

**NEUTRAL CITATION NUMBER [2016 ECC Der 1]
In the Consistory Court of the Diocese of Derby
In the matter of Ockbrook, All Saints
The petition dated 28th June 2015 presented by Rev'd Timothy M Sumpter,
Mrs Joyce Wild and Barrie Read, churchwardens.**

Before: the Chancellor, HH John W. Bullimore

Judgment

- 1) The petition seeks permission to remove and sell pews from the north and side aisles of this Grade II* listed building, standing in the Ockbrook Conservation Area. Originally there was a request to remove the wooden pulpit as well, which stands against the chancel screen. In the light of objections to that course, the petitioners have decided not to pursue it, and those who objected to its removal withdrew their objections. There are nonetheless three notices of objection relating to removal of the pews. All these objectors have decided not to make themselves parties to the legal proceedings, which a petition initiates, but request that I take their points into consideration when making my decision. The proposals are not going to cost anything and will be effected by volunteers. The following expresses at inordinate length, my decision and the reasons for it.
- 2) There are suggestions from the petitioners that these comparatively modest proposals may be followed, in due course, when they have appointed an architect, by a renewed request to remove the pulpit, and to remove the pews from the centre of the nave, and also, on the other side, there are fears expressed by one objector that they may seek to do just that, that the current proposal is but the start of (worse) things to come. I make it clear that I cannot prevent the petitioners bringing forward fresh proposals in the future, but also that any favourable decision now on this petition for what is sought, would not make the outcome of a further application more or less likely. I ought to add that it was recently suggested in another case in the diocese, that there is some diocesan or DAC policy, to the effect there should only be one sort of seating in a church, and not a *mixture* of pews and chairs. There is no such policy, and each application will be considered on its merits and decided in the light of any advice from the Diocesan Advisory Committee, and the amenity bodies that need to be consulted.
- 3) This case is proceeding under the Faculty Jurisdiction Rules 2013, which have now been replaced by the 2015 Rules in respect of applications made after 1st January 2016. Schedule I of the 2013 Rules sets out what consultation with the amenity societies is required. Consultation is required where proposals *'involve alteration to....a listed building to such an extent as would be likely to affect its character as a building of special architectural or historic interest'*. The DAC were of that view, and it seems to me that must be correct. That means consultation is required with Historic England (para. 3(2), and any relevant amenity society. In this case that is The Victorian Society (para. 4), as these are Victorian pews It

seems the DAC did not recommend The Victorian Society be consulted, but did suggest consultation with SPAB and CBC. It does seem that these two, together with the VS, presumably following contact by the parish, all commented about the proposals. Before coming to details of the proposals and the comments of the amenity societies, and the objectors' objections, I need to set out the legal basis on which a decision has to be made.

4) The 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* 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 all provides a structured method of coming to a conclusion.

- 5) The plan of the church shows there are 7 long pews arranged either side of the central nave, and 7 short pews in the north aisle, and 6 in the south with two more aligned east-west to the east of these. The side pews are not fixed, but are simply relatively immovable because of their weight. The chancel is comparatively narrow at approximately 4m as compared with the 10m width of the nave (internally), which is about 8.5 m long. Is communion celebrated from a nave altar or at the high altar?
- 6) There are a number of helpful photos, but these have been taken at different times with the side aisles in different configurations. The present pews at the side and in the centre seem to be similar in pattern,

save for their length. The area under the side pews is covered with carpet. The pews on the north side have on some photos been turned against the wall and so face into the nave, and small tables have been brought in, together with moulded plastic chairs on tubular metal frames, for 'café-style' church. Another photo shows the same area, but this time with different chairs, these having upholstered backs and seats. I am fairly sure these tables and chairs do not show the *usual* situation in the church, but rather the layout when a café-style service is held, perhaps monthly. The south aisle appears to have had some of the pews moved about for the benefit of the music group.

- 7) The *Statement of Significance* indicates the north aisle was built in 1814 and the south aisle in 1835, with a gallery at the west end. The pine pews were introduced in the 1890's. The parish does not consider them, or their removal, would 'degrade' the significance of the church. They are however features of the building at the time it was listed, whether or not included in the list description.
- 8) The *Statement of Need* shows there is a main regular Sunday service of Morning Worship or Holy Communion attracting 60 or so, led by the music group, and once a month, a Family Service, similarly led, with 120 attending.
- 9) It is said '*there is need to create flexible space....to enable various styles of services to be conducted and, in particular, to enable the church to meet more flexibly the needs of families with young children*'. Next '*there is also a need for space for those with impaired mobility and to permit church and community groups to meet in the church during the week*'.
- 10) Breaking this down, there are 4 reasons put forward for removing the side pews.
 - i) *flexible space for various styles of services*: what types of services are contemplated that cannot be accommodated with the present seating? How will moving the *side* pews allow these to happen?
 - ii) *the needs of families with young children*: how will the removal of the pews aid this, if the north side pews are to be replaced by tables and chairs, or is that only an occasional lay-out? The petitioners have not in fact asked to be allowed to introduce other furniture although the DAC seems to have felt that was intended to happen. I note that it is said that chairs will be brought on a temporary basis, from the off-site Gordon Lacey Hall, when extra seating is required, rather than obtaining new chairs at the moment.
 - iii) *helping those with impaired mobility (or families with prams)*: what do the petitioners put forward in support of this? Are they intending eg that those in wheelchairs should be placed in the aisles rather than in the central body of the church? Many churches have applied to shorten some of the pews in the centre of their buildings to provide space for wheelchairs off the central aisle. Just as users of such aids do not generally welcome being 'parked' in an exposed position at the front of the church, or

relegated to space at the rear, behind everyone else, nor should they be side-lined to the side aisles. That can be seen as discriminatory and demeaning. Sometimes such spaces can be created by moving shorter pews into the main body of seating, rather than cutting down longer ones. That might be a possibility here. I asked about a nave altar above, because if the Holy Communion is celebrated at the High Altar, then sight-lines from the side aisles into the chancel will be severely restricted. While some members of the congregation will not find that a matter of complaint, I think most prefer to see what is happening, and not simply listen to the Eucharistic prayer. This is an additional reason why those in wheelchairs should not be provided for only at the sides of the nave. How is communion administered to them?

iv) *to enable church and community groups to use the building:* in what ways will this be enabled to happen? Are church/ community groups using the building mid-week at the moment, or not? What groups are likely to use the church if the pews are removed, who will not or do not do so at the moment?

- 11) These proposals have the support of all 15 members of the **PCC** at their June 2015 meeting.
- 12) The **DAC** also recommended the removal of the pews at its meeting in March 2015, subject to the proviso they should approve any new furniture which is to be introduced (no such request having been made at the moment). However they accepted that the removal would be *'likely to affect the character of the building as a building of special architectural or historic interest'*, and recommended there be consultation with the various bodies I have already detailed. Professor Spencer was sympathetic to moving the pews, but felt they should be kept as wall seating, (as shown on some of the photos). She was critical of the temporary chairs, which I have described. She suggested the parish aim for removal of all the pews and replace them with good quality chairs, but noted that the state of the floor might need some investigation, and it might also be possible to remove the carpet. (See generally, her email of 2nd March).
- 13) There is also an important email to Gemma, who is acting on behalf of the PCC, of 25th March, reporting back on the DAC deliberations, and as a result of this the PCC apparently did not pursue the moving/removal of the pulpit. *'The DAC also suggested that once you have appointed a church architect you (begin) to work on a coherent plan leading towards a complete vision for the church. Perhaps, whilst deciding upon suitable furniture there could be some discussion about the long-term future and how the church can be re-ordered effectively but sensitively'*. The PCC response of 24th April shows that the parish are in the process of appointing an architect, but are also faced with the need for roof repairs.
- 14) The **Public Notices** were exhibited in June, relating to the pews alone, and as I have indicated three objectors to those proposals remain. I will deal with that below.

- 15) **Historic England:** as far as the pews were concerned, HE described them as '*a more common type of late C19th pew*', which '*add(ed) character to the simple interior of the nave and there will be some harm to the significance of the church caused by their loss*'. Having regard to the reasons put forward however, they '*would have no objection to make to their removal*'. **SPAB** did not wish to object to removal of the pews (email 3rd March). The **CBC** were content to leave things with the DAC (email of 16th March).
- 16) **The Victorian Society** responded on 25th June, well after the DAC meeting in March, and nearly 4 months after the Society was approached by the parish. They do not wish to object formally in view of the delay, but point out that even these 'bog-standard' pews have greater quality (sc than much modern seating) and the Society urged the parish to explore how the side pews could be made more comfortable, rather than spending the church's resources on replacement seating.
- 17) **Objections:** I have letters of objection from Robert Russell (23rd July), Pamela Summers (same date) and Vanessa Anderson (22nd July). Each has indicated they do not wish to become a party to the proceedings but ask that I take their letters into account, which I am required to do.
- 18) **Mr Russell**, (who is a Reader and long-term resident and former PCC member) complains that the specific reasons for the removal are not spelled out – rather as I did above – and that the Church Hall has been recently re-furnished, and that, and the nearby Village Hall provide space for organisations of various kinds. He regrets the potential loss of pew cushions (although this may relate only to the central pews) and the potential cost of providing replacement seating.
- 19) **Mrs Summers** regrets the loss of historic furnishings. She points out that the Hall is half a mile away, and the borrowing of furniture from there is impracticable. She accepts that the hall is not a location for after service refreshments. She feels that meetings can be held in the Hall(s) and queries the provision suggested for the disabled, as the central aisle and front space are available.
- 20) **Mrs Anderson** is on the electoral roll, but is a more regular member of the congregation at Borrowash. She suggests that some of the shorter pews could and should be retained, and located on the side walls, perhaps with deeper cushions, as a reminder of the history of the church. She acknowledges the longer pews, which are not the subject of this petition, could not so easily be incorporated into an overall re-ordering. I do find this somewhat difficult to understand. She seems to contemplate a much more radical re-ordering of the interior, while objecting to this comparatively minor scheme relating to the side aisles. She also objects to the projected sale of pews, as unlikely to raise much money, and of course, once the items are sold, they are gone for ever. She is aware that that there are no records of how the church was furnished before the last re-ordering in 1897. There should be a proper photographic record before any changes are allowed. She complains that when the proposals were discussed at the AGM in 2014, the 'doubters' (my word) were '*patronised and belittled*', and their comments '*unheard and ignored*'. The vicar has ensured that there are supporters on the PCC. There should be more spent on repairs and maintenance, rather than incurring avoidable

expense. There was no proper display of the proposals, or ready access to the plans.

- 21) **Mr Sumpter** responds by saying there are only 3 objectors out of a large congregation and ER, and suggests none of the three are regular attenders. He disputes what is said about the AGM or lack of publicity.
- 22) **Comments:** This petition has caused me some difficulty and I regret the delay caused by the time I have had it under consideration.
- 23) Looking at the list of questions set out in paragraph 5 above, my provisional answers are: Q1: Yes; Q2 : does not arise therefore; Q3: removal of the pews would cause modest or moderate harm to the interior of this Grade 11* building.
- 24) Q4: I do NOT find the reasons advanced for removing the pews '*clear and convincing*'. I see that there is a general level of support from the DAC, HE and the amenity bodies for providing more flexibility and space, but in my view when they are explored further, the reasons are not convincing, even taken together (see in particular, paragraph 10 above). It seems to me that the parish is managing with the arrangements it has put into effect at the moment, moving the side pews as circumstances require, and using temporary furniture from elsewhere. All the petitioners actually seek at the moment is removal and disposal of a dozen or so short pews, which in my view lacks sufficient justification.
- 25) The comment of the DAC (paragraph 13 above) points the proper way forward. The PCC needs to consult with their chosen architect and frame a coherent plan for re-ordering, bearing in mind what they can actually afford, remembering the other demands on their resources. I hope they will bear in mind my comments, among other considerations, especially concerning provision for the disabled members of the congregation. They need to explain how the bread and wine will be distributed to them at Communion. The present proposals are really incomplete; the choice of other furniture is basic to what they want to achieve and putting off decisions until some uncertain date in the future is not acceptable.
- 26) The petitioners will be disappointed by my decision, but I am satisfied it is the right one. I recognise they are seeking to make progress in terms of their mission in the community and among their established congregation. There may be strong reasons for putting forward a comprehensive plan for re-ordering, even if it cannot all be effected immediately because of shortage of funds. But there is a great danger that the interior of a church ranked in the top 8% of all listed buildings, will simply be damaged by minor changes that will achieve little in practical terms, over and above what the petitioners are *already* doing, without the support of an overall comprehensive scheme.
- 27) **In conclusion**, I do not find that the petitioners have sufficiently justified their proposals, in the way suggested in Q5 above, or otherwise. I do not strictly have to ask therefore if their proposals still continue to stand in the light of the objections received. It is sufficient to say that the objectors seem to me to raise some justifiable concerns.
- 28) As Mr Sumpter expressly says '*I would ask the Chancellor to take the following points into account in coming to his decision,*' I understand him to accept that just as the objectors have asked me to take into account their

written points, so he is content that I should come to a decision on the materials now before me.

29) I therefore decide as follows:

Subject to the following,

- **I DISMISS the petition.**
(The petitioners therefore have no permission to remove the side pews from the church or dispose of any of the side pews).
- **They nonetheless have permission to continue to relocate the pews within the building, and/or introduce temporary seating and tables, as required, in the side aisles, during the period expiring 30 June 2017, or such further period as may subsequently allowed, for the purpose of framing a more comprehensive plan for re-ordering the interior.**
- **In the event no such scheme has been presented to the DAC prior to that date, the court will give Further Directions, which may include a requirement that the petitioners restore the arrangement of the side aisles to its earlier status.**
- **The petitioners must pay the Registry the following by way of an enhanced correspondence fee in the sum of £275 plus VAT, having regard to the costs of dealing with the objectors.**
- **Liberty to apply by letter for further Directions, if so advised.**

John W. Bullimore
Chancellor
22nd January 2016