the PCC will be wanting new chairs again. He says there are cheaper and better chairs and gives examples, including some that will stack to a higher degree than others.

- d. ST also criticises this proposed expenditure for similar reasons and feels it may affect reserves for maintenance and building works.
- e. RW echoes the same point and criticises the proposal for such large expenditure when people are being asked for increased contributions to cover the running of the church.
- f. LW makes the same point and says that the PCC told the diocese that it needed to have its contribution to CF adjusted (presumably downwards) to build up its reserves. There is some contradiction in that she also says that all wooden chairs would have been preferable, although potentially costing *more* money, and that the excess cost could easily have been covered as the parish has a record of raising money for projects.

22. There are concerns about the environmental effect of the proposed chairs.

- a. SC says there has been no consideration as to the environmental impact of the chairs given the 2030 Net Zero commitment (I shall refer to this commitment afterwards as “NZ”) and says that all wooden chairs would fit the environmental requirements and last for a much longer time.
- b. CG says that the way in which the proposed chairs are manufactured (layers of ply glued together by resins containing toxic chemicals) is inappropriate in a parish that supports the Church’s commitment to NZ. LW makes the same point.
- c. AN makes in general terms the same point.

23. There are complaints about the lack of proper consultation.

- a. SC says that many members of the congregation feel there has been inadequate (or absence of) consultation and says that as Churchwarden, her recollection of any discussions is that the church was not adequately consulted and that the vicar has apologised for not having wider consultations.
- b. LW says that communication has been poor and that answers to questions raised after Public Notice were not forthcoming until early November.

24. All of the Objectors complain about the choice of chair.

- a. SC says it is incompatible with the Arts & Crafts design of the church, neither complementing the design nor the existing colour of its interior.
- b. CG makes the same point as SC and (as previously stated) refers to what she considers to be its unsatisfactory manufacture.

- c. JG puts his view more strongly, saying the metal style of the proposed new chairs is 'dreadfully incompatible' with the style of the church and no integral provision for bibles and kneelers which were 'lovingly contributed by members of the congregation'.
 - d. AN has the same objections as SC and JG.
 - e. RT has the same objection as SC and JG.
 - f. RW gives as her objection the other side of the same coin: she positively likes and finds comfortable the old chairs, finds it much easier to kneel with them than she suspects she will with the new chairs and worries that the 'lovely kneelers' that have 'personal dedications' will not be so easy to use.
 - g. LW's objections echo all of the others and adds concern about the seating capacity from 210 to 120.
25. These observations of the Objectors were copied to the Petitioners for their response, if they wished to respond. They did.

- a. **Need.** The Petitioners first set out what it considers to be its need for the new chairs. I am not going to rehearse the detail of this as I have not any sense that the Objectors complain about the intention to use the church more flexibly, save in respect of the point made about CF. The Petitioners say that they rarely need more than 120 chairs and, should that eventuality arise, then they have over 100 spare chairs. If the congregation were to expand to mean that over 120 chairs were needed regularly, then further *Abbey* chairs would be purchased.
- b. **Discussion and Consultation.** The PCC says that the proposal to replace the existing chairs has been discussed at many PCC meetings going back to January 2020. They say that they have displayed different sample chairs prominently in the church for over a year and that some comments were received, some positive and some questioning the cost. In essence, the Petitioners say that neither the *Theo* chairs nor the *Abbey* chairs would have satisfied everyone and the majority of the PCC took the view that the *Abbey* chairs were the preferred choice for the new chairs. The Petitioners say that if they were to delay the decision, the position is unlikely to have changed by the time it is next considered.
- c. **Cost.** The PCC says that this is an issue about priorities chosen after addressing the alternatives and records what it says is a very generous record of contributing to CF and affirms that it has met its pre-Covid obligations in full. They recognise that this expenditure is significant but say it is a 'one-off' expense. The Petitioners assess the biggest financial risk as being 'a sudden collapse of rental income from the nursery in respect of the hall', but this is offset by alternatives that could be found which may indeed generate a higher income. The advantage of more

flexible seating, it is said, would allow for greater opportunity to bring into the church activities presently confined to the hall.

- d. **Ecological Considerations.** It is said that the old chairs will be recycled. The Petitioners say that the alternative new chair, the *Theo*, also uses veneered plywood. All wood chairs would be too heavy and expensive.
- e. **Kneeling and Books.** The Petitioners wish to enable members of the congregation to kneel to pray should they wish and the kneelers will be available to those who wish to use them. The Petitioners accept that the old chairs have the advantage of allowing those in the row behind to put things inside such as hymn books, bibles and service sheets, although it appears this also extends to rubbish (tissues etc) in the case of some congregants. The Petitioners say they have assessed the advantage given by having the rear of the old chairs against the advantages provided by stacking. They comment that books to be used in the services can be given out to members of the congregation on arrival to be returned on departure.
- f. **Damage to the Architectural or Historical Significance of the Church. The legal test.** The test I am required to apply has come to be known as the *Duffield* test. The particular considerations of *In Re St Alkmund, Duffield* [2013] Fam 158 apply. The Court of Arches in *In re St John the Baptist, Penshurst* [2015] WLR (D) 115, reaffirmed the approach it set out in *In Re St. Alkmund, Duffield* in performing the necessary balancing exercise when determining petitions affecting listed buildings attracting the ecclesiastical exemption. It is this:
 - (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historical interest?
 - (2) If the answer to (1) is “no”, then the presumption is to be in favour of the *status quo* but it can be rebutted more or less easily depending upon the nature of the proposals.
 - (3) If the answer to the first question is in the affirmative, it is necessary to ask is how serious the harm would be;
 - (4) Then, it is necessary to assess how clear and convincing is the justification for the proposals;
 - (5) Generally, the greater the harm, the greater the benefit will need to be demonstrated to justify the proposals and, importantly, in the case of a building that is listed grade 1 or II*, if serious harm would result then the justification would need to be exceptional. This test has been enhanced by persuasive case law in this respect, namely that where what is found to be serious harm to a Grade I or II* listed church is contemplated then is there a less harmful alternative that would still satisfy the need?

- g. **Damage to the Architectural or Historical Significance of the Church. The Petitioners' Submissions.** The Petitioners say that the existing chairs are not specifically Arts & Crafts chairs, but are ladderback *Pilgrim* chairs of the late Victorian period. They consider the chairs they have selected to be of high quality, chosen by many prestigious churches and cathedrals (with higher listing status in many cases), some of which are much older than SMC. It is said that many see them as looking beautiful. They accept that some people do not like the lightness of the colour but they explain that the whole of the floor is light-coloured wood, as are the chairs in the coffee area. They also aver that the church can look very dark and gloomy at present.

Issues to be Decided

26. The principal issues to be decided are first the damage (if any) to the architectural and historical significance of this Grade II listed church set against the need of the church to make the change and, whether any damage so caused could reasonably be lessened by alternative proposals. I do not consider that the issue of need (the need for greater flexibility) is challenged by most of the Objectors. It is the choice of chair which is the real issue.
27. The question of consultation will be considered in terms of whether adequate consultation took place, whether a period of further consultation would be productive, whether Public Notice was given in the way prescribed in the FJR and whether those likely to be interested in the proposals have had the opportunity to become Objectors or Parties Opponent.
28. The question of cost is normally a matter for the PCC. It is for that body to determine the appropriate spending priorities of the church in question. The court should only intervene if (a) the money available for the proposed project is manifestly insufficient and cannot sensibly be obtained or raised within a reasonable period of time; (b) the spending is otherwise reckless given the state of the PCC's finances and may involve the PCC becoming unable to meet its obligations to those carrying out the works, its other obligations and its share of CF; or (c) there is other good reason for concern about how the finances for the application have been, or are being, raised and utilised. In the case of this particular petition, the only matter I intend to consider is whether a reduction in the CF contribution was obtained by telling the diocese one thing about the need to reduce the contribution whilst using the reduction for some other purpose – as alleged within the Objections and, if so, whether this is a matter of legitimate complaint.
29. I do not consider that the ecological issues raised in the Objections raise a matter I need to decide. The DAC makes recommendations to me if it considers matters touch on the commitment to NZ as set out for instance in *A Practical Path to "Net Zero Carbon" for our Churches* (pub'd by the Archbishops' Council in April 2020). The DAC did not certify that any NZ matters were raised by this petition.

30. I do consider that the issue raised by one Objector in particular relating to difficulty in kneeling when using the new chairs is relevant and important and this requires me to make a decision about whether the perceived difficulty of this Objector will cause a problem, whether that would be sufficient to cause me to reject the petition and whether (if not) it would cause me to impose any Condition to try and alleviate the difficulty.

Decision

31. I am satisfied that the Petitioners have demonstrated a need for more flexible seating with the ability to stack chairs. Although I have found that issues of comfort are often over-stated (padded chairs are not always in fact more comfortable than pews for example, particularly where the padded chairs have had considerable use). I do, however, recognise that these old chairs are relatively small. They have stood the test of time but I accept that they are now old and doubtless, in some cases, less stable than they were. Primarily, however, the Petitioners rely on the way in which more modern chairs may be moved and stacked more easily.

32. The questions posed in the *Duffield* case depend on the significance of the old chairs and any damage caused by removing them *and* any damage caused by the introduction of the new chairs. I am not persuaded on the evidence that the old chairs are themselves from of the Arts & Crafts movement. *Ladderback* chairs date from around the beginning of the 18th century and I have no doubt fitted very nicely into this church in 1909, but that is as far as the evidence goes.

33. The rear pocket feature of the chairs is particularly suited to a church. It is not so much for storing books and sheets between services as for having somewhere to place them during parts of the service when they are not being used. The old chairs look relatively sturdy, particularly as held together, and I can see that they might look, feel and be more stable to a person of whatever age who has any mobility issues.

34. The new chairs (the *Abbey* chairs) are disliked by all of the Objectors. Some of them have an understandable liking for the old chairs. Others are not averse to change but would prefer the *Theo* model and there is some thought that yet another model might be sought even if it turned out to be more expensive.

35. It is not for me personally to make an aesthetic judgment about which chair I would prefer. I am satisfied on the evidence that the old chairs can be removed and I will deal with their fate afterwards. Of the two competing models for the new chairs, *Theo* and *Abbey*, there are competing arguments for both and I have no doubt that each have their supporters and detractors. It would be hard, in my judgment, to describe any of the chairs (old, proposed new or *Theo*) as 'beautiful'. None of them are particularly beautiful or particularly ugly. I have concluded that all of the chairs are primarily functional and that all of

them could be placed in the church without damaging either its architectural or historical significance. They are comparatively neutral in colour, the old ones with a darker wood and the new ones (both versions) with a lighter wood. The old ones are familiar *ladderback* chairs of their time and have a pleasant appearance even if the overall impression is somewhat cluttered. The *Theo* has no visible metallic element, the *Abbey* does. Equally, the frame of the *Abbey* is less imposing whereas the *Theo* looks more substantial and solid. Again, there are advantages and disadvantages in design when looking at all the models, but my judgment is that none of them would damage the architectural or historical significance of this church.

36. It is said in the Objections that a number of people in the congregation object to the proposed new chairs. I cannot act on that form of hearsay evidence. People have had an opportunity to object and seven people have become Objectors. If others have strong views against the proposal then they have had the opportunity to become Objectors. They have not done so. I have read the submissions by a number of the Objectors as to not being sufficiently consulted about the specific choice of the new chair. I am sure they would not make this point if there was nothing to justify it. Equally, I am also sure that the general topic of replacing the old chairs to achieve more flexibility has been discussed for some time and that 'sample' chairs have been displayed. Both sides are giving me truthful accounts but, as one would expect, from their particular points of view.
37. In the end, however, I am satisfied that sufficient notice has been given to allow interested parties to object if that is what they wished to do. I agree with the Petitioners that further delay is unlikely to change views to any significant extent.
38. Associated with cost is the allegation raised in the objections that, in effect, the agreed reduction in the share given to CF as a result of *Covid* which they say was to build up reserves and is being used instead for capital expenditure on new chairs which are not essential. The Petitioners have set before me the very good record of this PCC in relation to CF and its confidence in being able to replace the sum expended in a reasonable timeframe. I have considered this aspect very carefully. I am confident that the PCC will be transparent as to how its reserves were used in purchasing the chairs in any discussions with the diocese and I am satisfied that this choice of priorities is a matter for the PCC and does not require me to refuse the petition and that contributions to CF will return to the amounts and pattern adopted by the PCC before *Covid*. In reaching the conclusion that this issue is not the subject of legitimate complaint and should not be used by me to refuse the petition, I have taken into account the impressive record of contributions to CF before *Covid* as well as the logic of the Petitioners' assessment as to how they will generate income in the short to medium term.
39. I have been concerned by the observations of the Objector who fears that her ability to kneel during services will be affected by the introduction of the new

chairs. I consider that the Petitioners have understood and answered this in part, but not in whole. I am told that kneelers will still be available. There is agreement that the kneelers in this church are special.

40. Kneelers are one of the glories of the Church of England. They are often made with love and care with a range of imagery and dedications. I have in the past frequently suggested to those who wish to place something in a church to commemorate the life and work of a loved one who worshipped there that the creation of a dedicatory kneeler not only provides a memorial but one that is used constantly in acts of worship. I am very glad indeed that the kneelers are being kept. I am going to include a Condition about how they are to be made available. It is important that this is a simple process and one which anyone worshipping at the church will understand. In a secular example, far from kneelers, many people may have experienced staying in a hotel where somewhere in the room there is reference to a bathmat being available from reception if requested. True it is that the mat is available if needed, but the process for obtaining it is likely in practice to discourage guests from bothering. I do not want this to be the case with the kneelers.

41. The issue not addressed in the Petitioners' responses is that of stability when kneeling. Kneeling without any support is difficult for people who have any mobility issues including arthritis, back pain and the like. The tendency is to stabilise oneself by holding onto the back chair in front. I will impose a Condition aimed at trying to lessen this potential problem. I understand the new chairs will be coupled together, although in a different way from that at present.

42. I do not consider that this potential difficulty is a sufficient reason to refuse the petition, but it does need to be both thought about and monitored.

43. Finally, the DAC entered a proviso to its Notification of Advice that 10% of the new chairs must have arms.

44. In conclusion, having taken into account all of the evidence and all of the objections raised by the seven Objectors I am satisfied that the faculty *nisi* I previously granted should now become absolute, as there is a definite need for greater flexibility in respect of the seating and, in my judgment, no danger of damage to the architectural or historical significance of the church.

45. I impose the following Conditions:

- a. At least ten per-cent of the chairs must have arms.
- b. Kneelers must be readily available for use by congregants and visitors and be both visible and accessible before Divine Service for worshippers to take (or be provided with) and use. The arrangements must not place an obligation on any worshipper to have to enquire whether kneelers are available.

- c. Consultation must take place with regular members of the congregation who usually kneel at services as to how this can be arranged most easily for their personal stability with the new chairs and the arrangements made must be subject to regular monitoring to see that any adaptations are succeeding in their aims.

46. I make no orders as to costs.