

**Neutral Citation Number: [2017] ECC Der 5**

**In the Consistory Court of the Diocese of Derby**

**In the Matter of Kirk Ireton Holy Trinity and**

**In the Matter of a petition dated 29<sup>th</sup> July 2015 of Rev Kara Werner, Team Vicar, and Jeremy Butt and Mrs Kathleen Stevens, churchwardens, Martin Tomlinson, treasurer, and Canon David Truby, Team Rector.**

### **Judgment**

#### **(1) Introduction and summary**

Kirk Ireton is about 4 miles from Wirksworth and is part of the Team Ministry under Canon Truby. The village and its neighbour, Callow, have a population of about 500, and there is an electoral roll of 22. Like many village churches today, it has a small congregation, but attracts visitors because of its location in the Derbyshire Dales, and apart from worship that takes place, it is used by the Church of England primary school for weekly assemblies, and doubtless on other appropriate occasions, and is said also to host ‘regularly’ concerts, recitals and exhibitions. I have a DAC site report resulting from a meeting on 25<sup>th</sup> September 2014 chaired by the then Archdeacon of Chesterfield, the Venerable Christine Wilson, which sets out the need for various improvements to the church and its facilities. This contains a number of photographs. It is a most useful document. By an on-line petition created in May 2015, some of the ideas that had been under consideration, crystallised into an application to *remove all the pews* in the nave from this Grade I church, which is dedicated to the Holy Trinity, and introduce chairs. This was the *original* proposal and was supported by the PCC by 8:1. It was also *Recommended* by the DAC on 30<sup>th</sup> July 2015, subject to their approval of the chairs to be introduced, and compliance with any comments from Historic England (‘HE’) or the Church Buildings Council (‘CBC’).

(2) In the light of objections, particularly from Historic England, the petitioners have modified their proposals so as to leave the present seating in the central part of the nave, and the furniture in the chancel and remove only pews around the periphery of the church, (numbered 1-15 on the most recent plans). In essence, the petitioners now want to remove only some pews from this Grade 1 church (as opposed to *all* the pews as they originally wished), and replace them with chairs with upholstered seats. This was supported 7:1 by the PCC. Having read the most recent correspondence, it is clear the petitioners see these modified proposals as being only phase 1 of a long-term aim to remove all the pews.

#### **(3) The church**

The listing description states “*C12 with subsequent additions and alterations in most succeeding centuries to the C19*”. It proceeds to give further detail of the architectural features of this church, which is constructed of local grit-stone, but they have little to do with this particular application. It also notes “*Restoration in 1873. The tiled chancel and sanctuary floors date from this time.*” There is no specific mention of the pews.

(4) The volume on *Derbyshire* in *The Buildings of England* Series (Yale 2016, by Hartwell, Pevsner and Williamson) adds no new information about the pews, but states that the altar rails, reredos and pulpit were variously introduced in 1920 and 1924, so possibly they are later than the 1873 re-ordering, of which I had assumed they formed part. In an email from Martin Tomlinson, the church treasurer, dated 16 June 2015, the views of the architect (Tony Short) are set out. It appears there were box pews until the 1873 re-ordering. Mr Short considers the most likely date for the present pews is 1900-1910, but that does not explain what seating arrangements existed between 1873 and the early part of the 20<sup>th</sup> century.

(5) The **Statement of Significance** describes the pews as '*unattractive but functional*' and says the simple and open '*airy*' feel of the interior is '*slightly spoiled*' by the pews '*crammed*' into it. The photographs available to me indicate pews that are very much at the lower end in regard to quality, and they seem to have suffered somewhat in the years since their introduction. On what I have seen, I agree with the parish's assessment.

#### (6) **Historic England**

In their letter of 29 June 2015, following the original proposal Historic England said the pews "*appear to be post 1871. They are constructed in softwood, and are of a simpler, more common type of pew. Though the pews are not of the highest quality, collectively, they add structure and character to the nave interior which contributes positively to the special interest of the church. Their complete loss would be regrettable and cause some harm to the significance of the church. Therefore a robust justification is required. Taking into account the modest contribution of the pews, the justification for removal focuses on an appropriate replacement which serves the parish's need for flexible and sustained usage and seeks to reveal and enhance the special interest of the church.*" The upholstered chairs then being suggested were, in HE's view, not suitable on aesthetic grounds, and they recommend consideration of stackable benches or wooden chairs. There is no specific mention of the then current *Guidance Note* from the Church Buildings Council on *Seating*, but that advice mirrors the main thrust of the *Guidance Note*.

#### (7) **The proceedings**

The on-line application was created on 11<sup>th</sup> May 2015 by the team vicar, Rev Kara Werner, but signed on 29<sup>th</sup> July by those named above, save Mrs Stevens as she abstained on the vote. She will therefore not be treated as a petitioner. That it was 'created' then does not of course mean that the application as a whole was ready for me to deal with. It came before me for consideration as long ago as January 2016.

(8) I prepared a 6 page **Note and Directions**, that is dated 18<sup>th</sup> January. This would have been in the petitioners' hands within a few days. In this document I pointed out a number of apparent ambiguities and uncertainties in the 'paperwork', including the Public Notices. It was not immediately apparent for instance that the intention was at that time to remove all the pews. I directed that there should be fresh Notices making this clear and the need to specify the number and nature of the chairs to be introduced.

(9) I also asked that the DAC look at the application again, as I felt they had not grasped fully what was being sought, and for their considered views on the proposed types of seating.

(10) I further directed that HE should be asked if they wished to pursue their previous adverse comments by becoming formal objectors, and that the views of the Victorian Society should be sought, as I then believed these were Victorian pews.

(11) I also set out the *Duffield* guidelines to help the parish understand the legal approach I was obliged to take in considering their proposals, and my then preliminary view as to the answers to the various questions, and stressed the need for '*robust justification*', as HE had expressed it. I also indicated that I would not be sympathetic to spreading implementation of any approved proposals over more than two 'phases'. I set no time within which my Directions should be complied with, and rather assumed that the parish would deal with any points with reasonable expedition.

(12) It was something of a surprise and disappointment that the papers were not returned to me until mid-October 2017, about 21 months later. I have not been made aware of any factors that have resulted in this considerable period of delay. As will appear at the conclusion of the judgment, the Registrar and DAC secretary, and indeed others, have had to spend some considerable time in getting the parish's response together. (I confess my own fault in not dealing with this matter within, say, 28 days of the return of the papers to me, and the further information now available.)

(13) I now turn to the application and will concentrate largely on the details *as they presently stand*, which are now somewhat clearer than they were. I am grateful to the Registrar for the further information and observations in her covering letter of 13<sup>th</sup> October.

(14) This application *originally* sought permission to '*introduce a phased re-ordering(,) replacing loose and damaged pews, and replace with chairs in accordance with drawings K1201, 1204, 1207, 1210 and 1212, and relating to the photographs of the ramp, screen and pews.*' Which pews were damaged and which were loose, was not made clear. (I now understand this relates to the pews at the rear and in the Lady Chapel area.)The experienced firm of church architects, Anthony Short and Partners, prepared those drawings. There are *now* two further drawings, designated K1 210, showing the present layout, and K1 212, illustrating the proposed re-ordering. Apart from plans, I have a number of photographs that illustrate the seating layout. What is easily apparent from looking at the new plans, however, is much more difficult to describe in words, but I must try.

**(15) Layout and seating**

This is a small compact building, consisting of a nave with a central aisle, and aisles along the north and south walls. The chancel arch protrudes significantly into the nave on both sides and the wooden pulpit is cradled within the northern 'arm'. It seems the church as a whole stands lower to the east. The chancel is set two steps *lower* than the nave, and from that level there is a single step *up* to the small sanctuary, which is flanked on three sides by substantial exterior walls. Similarly a single step leads *up* into an area in the southeast corner of the building, which is or has been used as a Lady Chapel. A further single step *up* at the west side of this area, takes one back to the chancel level. There is a tower to the west end, two steps *up* from the nave level. The font stands on the north side of the entrance into the tower, against the west wall of the nave. The organ is situated at the same level as the chancel against the north wall, and there is a vestry, to the north of the sanctuary in the northeast part of the

present structure. Entry to the building is gained through a porch at the southwest, and a boiler house is situated on the north side of the tower.

(16) The main seating consists of two blocks of long pews in the nave, set in five rows, either side of the central aisle, with three short pews to the south of the protruding chancel arch. In the chancel are clergy seats and two choir stalls, set conventionally facing north and south. On the new plan, all these are *marked in green, save for the easternmost short pew, marked in red*. Four further pews (*in red*) are in the northwest corner, one against the north wall, and two further pews (*also in red*) in the southwest corner. In the Lady Chapel are four further pews of varying lengths, and a longer piece of furniture of some kind (*all in red*), and a long pew (*in blue*). To complete this description, two further pews stand to the south side of the tower entrance and are shown *in yellow*. The pews (except for the green ones) are numbered 1 to 15, and are said to be 'loose', by which I understand they are freestanding. There is no key to explain the significance of the various colours used on the plan.

(17) The *original* proposal, as I say, was for the removal of *all the furniture* save that in the chancel, and the long pew in the south-east corner, and the subsequent introduction of around *62 upholstered chairs*, and *60 light-weight stackable chairs* with, I believe, tubular metal frames. The *original* plans K1 201, K1 204 and K1 207, show these new chairs (or a good number of them), deployed in various configurations.

(18) The second 'new' plan, K1 212, shows the layout *now* proposed, although of course chairs are moveable, and so can be arranged as circumstances require. The *green* pews and chancel furniture will remain. The only pews to be removed are therefore those around the sides of the main area of seating in the central part of the nave. Of these new seats, 10 are shown placed in the northwest corner, grouped around a small table, 6 more in two rows by the entrance to the tower, and 14 in the area of the Lady Chapel. The total is therefore 30.

(19) However the number of seats as shown on the plan may be intended as illustrative rather than definitive. The Registrar in her letter tells me the parish wants to acquire 24 of the type without arms, and 15 with arms, a total of 39.

(20) The type of chair is illustrated on a photograph provided. The manufacturer is Alpha Furniture and the model is LAMH. They have laminate wooden frames that will be stained *alder*, and seats upholstered in a tweed fabric of the colour Sandvale. In reaching this choice of design and finish, the petitioners have been assisted by the advice of Professor Janet Spencer, who is a previous Chair of the Derby DAC, and who continues to advise on textiles and furnishings. As I say, in their original Notification of Advice, the DAC made it a condition that the petitioners obtain the DAC's approval. This has been done as is evidenced by her email of 12 April 2016, (although the petitioners are no longer seeking approval also for the lightweight stacking chair on which she has also given advice).

#### (21) **Statements of Significance and Needs**

These go back to June and July 2015, (a time when it was proposed to remove all the pews, in stages). From these documents it appears that the building is '*regularly used*

*for concerts, recitals and exhibitions*'. The church is kept open in daylight hours and attracts many visitors from the tourists who visit this part of the Derbyshire Dales. The church is used by the local school for collective worship and end of term gatherings. It is the only similar space in the village able to host such gatherings or community events.

(22) The proposed re-ordering sought greater flexibility in the use of space in the interests of family services, the community and the school. The Mission Action Planning initiative in the diocese had highlighted the need for the liturgical life of the church to become more flexible and open, in order to draw and keep young families, and for greater and enhanced community use. The local shop was said to have an uncertain future and possibly the church could offer a venue for it. (This is so uncertain that I will ignore it in reaching a decision).

(23) Although there has been significant revision of the proposals, they will still go at least some way to meet these aims.

**(24) Revised Public Notice and DAC**

The revised proposals were expressed on the new Public Notice (exhibited between 31<sup>st</sup> October and 28<sup>th</sup> November 2016) as follows: *'To remove the loose, damaged or dangerous pews and replace them with chairs in accordance with drawings K1 210 and K1 212 and accompanying photographs. The chairs to be Alpha LAMH wooden laminate stacking chair with wooden back stained alder and upholstered seat.'* Public Notices should be self-contained and not require examination of other documents and plans. Only on an examination of the two 'new' plans can a better, but by no means full, understanding of the present proposals be gained, although as I have said, the distinctions made by the various colours, red, yellow and blue, are not explained.

(25) **The DAC** considered the revised proposals on 24<sup>th</sup> October 2016 and *Recommended* their approval. They considered the work was likely to affect the character of the church as a building of special architectural or historic interest but then indicated they did not consider publication of the proposals by a notice on the diocesan website under Rule 9.9 was required. *This is wrong*. Having reached their conclusion on the effect of removal of some of the seating on the character of this *Grade I* church, they should have indicated such further publication of notice on the website was *mandatory under the terms of the Rule*. There is no choice.

(26) The DAC is of course an advisory body, and cannot definitively determine what amenity societies should be consulted, or whether Rule 9.9 applies or perhaps even whether the character of the church is so affected by the petitioners' proposals. However the petitioners and the Registrar will rely on the views of the DAC as to whether the Rule applies, and for the future the Committee should be aware that *alteration to any part of a Grade I or Grade II\* building* to such an extent as would be likely to affect its character, *requires publication* on the diocesan website of the relevant details as set out in Rule 9.9(2). The Registrar tells me that in fact notification of the proposals went on the diocesan website on 1<sup>st</sup> November 2016. No objections or comments were received.

**(27) Further support for the proposals.**

Mr Peter Johnston, the head teacher of the CE primary school in the village, in an undated letter, (but later than when I saw the proposals in January 2016) expresses support for replacing pews with chairs '*as it would make it a much more flexible place for a variety of activities including nativity plays and performances*'.

Mrs Caroline Harrison is Secretary of the Community Association in the village. She writes on 9<sup>th</sup> May 2016 to express KICA's support for removal of the pews. The size of the village hall limits the number of people who can be comfortably accommodated there.

The terms of each of these letters indicates that each of the writers believe the proposal is still to replace all the pews, which is indeed still the long-term aim.

Mrs Penny Glendinning also writes in support of creating more space and greater flexibility, on behalf of the Church Social Committee.

**(28) Consultation**

I quoted the original response of **Historic England** in paragraph 6. Since my Note, attempts to consult with **SPAB** and **The Victorian Society** have been made, but without success. I am told the latter do not consider the pews to be of interest to them. **CBC** said originally they were prepared to leave consideration to the DAC. On 2<sup>nd</sup> August 2017 they maintained that position in regard to the new proposals, but drew attention to their Guidance against the introduction of upholstered seating. On 4<sup>th</sup> August, **Derbyshire Dales District Council's** officer, Dr Mark Askey, indicated that as the majority of the seating was being retained, it was the Council's view the removal of pews as shown on K1 210 would not harm the special character of the interior.

(29) **Historic England** wrote again on 8<sup>th</sup> August. HE were encouraged that it had been decided to retain the fixed pews, and remove the 'loose' ones. It was for the Chancellor to say if this was a sufficient justification. They noted the choice of wooden chairs and expressed the hope they would be in a choice of finish and colour '*to complement the Victorian scheme.*'

**(30) Discussion**

As is evidenced by the dates I have given and from the documents sent to me, it appears to have taken a great deal of time and effort, and the input of people outside the parish, to come up with the present more modest proposals. It should not have been so difficult! I have considered the *CBC Guidance Note on Seating*. This application does not warrant prolonged consideration of its detail, when the petitioners are seeking only to remove a modest number of loose and damaged pews and provide replacement seating. Greater clarity about the present defects, would have assisted the application.

**(31) Legal framework**

The present test (or framework or guidelines) within which the court is **required** to come to decisions about proposed alterations to listed buildings is set out in paragraph 87 of the decision of the Court of Arches (the ecclesiastical court of appeal) in the case of *Duffield, St Alkmund* [2013] Fam 158 in a series 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 assumption 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 harm is to a building which is listed Grade 1 or 2\*, where serious harm should only be exceptionally be allowed.*

This provides a structured and logical method of coming to a conclusion.

(32) The answers as they appear to me are as follows:

Q1: *Yes* Q2: *Does not arise* Q3: *Slight only*. The present layout can at best be described as 'bitty'. The pews are of poor quality and appearance, although they have obviously fulfilled their role for 100 years or more. In my view, the removal of those that are to be removed will have very little effect on the appearance of the interior, save to make the interior tidier. The chairs to be introduced have been carefully selected, are modest in number and will not overwhelm the pews being retained, and the choice of finish and material will fit well with the colour of the pews retained.

(33) As to Q4 and Q5, I am satisfied that the petitioners have shown a '*robust justification*' in terms of need for their revised proposals, which are no longer opposed by Heritage England. The flexibility afforded by the introduction of the chairs will assist in making the building more available and useful for the church, the school and wider community, as well as more convenient for the congregation.

ORDER

*A faculty is to issue for the removal and disposal of the pews shown 1-15 on the plan K1 210, and introduction of 39 Alpha upholstered chairs of the model illustrated, with the finish indicated.*

*The petitioners are to have 12 months to complete the work.*

**The petitioners should not assume that success on this application will lead automatically to permission to go further.**

**(34) Costs**

Unhappily this is a case that has gone far beyond the ordinary, and has not been assisted by the petitioners' changes of mind. I treat the work done by the Registrar until January 2016 as covered by the initial 'standard' fee payable to the Registrar. It is apparent there has been considerable time and effort spent since then (following my Note), by the Registrar, in trying to finalise the proposals, and forward things, in conjunction with the DAC Secretary, and the parish, together with Mr Tomlinson. She informs me that she has '*conservatively*' spent a further 4 hours on this. That charges out at £180 per hour plus VAT, for what is specialist legal work. **That is £720 plus £144, or £864. I so order. The costs are to be paid prior to and as a condition of issue of the faculty.**

**I repeat that Mrs Stevens is not to be named as a petitioner on the faculty.**

John W. Bullimore  
Chancellor  
29th November 2017