

In the Consistory Court of the Diocese of Oxford  
Before Mr Christopher Rogers, Deputy Chancellor

In the matter of St Peter's, Drayton

**Judgment**

*Introduction*

1. This is a matter with a slightly more drawn out history than would be usual for what is a relatively straightforward petition, and I know that has been a matter of frustration to the petitioners. There is also one point on which I am unable to grant the petitioners what they have asked for. I therefore set out the procedural history and the reasons for my decision in fuller form than usual for such a petition.
2. The church of St Peter's Drayton combines both medieval and Victorian elements. The petition is for a faculty to remove four rows of pews in the west end of the building, two of which are substantially medieval, and others of which are Victorian. The pews on the south side of the west end were removed some years ago in order to provide a more flexible space, and the petitioners now seek to extend that by also removing those on the north side of the west end in order to allow greater use of the space by community groups in the village. Following consultation with Historic England they now plan to re-site the two remaining medieval pews in the Lady Chapel, and to dispose of the rest of the largely Victorian pews. This would leave a medieval front panel in place.

*Procedural History*

3. The petition was submitted online on 18 December 2016, and to me on 7 February 2017. There were however a number of issues which were at that stage unclear from the petition and the documents submitted with it. In particular, there was a DAC visit report dated 25 November 2014, which referred to a number of issues which were not fully addressed in the petition:
  - a) The delegation stated that they had been shown a plan of the church purporting to show which pews were medieval, but that this did not tally with the pews as examined. They therefore advised that a new plan be drawn up for use in the statement of significance. The plan included with the statement of significance did not however show the pews;
  - b) The DAC referred to the fact that the PCC had stated that the local community would like to use the church, but that the draft statement of need did not state the frequency of events which would preferably be held in the church but currently have to be held elsewhere; and
  - c) The DAC commented that the church could only be used more widely if the building was properly heated, but that the PCC had admitted that

they could not afford to have the heating on very often. They recommended that they experiment with constant low-level heating, so that it would then be easier to raise it when required for events.

4. The petition further did not include any photographs of the proposed site of the re-sited medieval pews in the Lady Chapel, and nor did the petitioners make any proposal for what they were planning to do with the Victorian pews which they were planning to move.
5. In the circumstances I gave directions for the following particulars to be lodged with the registry:
  - a) Confirmation that only the row referred to included medieval material, and that that was the same row referred to in the Historic England report;
  - b) A plan indicating the position of the relevant pews, indicating which it was proposed to move and where, and the age of all relevant pews;
  - c) Photographs of the Lady Chapel and an indication of how it was proposed that the medieval pews be re-sited there;
  - d) An indication of how frequently events which could be held in the church are held elsewhere (including an indication of whether, if known, they would definitely be held in the church, or whether there was simply a hope that they would be); and
  - e) Details of whether the PCC had considered whether they could afford to heat the church adequately (including whether they had considered the DAC's suggestion regarding low-level heating).
6. I further pointed out that the petition made no proposal regarding disposal of the Victorian pews and therefore gave permission for the petition to be amended.
7. An e-mail was sent to one of the petitioners on 1 March 2017 requesting the information/particulars set out in my directions, but no response was received.
8. Sue Harris, who has been corresponding on behalf of the petitioners, then e-mailed the Archdeacon of Berkshire on 30 July 2017 stating that '*we are beginning to feel that despite complying with every request made of us we get so far and then get turned back again. We want St Peter's to be the hub of the community and this would make such a difference to that endeavour.*' The Archdeacon of Dorchester replied on 3 August 2017 advising Ms Harris to provide the information requested.
9. By e-mail dated 7 August 2017 Ms Harris then contacted the registry apologising for the delay in replying to the e-mail of 1 March 2017, which had been sent to a petitioner who was no longer a churchwarden, but they had

been dealing with a parish re-organisation during an interregnum. She did however answer the questions asked in the directions, making clear that there is a range of uses to which the church can be put if there is more space, and including pictures of the Lady Chapel. No plan was however provided; Ms Harris stated that it was their view that the church is adequately heated; and that it was planned to dispose of the Victorian pews and to buy stacking chairs for use as necessary.

10. The petition was then returned to me on 12 October 2017, shortly after which I gave further directions, pointing out that my earlier directions had not been complied with, in particular that no plan had been provided, the petitioners had not engaged with the point made regarding the heating, and the petition had not been amended to deal with the disposal of the Victorian pews. Furthermore, the petition did not deal with the new chairs which the petitioners planned to purchase, and two of the petitioners appeared to have left the church since the presentation of the petition, which had not been amended accordingly. I therefore suggested that the one remaining active petitioner might wish to wait for a new priest-in-charge to be appointed in order to get things in order, but that if they wished to proceed they would need to comply with directions, in particular that:
  - a) The petition be amended to reflect the current wardens and priest-in-charge if appointed;
  - b) The petition be amended to include the disposal of the Victorian pews and the purchase of new chairs for use in the space; and
  - c) The petitioners comply with the earlier directions for the provision of a plan and an adequate response regarding the heating of the church.
11. I further provided that should the petitioners fail to comply with these directions by 4 December 2017 the petition would be struck out, but that should the petitioners wish to wait for a new priest-in-charge to be appointed they should request a stay before that date. I stated that I considered the unless order to be necessary in order to get the petition back on track pursuant to my duty under Rule 1.4 of the Faculty Jurisdiction Rules to manage the case actively in accordance with the overriding objective, including giving directions to ensure that the petition proceed quickly and efficiently.
12. By e-mail dated 27 November 2017 Ms Harris responded to the registry's e-mail of 20 October 2017 providing the names of the new priest-in-charge and the new churchwardens; including a plan as directed; and stating that the heating is only turned on during the day when the church is in use, but that their treasurer is of the view that this can be done more regularly, particularly if the church is hired out. The petition was then returned to me on 28 November 2017.

*The Evidence*

13. The statement of need refers to a number of groups which have expressed an interest in using the church if there were a bigger open space available, including the following:
  - a) a non-church member who has offered to run regular coffee mornings for the wider community;
  - b) a group for the lonely and bereaved which is outgrowing the church hall;
  - c) a thriving mother and toddler group which meets in the church hall but could use a larger space;
  - d) an Alpha group which could also use a larger space; and
  - e) messy church and celebration services currently take place in the village school, the continued use of which is not guaranteed.
14. The church would also like to experiment with dance and drama in worship, but do not at present have the space.
15. The views of others in the community have also been canvassed. The Parish Clerk, Mr David Perrow, responded by letter dated 31 December 2015, confirming the petitioners' view that there is a shortage of suitable meeting places in the village, and that *'St Peter's Church is the largest covered space in the village, and as such could fulfil a valuable role in the village if its traditional (medieval) use as a more flexible meeting space could be restored by the removal of pews which were installed later in the church's history.'*
16. Other groups in the village are also stated to have expressed their support for greater community use of the church, including the W.I., 'Drayton Wives', and the Guides and Brownies.
17. In its pre-application advice, dated 18 March 2016, Historic England stated that in the 15<sup>th</sup> or early 16<sup>th</sup> centuries the church was probably filled with medieval benches such as the two now being sought to be moved, but that they were adapted to form box pews in the 17<sup>th</sup> and 18<sup>th</sup> centuries. G.E. Street then sought to restore them to what in his view was the medieval layout in his 1855 restoration. The two surviving medieval pews are described in the following terms: *'though heavily restored, [they] are extremely rare survivors and are of the highest significance. There can be no question of these being removed from the church.'*
18. The advice goes on to state that the Victorian benches are also of significance, *'in that they transform the medieval survivals into a near complete set, giving an indication of how they would have appeared when initially installed.'* It goes

on: *'The loss of medieval benches would in our view entail a very high level of harm given how rare these are. Given that the Victorian benches are also of some value their removal would also be harmful to the significance of the building.'*

19. The advice continues:

We think it important that the pew frontal remains in situ given that this is medieval and provides the crucial piece of evidence that the entire nave was pewed out in the late medieval period. At least one long bench should remain behind it, in order to give the frontal a meaningful context. It is also important that the two medieval benches in this area are retained within the building. However given a good case has been made for using the building more flexibly we would countenance moving them from their present location. ... The only place for the medieval benches that I could see would be the Lady Chapel in the South Transept. We accept that the remaining Victorian benches could be removed on the basis that the harm entailed was outweighed by the opportunities created to sustain the life and mission of the church and thus ensure the long term future of it as a place of worship.

20. The churchwardens responded by letter dated 21 March 2016 stating that they will be able to accommodate the medieval pews in the Lady Chapel, but that they were concerned about leaving just one long bench behind the pew frontal as it would look odd on its own, and *'In our experience people may sit here whereas we try to encourage them to sit forward to be part of the main body of the church. We feel that the pew frontal provides a division between the main seating area and the space that would be created for other activities.'* Richard Peats of Historic England replied two days later by e-mail stating that *'While I think it would be better if the bench was retained I do not think that it is so important that we would object to a Faculty application if submitted.'*

21. By e-mail dated 11 August 2016 the Victorian Society stated that they did not wish to comment on the removal of the pews, but because of the medieval content of some of the pews would defer to the Society for the Protection of Ancient Buildings. By e-mail dated 1 December 2016 the SPAB stated in turn that they would defer to the Victorian Society, having signalled their non-objection.

*The Law*

22. St Peter's Church is listed (grade II\*), and I therefore have to follow the guidance given by the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158 at paragraph 87:

- (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 easily, depending on the particular nature of the proposals...
- (3) If the answer to question 1 is 'yes', how serious would the harm be?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, ... will any resulting public benefit (including matters such as liturgical freedom, pastoral wellbeing, 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 are permitted. This will particularly be the case if the harm is to a building which is listed grade I or II\*, where serious harm should only exceptionally be allowed.

### *Findings*

23. Grade II\* buildings are particularly important buildings of more than special interest, making up only 5.5% of listed buildings. In the present case the petition is to move extremely rare original medieval pews, and to remove other pews altogether from an area of the church where there have been pews since medieval times. As stated by Historic England, those later pews transform the medieval pews into an almost complete set. In the circumstances I find that the proposed changes would clearly result in harm to the significance of the church as a building of special architectural or historic interest.
24. It is therefore necessary to move on to the question of how serious the harm would be. The pews from the south side of the west end of the church have already been cleared, and so the appearance of the church has already changed from being a fully 'pewed' church. The removal of the remaining pews in the west end will further leave a substantial number of pews in the rest of the church. The plan provided only shows the area of the pews which are sought to be removed, but from photographs it looks as though seven of eleven rows in the whole church will remain.
25. The change in appearance will nevertheless be substantial. Further, moving the only remaining medieval benches, removing all remaining pews in that part of the church, and leaving a pew frontal in isolation, will in my judgment make it difficult for future generations to understand the original function and context of the remaining medieval furniture. At least by retaining the frontal, and the two medieval benches elsewhere in the church, the harm to the church's significance would not in my view be serious, but it would be substantial.

26. In order to determine this petition I therefore have to turn to question (5) of *Duffield*. Bearing in mind the strong presumption against proposals which will adversely affect the special character of a listed building, will that harm be outweighed by any resulting public benefit?
27. In response to the most recent directions the petitioners have given sufficient information on the community activities which it is hoped will take place in the church if the relevant pews are removed. I do not need to go into detail, but they have satisfied me that these are concrete proposals which will happen regularly (whether weekly or monthly). Even if not all of those plans materialise, the fact that the community beyond the church walls is expressing a desire to make more use of the church is something which the PCC are clearly right to be attempting to make the most of. Bringing more people into the church for community events, whether more or less connected with church activities, is an important part of the mission of the church, particularly in a small village. While the petitioners have not always responded fully or expeditiously to the directions made in this case, I commend their energy and commitment in seeking to further that mission during an interregnum, and find that clear public benefit would result from the clearance of pews from this part of the church.
28. In answering question (5) of the *Duffield* guidelines it is however necessary for me to consider whether the harm caused by each element of the proposals would be outweighed by the public benefit, rather than simply taking the proposals as a whole. It follows that as part of that assessment I also have to consider whether any harm to be caused is necessary in order to achieve the public benefit sought.
29. Given that the medieval pews are in the third row of this section of pews, it is regrettably not practicable to retain them where they are and dispose only of later pews; that position is particularly the case given that they are not full length pews, but small enough to fit either side of a pillar. They would not therefore be suitable for the position directly in front of the pew frontal where there is no pillar. In the circumstances I find that the harm caused by the medieval pews being moved out of their original context to the Lady Chapel is necessary to the plans generally, and is outweighed by the public benefit obtaining as a result.
30. I similarly find that the removal and disposal of most of the remaining later pews in this area of the church is necessary to the plans, and the harm in doing so is outweighed by the public benefit which it is claimed will result.
31. I do not however feel able to order the removal of all of the pews in this area. I agree with Historic England that the front pew should ideally be retained in order to give the medieval pew frontal context. While Historic England have

stated that this is not so important as to cause them to object if its removal is included in the petition, their view has not changed. In response, the petitioners have not sought to argue that this one pew's retention will unduly hinder the broader public benefit of clearing the rest of the area, but have argued that it would look odd on its own. I do not consider the argument that they would like people to sit further forward and that people may choose to sit in this pew if left in isolation a good one, and nor is their desire visibly to separate the seating area from the clear space persuasive.

32. I do accept the petitioners' point that leaving one pew on its own is not ideal, and it will to a degree look odd on its own. This is however a difficult balancing exercise, and if the pew frontal were left on its own without a pew that too would look odd. Given that the starting point here is a strong presumption against proposals which will adversely affect the character of a listed building; that this building is grade II\* listed; and that the retention of this pew is not necessary to the general public benefit of the proposals (though I accept that it will make the space available slightly smaller and perhaps a little awkward to use), I am not persuaded that the marginal public benefit of removing this front pew is outweighed by the harm of removing it and leaving the pew frontal isolated. The petitioners have not therefore rebutted the presumption against change in the case of that pew, and it must therefore remain.
33. I am satisfied that the stackable chairs proposed for use as and when needed in the newly cleared space are appropriate: they are simple, with a chrome frame and un-upholstered wooden seat and back, with an elegant quatrefoil hole carved in the back.
34. I will therefore order that a faculty be granted as follows:
  - (a) For the moving of the two remaining medieval pews in the third row of pews in the north side of the west end of the church, as identified in the submitted plan, to the Lady Chapel;
  - (b) For the removal and disposal of rows two and four of the same section of pews; and
  - (c) For the purchase and use of stackable chairs from the Irish Contract Seating Company as referred to in Sue Harris's e-mail of 27 November 2017.
35. The following conditions will apply to this faculty:
  - (a) In the absence of a plan showing where the medieval pews are to be sited in the Lady Chapel (but relying on the petitioners' photographs showing the chairs which they will replace), their precise position is to be agreed with the DAC, taking particular care to ensure that they are not in a position where they are likely to be damaged, especially by



being too close to radiators. In the event of any difficulties in reaching such agreement the matter is to be referred back to me; and

- (b) The petitioners are to attempt to sell the pews to be disposed of to another church, failing which they are to be sold on the open market.

36. I further make an order under the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2016 for the petitioners to pay the costs of the petition.
37. As a result of the petitioners' expressed frustration with the time taken by the faculty process I also feel obliged to comment on the way in which this petition has progressed. As referred to above, I realise the enormous amounts of time and energy which people put into keeping a church functioning during an interregnum, and particularly appreciate the steps taken in this case to do more than that and to extend the church's mission. I do not know what delays there might have been between the DAC's first report in 2014 and the presentation of the petition in December 2016, but I am bound to say that this should and could have been dealt with far more quickly since presentation of the petition if it had been better prepared. It is difficult to work out what a parish would like to achieve in this kind of case without a plan, and directions are not given to make life more difficult for petitioners, but rather so that the court can understand what it is being asked to do.
38. The faculty system does not exist simply to rubber stamp PCC proposals. Indeed, to do so would be a dereliction of duty. I have to form a view for the sake of both the current generation and future generations as to whether a proposal gets the right balance between protecting our shared heritage and furthering the mission of the church. In this case it has taken some time to obtain the necessary information and particulars from the petitioners in order to be able to make that judgment. It is important that petitioners realise that these are formal proceedings, much as I know everyone tries their utmost to help those involved. That said, I am grateful to those involved for all of their hard work in ensuring that the court did in the end have everything it needed, and wish the new priest-in-charge and PCC of St Peter's well in extending their links within the community and furthering the mission of God's church.

14th December 2017