

Neutral Citation Number: [2017] ECC Sal 1

In the Consistory Court of the Diocese of Salisbury Petition No. 3389

Re Donhead St Andrew, St Andrew

(1) Richard Warhurst
(2) Simon Cooper
(3) John Jeffery

Petitioners

- and -

(1) Ann Danby
(2) Philip Danby
(3) Richard Lee
(4) Graeme Barnes
(5) Malcolm Wise
(6) Sheila Wise
(7) Anita Keogh

Parties Opponent

Judgment

1. There has been a church on the site of the church of St Andrew in the parish of Donhead St Andrew for over a thousand years. It is set in a peaceful corner of Wiltshire. Its late Saxon origins have been almost entirely superceded by a building of the 14th and 15th centuries which was substantially rebuilt in stages throughout the 19th century. It is Grade II* listed.
2. After a number of pastoral reorganisations in recent decades, the parish is now part of the Benefice of St Bartholomew of six neighbouring parishes. Formal worship takes place in the church on

the first four Sundays of each month in a range of styles from Choral Matins to a non-Eucharistic Family Service.

3. The Incumbent and Churchwardens of the parish have petitioned for a faculty permitting major re-ordering works which essentially comprise the following changes:
 - a. The erection of an extension in place of the existing vestry and boiler room to house a parish room, toilet and kitchen;
 - b. The removal of all nave pews and pew platforms and installation of a new Chilmark stone floor;
 - c. New heating and lighting systems;
 - d. Relocation of the font and pulpit;
 - e. Internal plaster repairs and redecoration;
 - f. Provision of a servery area in the north aisle; and
 - g. The introduction of various items of ancillary furniture.

There are additional proposals in relation to the re-roofing of the church which are currently on-hold whilst the presence of bats in the church is investigated. They do not form part of the Petition before me.

4. It will become clear from this judgment that there are a number of areas of dispute in relation to the proposals. There are, nevertheless, a number of elements which have elicited no objections or concerns: the heating and lighting systems, the internal repairs and decorations, the changes to the sound system. I am satisfied that those elements are appropriate and will focus my attention in this judgment on those areas of dispute.

Procedural history

5. The proposal to re-order the inside of this church has been ongoing since at least 2011. On 15 December 2016 the Diocesan Advisory Committee issued a Notification of Advice recommending the proposed works in their current form subject only to a sensible proviso about the appropriate protection of the organ during the works.
6. An earlier iteration the proposals included the retention of two blocks of pews in the nave and when the proposals first came before me in February it was clear that the consultations which had taken place were in the context of that earlier proposal. In addition, Historic England appeared only to have been consulted in relation to the extension of the building (presumably as part of the planning application) and not in relation to the internal re-ordering. Under Schedule 2 of the Faculty Jurisdiction Rules 2015 Historic England are entitled to be consulted in relation to the entirety of the scheme. On 2 February 2017 I directed that Special Notice be given to Historic

England, the Society for the Protection of Ancient Buildings, the Victorian Society and the local planning authority. I extended the period for a response to that notice to 28 days in light of the fact that the bodies, and in particular Historic England, had not yet seen all of the proposals. I also directed that the advice of the Church Buildings Council should be updated as their existing advice related to the earlier version of the scheme.

7. By the time those directions had been complied with the Public Notices had also been displayed. Those notices elicited fourteen letters of objection. Those letters were followed by six formal Particulars of Objection as a result of which seven people became Parties Opponent in this matter. The authors of the remaining letters of objection have elected to have their objections taken into account (or are to be treated as having so elected). In addition, eighteen people wrote to the Registry in support of the proposals. As a result of all of this I gave further directions on 7 April 2017 in which I expressed the view that the matter was capable of determination on consideration of written representations and invited the various parties to indicate in writing whether they consented to that course. All parties have indicated that they do so consent and as such I have directed that this matter shall be determined on the basis of written representations under r.14.1 of the Faculty Jurisdiction Rules 2015, it being expedient so to do. Whilst indicating their consent to the determination of the matter in that way, each party also took the opportunity to file further representations upon which they wish to rely.
8. I visited the church for an unattended inspection on Tuesday 9 May. The church was left open (as it is every day) and I was able to take time to understand both the external and the internal impact of the proposed scheme. It is a beautiful and peaceful spot.

Consultation with and advice of statutory bodies

9. The consultation with the statutory bodies required under Schedule 2 of the Faculty Jurisdiction Rules 2015 has produced a broadly supportive response, although no substantive response was received from the Victorian Society or the local planning authority to the special notice given. The proposed extension is viewed as relatively modest in scale and respecting the character and appearance of the existing church.
10. The responses to the change from tiled to stone flooring in the nave and aisles are mixed. Historic England supports the new stone floor as a return to the original pre-Victorian flooring whereas SPAB is concerned about the loss of the red encaustic tiling.
11. Both Historic England and SPAB consider the loss of all of the pews to be unfortunate and consider that the retention of the nave pews would

lessen the significant impact on the character of the church caused by their loss. SPAB defers to the Victorian Society in relation to the significance of the pews themselves. Historic England suggests that the pew timber should be reused in the other new furniture wherever possible to retain the contribution its age and patina makes to the church interior.

12. The advice of the Church Buildings Council was supportive of the earlier proposals but the Council has now expressed regret at the decision not to retain some of the nave pews as a way of addressing local opposition to their loss.

13. None of the statutory bodies have elected formally to oppose the Petition.

The objections - individual objectors

14. I have received more than twenty substantive letters or sets of representations objecting to the proposed works from the seventeen people who responded to the Public Notices by way of objection. Those letters include additional representations made by the seven people who have elected to become Parties Opponent. I also have copies of the Forms 5 submitted and various shorter letters and communications. Each of those who has raised concerns has set down their involvement in and relationship to the church and parish of Donhead St Andrew and, despite some suggestion to the contrary, I am satisfied that they all have a genuine and sufficient interest in the matter.

15. There is, as is often the case, a degree of consistency or overlap in the objections which have been raised. The representations are detailed and complex and I have carefully considered all of the arguments made. I set out, in no particular order, a summary of the principal objections below.

a. The pews. It is argued that at least some of the pews should be retained in accordance with the earlier formulation of the scheme. This would ensure that the church still “looks and feels like a place of worship”. The pews are solid and durable and are part of the history and character of the church. The proposed removal of all pews will mean the church appears and feels less like a place of worship and more like a village or community hall.

b. The chairs. It is said that the cost of the solid oak chairs with which the Petitioners propose to replace the pews are too expensive and a more reasonably priced alternative could or should be used.

- c. The floors. Some objectors have raised concerns that the current cruciform pattern on the flooring should be retained as an architectural reminder of the Christian purposes of the building. It is also argued that the Victorian tiles' contribution to the history of the building should not be lost.
- d. Funding. A clear, common and strong theme to the objections received is a concern about the cost of the proposals. The fundraising from which this scheme is intended to benefit was commenced about fifteen years ago and over the intervening period the estimated cost of this project, as it has developed, has invariably grown. The PCC and Friends group has raised a little over £300 000 towards the scheme so far, but, once reclaimable VAT is discounted, some £512 000 is needed. This is a daunting sum. It is said that the fundraising projections relied upon by the Petitioners are unrealistically optimistic and that it is irresponsible and inappropriate for a parish of this size to take on a project of this size if it will either delay further what has already been a long-delayed project or leave future generations with loans or debts which cannot be managed.
- e. Parking and the availability of alternative venues. Many of the objectors query the need for the church to be used as a venue for larger congregational and community events as intended by the Petitioners (e.g. harvest suppers, craft fairs, educational talks). Parking at the church is already limited and difficult and there are other halls available in the neighbouring parishes of Donhead St Mary and Charlton as well as a school field centre close to the church.
- f. Roof works. There are roof repairs and proposed insulation for the roof which are not included within this Petition. It is argued that not only should the cost of those works be included in the Development Fund costings, but also that those works should take priority over the works of improvement proposed.

16. Three of the Parties Opponent have suggested that there may simply be too many churches in the small area of the Benefice of St Bartholomew and that the closure of Donhead St Andrew parish church should be considered.

17. Some objectors have raised questions about proposed works of restoration and improvement to the organ, but those works are, at least in part, the subject of a faculty granted by my predecessor, Chancellor Wiggs, and are not before the Court at this time.

18. I note that, apart from the arguments in relation to funding and its cost implications, there does not seem to be any serious objection to

the design or form of the proposed extension which does, of course, have planning permission.

The Petitioners' case and letters in support

19. As well as the fourteen letters of objection, seventeen letters of support for the proposals were received by the Registry in response to the Public Notices. The letters are unequivocally supportive of the works, with a particular focus on the replacement of the pews with oak chairs. This reflects the fact that the issues about seating appear to be at the heart of this dispute.

20. As well as having outlined their case in a careful and detailed Statement of Needs, the Petitioners have also produced fulsome responses in Form 6 to the detailed objections raised by each of the Parties Opponent. Having carefully reviewed all of those documents, I summarize the key parts of their position below:

- a. The pews. The Petitioners argue that the pews are standard catalogue issue pews of no particular artistic or historic significance. They are said to be uncomfortable to sit on for any length of time. Even if reduced in length and not fixed they are heavy and difficult to move. Their size and lack of stackability seriously inhibits the flexible use of the space within the church for varied forms of worship, social and wider community uses.
- b. The chairs. The chairs chosen are high quality un-upholstered oak chairs. The Petitioners say that, when linked in rows in the nave (as will be the case when the church is "at rest"), they will have an aesthetic effect similar to rows of fixed pews.
- c. The floors. The Petitioners say that the new flooring will provide far better accessibility than the current floor levels which lack uniformity. The overwhelming majority of the Victorian decorated encaustic tiles are to be found in the chancel and will be retained. Most of those to be removed are plain, damaged and in poor condition. Their retention will interfere with the new heating system. The proposed stone flags return the church floor to its pre-Victorian state. The Petitioners say that the usual layout of the chairs will preserve the cruciform design of the church but argue that to include any patterning in the nave and aisles floor will constrain or clash with other potential seating layouts which may be used from time to time.
- d. Funding. The Petitioners acknowledge the ambitious nature of their plans but deny that costs have spiraled out of control.

They argue that they have experienced fundraisers who are confident of the possibility of raising the additional funds needed. The proposals are intended to establish a future for the church for the next century or more and therefore the quality required by those works are appropriately reflected in the cost.

- e. Parking and the availability of alternative venues. The Petitioners argue that the alternative venues suggested locally are often inappropriate as being either too small or heavily booked. It is also their purpose to draw people into the church itself as a way introducing and welcoming new people into the fellowship of the church and ensuring its continued use and availability to future generations. Parking is acknowledged to be inconvenient, but it is argued that it is workable, with parking for approximately 30 cars being available in surrounding nearby roads. Rather enigmatically, the Petitioners mention possible longer term solutions to the parking problem, but I have no details of these and cannot, at present, see them to be more than speculative.
- f. Roof works. The intended roof works are only currently “on-hold” pending the assessment of the impact of the works on bats and their roosts. The Petitioners have acknowledged that their priority in allocating funds is first to address the recently discovered urgent repair work (which I take to mean the recent discovery of crumbling roof tiles) before moving on to the improvements and extension planned. Permission will, of course, need to be obtained for those roof works in the fullness of time.

Consent of the Bishop

21. Mr Richard Lee, Party Opponent, has pointed out in his written representations that “[t]here is no letter from the Bishop concerning the demolition of part of the church.” I take this to be a reference to the fact that the new extension is to be built in the place of existing boiler house and vestry and to rule 5.5 of the Faculty Jurisdiction Rules 2015 which reads:

“Where a petition seeks a faculty to authorise the demolition or partial demolition of a church under section 17(2) or (3)(a) of the Measure, the written consent of the bishop of the diocese to the proceedings being brought must also be submitted with the petition.”

22. That rule is, of course, made under powers conferred by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 and is to be read in the context of section 17 of that Measure as recently amended

by the Church of England (Miscellaneous Provisions) Measure 2014. Section 17(5) reads:

“For the purposes of this section, “partial demolition” and cognate expressions—

(a) mean removal of such part of a church as would, in the opinion of the court, significantly affect its external appearance, and

(b) do not include the destruction or removal of minor or ancillary structures forming part of the building.”

I do not think that the removal of the unsightly brick boiler house and the vestry would significantly affect the external appearance of the church. Equally, such removal would, I find, amount to the removal “of minor or ancillary structures forming part of the building”. This means that the proposals here do not amount to partial demolition for the purposes of the Measure and as such the requirement under rule 5.5 (and indeed under section 17(4) of the Measure) for the Petitioners to produce the written consent of the Bishop does not apply. I note that the Bishop of Salisbury is named as the patron of this development project.

The law

23. The Court of Arches has set down guidelines to be applied by Chancellors in determining cases of this nature¹. Those guidelines take the form of a list of questions:

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) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in *In re St Mary’s, White Waltham (No 2)* [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not 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 (see *St Luke, Maidstone* at p.8), 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

¹ See *Re St Alkmund, Duffield* [2013] Fam 158 at para 87.

harm is to a building which is listed Grade 1 or 2*, where serious harm should only exceptionally be allowed.

The questions have been refined further by the Court of Arches in *Re St John the Baptist, Penshurst* (9 March 2015). I will address each of these questions in turn.

Would the proposals result in harm to the special significance of the building?

24. In determining this issue I must consider whether any harm is caused to the particular special architectural or historic interest of this church building, which necessarily entails consideration of what is especially significant about Donhead St Andrew church. Firstly, it is important to note that the building is highly listed – Grade II*. This means that it is (to use the words of Historic England) a “particularly important building of more than special interest; 5.8% of listed buildings are Grade II*”.

25. The church benefits from a reasonably lengthy listing entry which I have seen along with the 7-page Statement of Significance provided by the Petitioners. Although the present building is substantially 14th and 15th century in origin, the tower, the chancel and the south aisle were all rebuilt at different time in the course of the 19th century. There was a substantial re-ordering in the mid-1870s which included the replacement of the “paving, floor pews, seats and pulpit” with the interior which we still see today. The pews, which are mentioned in the listing entry, but only in passing, are said to be of a basic design from a standard catalogue available at the time of their installation. The 1870s flooring replaced a previous stone flooring, much like the one now proposed.

26. As mentioned above, many elements of the proposed scheme are uncontentious: the heating proposals; the lighting scheme; the changes to the sound system. There is only the slightest of objection to the relocation of the font to the liturgically correct position next to the main entrance. I am satisfied that none of these changes would result in harm to the special significance of this church.

27. It is less clear whether the erection of the extension over the existing brick boiler house and vestry, with the use of the existing and matching stonework, would cause harm. The loss of the unsightly boiler house must be a positive enhancement to the significance of the building. The extension itself is modest and clearly subservient to the existing building. It is designed in a way that is in keeping with the

church, re-using the vestry greensand stone and other matching materials. The use of existing internal doorways means that the impact on the interior of the church is minimal. On balance, I do not think that the erection of the extension would cause harm to the significance of the building. If I am wrong about that then any harm caused is slight.

28. The impact of the internal re-ordering on the significance of the church is greater. The relocation of the font to its liturgically correct position by the main entrance will enhance its prominence and setting and the adaptation of the pulpit to make it moveable is a minimal change. Nevertheless, the wholesale removal of the pews and the change of the flooring throughout the nave and aisles removes permanently a substantial part of the 1870s interior. That will, I find, cause harm.

29. Looking at the effect of the proposed scheme as a whole on the special historic and architectural character of this church, I am satisfied that harm would be caused.

How serious would that harm be?

30. When considering the seriousness of the harm, I am particularly mindful of the permanent nature of the proposed changes to the interior. Once the pews and floor tiles are removed from the nave and aisles, they will be lost forever. That may be seen to be harmful to the historic character of this church and I have carefully considered the quality of what is to be lost. As far as the flooring is concerned, the overwhelming majority of the interesting, decorative encaustic tiles are found in the flooring of the chancel and are to be retained. Almost all of the nave tiles are plain and many are in poor condition. I am also mindful of the fact that the new floor proposed represents a return to the stone flooring which existed in the church prior to the 1870s. Whereas it is perhaps to be regretted that there will be some loss of warmth in the replacement of the red and black tiles with Chilmark stone, I do not think that the impact on the special significance of the church is great.

31. The pews are solid and attractive items of furniture which appeared to my inexpert eye to be in substantially good repair. They give a structure and clarity to the interior of the building, emphasizing its cruciform shape and encouraging focus on the chancel and sanctuary. They are not said to be architecturally significant in themselves, being of a plain and standard design, but they contribute markedly to the Victorian interior of the church. They are to be replaced by high quality solid oak chairs which will, when the church is "at rest", be linked together in the nave in rows in essentially the same position as the pews. Their straight-topped backs and solid seats would, to a degree, replicate the order and cruciform shape which is emphasized

by the pews. That limits the aesthetic impact of the proposals. On balance, I find that the harm which will be caused by loss of the pews and their replacement with these chairs is no more than modest.

How clear and convincing is the justification for carrying out the proposals?

32. In its *Duffield* and *Penshurst* decisions the Court of Arches made clear that the justification for carrying out the proposals includes justification which falls short of need or necessity. Much of the justification provided by the Petitioners in this case could be said to fall short of necessity in its strict sense, but it is nevertheless relevant and must be weighed in the balance. Mr Philip Danby, Party Opponent, has said that the creation of a kitchen and parish room is “an indulgence too far” for this parish. The Petitioners (and indeed those who write in support of the proposed changes) argue that the ability to provide hospitality for congregational and community events is vital in nurturing greater and wider use of this building, and that the ability to provide a safe space for children to play and learn during services is essential if younger families are to be encouraged to join and take a full part in this worshipping community.

33. The Parties Opponent have expressed the fear that the proposals are a manifestation of the Petitioners’ desire to turn their parish church into a community hall or hub, rather than a place of worship. Such a change would, indeed, be inappropriate. The church is, and must remain, a centre of worship and mission within its community. It is, nevertheless, clear to me that the Petitioners’ justification and plans are centred upon a desire to enhance the church both as a place of worship (by providing a more accessible and flexible space which will accommodate different forms of worship and congregational fellowship) and as a centre of its mission in sharing the Gospel and demonstrating Christ’s teachings practically in Donhead St Andrew. They seek to draw new people into the church building through the hosting of community groups (Mums and Toddlers, an Active Retired group, a reading group) and thereby make contact with and serve their community in the hope and trust that this will grow their congregation. They wish to serve their community by offering their building as a venue to host local events (concerts, flower festivals, craft events, educational exhibitions). Some of these proposals are aspirational; some have already taken place, albeit in truncated form in light of the current layout of the building.

34. The Parties Opponent also raise some very real concerns about the financing of this project. In recent years, as the project has been developed, the predicted cost has risen dramatically and now sits at just over £500 000. In light of this the scheme has been described as “extravagant and overambitious” and “morally obscene” given the modest size of the parish. Serious concern has been expressed about

the ability of the PCC to raise the necessary funds. Around £300 000 has already been raised towards the development project and the complaint is made that those who have donated towards the scheme over a number of years thus far had not anticipated a scheme of this cost and size nor that they would have to wait this long to see it come to fruition.

35. In response, the Petitioners have provided a detailed fundraising plan showing how they intend to raise the balance of monies needed. They have the benefit of the services of a skilled (if not a professional) fundraiser and are confident that the funding can be found.

36. It is true that this is an ambitious project for a village of this size. I have considered the Parties Opponent's concerns about funding carefully and at length and have come to the conclusion that, although they have some force, they cannot prevent the grant of a faculty in this case. The parish of Donhead St Andrew has a history sensible financial management. The building is in good condition structurally (save for recently discovered issues with the roof which are in hand). The parish has met the maintenance and repair obligations arising from its quinquennial inspection reports and pays its annual diocesan share in full. The funds for this project have been ring-fenced and significant success is demonstrated by the current balance of funds. I have come to the conclusion that the sort of financial risk about which concern has legitimately been expressed can be substantially ameliorated, if not avoided altogether, by making it a condition of any faculty granted that the works shall not commence until the funding for the works is promised or in place. The grant of a faculty is permissive, not mandatory, and if a faculty is granted, the Petitioners are not required to undertake the works. If, as the Parties Opponent fear, the funds cannot be realized for the works as proposed, then the Petitioners will simply not be able to do the works. If it is felt that the works could be undertaken in phases (for example, the extension/parish room/toilet/kitchen as one phase and the flooring and pew replacement as another) then the Petitioners could seek permission to commence one phase for which funding is in place, with any later phase(s) of work being undertaken once those additional funds are in place.

37. I note that at one point in their written representations the Petitioners have suggested that cost of the chairs is such that it might be possible to purchase them on an *ad hoc* basis as and when funds are available and that, if necessary, alternative temporary chairs could be used alongside some of the new chairs until enough money has been raised to purchase the number of new chairs required. I do not consider that to be appropriate. A substantial part of the reason why I have determined that the harm caused by the replacement of the pews with chairs will cause no more than modest harm is that the aesthetic impact on the order and structure of the interior of this church will be limited by the introduction of a single form of high quality chair which

will remain in blocks like the pews whilst the church is “at rest”. Using a mixture of different chairs, potentially for a significant period as funds are raised, will cause greater harm. Funds must be promised or in place for enough chairs for the purposes of the project, or phase of the project, before work begins.

38. It will be apparent from the above that, despite some reservations about the funding for the project, I consider the justification provided in this case to be strong.

Does the resulting public benefit outweigh the harm to be caused?

39. On the basis that the harm to this building would be modest and the justification is strong, I find that the public benefit does outweigh the harm to be caused.

Conclusion

40. It will be apparent from the above that I will direct that a faculty should issue in this case. In so directing, I am very aware of the upset and division that exists within the parish over the scheme of works proposed. The number of letters received at the Registry indicate the strength of feeling about the scheme locally, but those letters were fairly evenly divided between objections to and support of the works. There have been complaints of unedifying behaviour at the Annual Parochial Church Meeting in 2016. I am not able to determine whether and to what extent any of the personalities involved has behaved inappropriately in the run up to this application, nor is it necessary for me to do so. I am sure that everyone involved has acted through a genuine desire to protect and further role of this beautiful church building in the community of Donhead St Andrew.

41. The parochial system is essentially a democratic one and it is the job of the PCC to make the, sometimes hard, decisions about whether and how such projects are to be pursued. I am satisfied that the PCC’s support for the scheme has always been by a substantial majority, and is now unanimous.

42. I trust that this judgment will serve as something of a conclusion to the tensions which exist and that the emotive language that has been used at times in the correspondence before me suggesting that the development project, if it goes ahead, will “forever divide the village”, proves unwarranted. I hope all concerned will now be able to set aside the discord and conflict which has been a feature of this case and look purposefully to the future of the parish of Donhead St Andrew in its service of God and its community.

Canon Ruth Arlow
Diocesan Chancellor

24 May 2017