

In the matter of Christ Church, Upper Armley

## Judgment

1. By a petition dated 29 March 2017, the vicar and churchwardens of Christ Church, Upper Armley seek a faculty for the following works:
  - Permanent disposal of the pulpit (Victorian, modified 1936), temporarily re-located to the north aisle as part of 2015 reordering and under Archdeacon's Licence
2. As will become apparent, I do not consider the pulpit to be a church treasure such as to require a hearing in open court, as discussed in *Re St Peter, Shipton Bellinger* (19 November 2015, unreported), at para 23. See also *Re St Lawrence, Oakley with Wootton St Lawrence* [2015] Fam 27 at para 19; and *Re St Peter's, Draycott* [2009] Fam 93, at para s36-37. I am satisfied that there is sufficient material before the court fairly to dispose of the matter.

### Background

3. Christ Church, Upper Armley is a grade II listed building in inner city Leeds. It was substantially re-ordered in 2015 to provide flexible worship and community space with a folding screen in between. There is no church hall, so the church houses a range of sacred and secular activities.
4. The 2015 reordering was undertaken pursuant to a faculty dated 4 November 2014 granted by Acting Chancellor Bullimore. It comprised the removal of pews and their replacement with chairs, the levelling of the floor and introduction of carpet, the relocation of heaters and the replacement of the screen to the narthex. The Certification of Completion is dated 14 June 2015.

### The archdeacon's licence for temporary minor re-ordering

5. On 10 December 2014, the Venerable Paul Hooper, then Archdeacon of Leeds, granted what is headed 'Temporary Permission for Reordering/Works for 15 Months'. The works or proposals were stated to be 'temporary removal and storage of pulpit' and the conditions included the following:
  - Pulpit is de-constructed by a suitably qualified contractor and stored in an appropriate dry location in church. By 9.12.15 the PCC to decide whether to reinstate the pulpit in its original position or to lodge a faculty application for the permanent removal of the pulpit. A copy of this temporary licence to be lodged in your log book.
6. The minutes of a PCC meeting held on Monday 16 November 2015 record:
  - The PCC discussed and agreed that a faculty should be applied for to remove the pulpit from the building.
7. However, the parish did not petition for a faculty until 29 March 2017. By an email of the same date an official at the DAC informed the registry clerk:

... our records show that the parish submitted its papers to the DAC for a confirmatory faculty [*sic*] in February 2016, prior to the expiration of the temporary permission. The DAC recommended the works [...] but held off issuing the notification of advice whilst the parish consulted with the Victorian Society and revised its supporting documentation [...] The final submission of the revised documents was delayed until recently and hence the temporary permission has unfortunately lapsed. It is hoped the Chancellor will be understanding of the situation.

8. Even the most understanding and benevolent of Chancellors is constrained by the law. In relation to licences for temporary minor re-orderings the law is clear. I intend this judgment to be forward-facing and therefore will cite the current provisions of the Faculty Jurisdiction Rules 2015. At the relevant time, the 2013 Rules (which were in force between 1 January 2014 and 31 December 2015) would have applied but they were identical in all material particulars with the like provisions in the 2015 Rules, albeit somewhat more robust in their enforcement provisions than the Faculty Jurisdiction Rules 2000 had been.

**Temporary minor re-ordering**

**8.2.**—(1) On the application of the minister and the parochial church council an archdeacon may give a licence in Form 9 authorising a scheme of temporary minor re-ordering of a church (including its fixtures and fittings) for a specified period not exceeding 15 months.

(2)-(8) [*text omitted*]

(9) The period specified in the licence may not be extended by the archdeacon.

(10) If a petition for a faculty in respect of the scheme authorised by the licence is submitted to the court not less than 2 months before the expiry of the period specified in the licence, the scheme is deemed to continue to be authorised by the licence until the petition is determined by the court.

**Steps to be taken on expiry of licence for temporary minor re-ordering**

**8.3.**—(1) On the expiry of the period specified in a licence given under rule 8.2—

- (a) the archdeacon must send the minister a copy of Form 10 (which asks the minister to state whether a faculty has been applied for in respect of the scheme of temporary minor re-ordering and, if not, whether the position has been restored to that which existed before the scheme was implemented); and
- (b) the minister must complete Form 10 and return it to the archdeacon within 14 days of receiving it.

(2) [*text omitted*]

(3) Save to the extent that it has been authorised by faculty, when a scheme of temporary minor re-ordering ceases to be authorised under rule 8.2 the archdeacon must take steps to ensure that the position is restored to that which existed before the scheme was implemented.

9. The simple point is this. The archdeacon has no power to extend the period specified in a licence: r 8.2(9). On the expiry of that period, the reordering ceases to be authorised, and the archdeacon must take steps to ensure that the pre-existing position is restored: r 8.3(3). There is only one exception to this, namely where the parish has submitted a petition for a faculty not less than two months before the expiry of the period specified in the licence: r 8.2(10). The rule is clear. Contrary to the arguments advanced at paragraphs in the email quoted at paragraph 7 above, the deadline is not the expiry of the licence, but two months earlier; and the trigger is submitting a petition to the court, not seeking the advice of the DAC. Whilst the on-

line faculty system may have blurred the distinction somewhat, there is no room for ambiguity in the rule. (The rubric now on the Licence for Temporary Minor Re-ordering helpfully sets out these provisions, but this case pre-dates Form 9).

10. Had the parish lodged a petition not less than 2 months before the expiry of the licence, the re-ordering scheme would have been deemed to be authorised until the petition was determined by the court: r 8.2(10). But the parish did not and thus they should have restored the pulpit to its original position. And the archdeacon should have taken steps to ensure that they did so r 8.3(3).
11. Parishes should be disabused of the common misconception that that seeking advice from the DAC amounts to compliance with r 8.2(10). The prudent course, if it looks like a Notification of Advice will not be forthcoming from the DAC in sufficient time would be to submit a petition to the registry before the deadline with a request that proceedings be stayed pending receipt of the Notification. The Faculty Jurisdiction Rules 2015 make express provision for starting proceedings notwithstanding the absence of DAC advice: r 5.2(4), disapplying r 4.4(1). This may, however, require a paper application, outside the online faculty system. And if by indolence or misfortune the parish allows the deadline to pass, it could apply for an interim faculty under r 15.1 to authorise the continuance of the reordering scheme until such time as a petition for a full faculty is determined. Any such application will be determined on its merits, one factor being its promptness.
12. The situation in this case was not assisted by the retirement of the archdeacon and the appointment of an acting archdeacon pending the successor coming into office. During this period there was culpable neglect in the discharge of the archdeacon's statutory duty to make proper enquiry using Form 10 (r 8.3(1)) and to take steps to restore the church to the position which existed before the scheme was implemented (r 8.3(3)). I trust this case will act as a timely reminder to all archdeacons in this diocese and beyond of their duties of enforcement regarding licences for temporary minor re-ordering. They should keep a careful note of the date upon which all such licences expire. Newly appointed archdeacons (should any happen upon this judgment) would do well to rummage through their filing cabinets in search of any ticking time bombs inherited from their predecessor.
13. As to the parish's oversight, I propose no sanction beyond the obloquy of the preceding paragraphs.

#### **Consultation**

14. In a Notification of Advice dated 29 March 2017, the DAC recommended the proposal for approval by the court.

15. By letter dated 1 March 2016 in response to a letter from the incumbent seeking pre-application advice, Historic England indicated that it did not consider it necessary to engage in pre-application discussions, and it did not wish to be consulted on the proposal.

16. I directed consultation with the Church Buildings Council, whose reply dated 31 July 2017 contained the following:

The Church Buildings Council appreciates the need for a flexible space for a growing congregation, in keeping with the successful informal style of worship at this church. It notes that the pulpit is no longer used.

The pulpit is located within a grade II listed Victorian Church. It is understood that the pulpit was altered from its original 1872 form by the addition of timber steps, possibly when it arrived at the church in 1936. The addition of these steps in a different colour oak have made it appear bulky and it no longer has a coherent design. The Council understands that the pulpit has already been removed from the chancel to the north aisle with a temporary licence and that the additional chancel space has been well received. As such, the PCC now wish to remove the pulpit completely.

The Council agree that the parish has a convincing case for its removal, and that it is sufficient to justify removal of this much-altered furnishing that is not original to the building and does not contain significant historic material.

The Council is content to defer to the DAC for consideration of this proposal.

17. The parish's consultation with the Victorian Society led to the expression of unease with the proposal and accordingly I directed that the Society be given special notice under r 9.3. This duly occurred by letter dated 7 June 2017. Mr Christopher Costelloe of the Society replied by email on 8 June 2017 asking for confirmation that the parish had made no reply to its so-called 'letter of objection' and asking for a copy of the archdeacon's licence. By email dated 16 June 2017, the registry clerk answered the first query in the negative, and supplied a copy of the licence as requested.

18. Nothing further has been heard from the Society. The 21 day period for sending representations or particulars of objection (r 9.5) has expired. There has been no request to enlarge that period. Even if the clock were deemed to have re-started when the registry clerk replied to the Society's enquiry, more than 21 days has passed from this later date.

19. In the absence of any response to the special notice, I nonetheless give regard to the content of correspondence from the Society to the parish in various emails, the most expansive of which is from Sophia Laird dated 23 May 2016.

The pulpit is a handsomely carved piece which adds character to the chancel space, and its removal is not justified. Lack of use does not constitute a justification for the removal of this handsome fitting, liturgical fashions change in time and this should not be a justification for

the loss of an important fitting. The small amount of space gained by its removal also does not constitute a reasonable justification for its removal, Christ Church is a large building which can easily accommodate the footprint without infringing the liturgical freedom of the parish. We **object** to the removal of the pulpit.

### Assessment

20. Even though this petition is unopposed, it relates to a listed church and the burden of proof lies on the petitioners to satisfy the court that a faculty should be granted pursuant to the framework recommended in *Re St Alkmund, Duffield* [2013] Fam 158, as modified in *Re St John the Baptist, Penshurst* (9 March 2015, unreported).

- (1) What is the special architectural and/or historic interest of the listed church?
- (2) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
- (3) 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 [...] Questions 3, 4 and 5 do not arise.
- (4) If the answer to question (1) is 'yes', how serious would the harm be?
- (5) How clear and convincing is the justification for carrying out the proposals?
- (6) Bearing in mind that there is a strong presumption against proposals which will adversely affect the character of a listed building [...], 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 [this question], 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 to a building which is listed grade I or II\*, where serious harm should only exceptionally be allowed.

21. The Listing Statement for Christ Church, Upper Armley reads as follows:

Anglican church. 1869-72. By Richard L Adams. Coursed squared gritstone, ashlar details, slate roofs. Gothic Revival style. EXTERIOR: tall nave with tripartite clerestory windows, 2-light lancets to low N and S aisles. Gabled S porch. Tall W tower with large 2-light belfry. Chancel with 3-light lancet E window with oval window above in gable. INTERIOR: re-ordered 1983; a screen cuts off the western 2 bays of the 5-bay nave and tower. W end memorial to William Ewart Gott of Armley House, now The Mansion (qv) 1827-1879 who 'liberally' aided the building of the church, gave the font, the E window is in his memory. Chancel windows to the memory of John Aitchison Gott, 1853-82, Baptistry window in memory of Alexander Gott, priest, 1860-89. Quatrefoil columns, clerestory obscured by inserted ceiling, pulpit of carved oak presented 1936; font of stone, octagonal, carved frieze of leaves, cover 1960. Original pews with moulded pew ends, white marble floor to choir, painted stone reredos has cusped recesses and crocketed finials. (emphasis added)

22. Mr A W Hawkworth, the parish's inspecting architect, writes in a letter dated 11 February 2016:

The pulpit is of carved oak with a short flight of curved steps. There is some damage to the pulpit from the internal reordering scheme undertaken in 1983. The pulpit is octagonal in plan with carving of fair quality, but not exceptional. The pulpit contains a brass plaque stating that:

*'this pulpit is presented in memory of the late Mr Francis Halliday by his widow January 19th AD1872'* and a later engraving as follows: *'Presented by Walter W and Annie L Alexander 1936'*.

23. The date of fabrication was the subject of email exchanges with the Victorian Society when it was first consulted, and the likelihood is that the pulpit was originally housed in another (unspecified) church.
24. Turning to the first question, would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest? I struggle to see how it can be said, in the circumstances of this case, that the removal of what is a rather ordinary pulpit, can be said to result in harm to the significance of Christ Church, Upper Armley as identified in the listing statement which I have recited in full above. I consider the evaluation of the Victorian Society somewhat overstated and out of step with the common opinion of the petitioners, the DAC, the Church Buildings Council, Historic England and the inspecting architect. I defer to the predominant latter view.
25. Since I consider the answer to the first question is 'no', then the ordinary rebuttable presumption in favour of the *status quo* is applicable. Thus I need to consider the particular nature of these proposals and the parish's justification in particular. The Statement of Needs chronicles a vast range of activities, sacred and secular, taking place in the church throughout the week. I need not rehearse them here.
26. I am further impressed by the parish's Mission Action Plan, and the extent to which it is perceived as compromised by the liturgical presence of the unused pulpit. It has not been used since the 1980s and, stored in the north aisle, it poses a risk to young and unsupervised children for whom it is an allurements for climbing etc. The over-lengthy experimentation during and after the period of the archdeacon's licence has convinced the parish of the innumerable benefits of its permanent removal.
27. Under the heading 'justification' the parish states:

In terms of mission, Christ Church is an informal, growing, all-age, multi-cultural community, deeply connected to its local setting in an area of considerable deprivation. The worship style is informal and welcoming. The re-ordering of the church has enhanced this considerably and has provided more flexibility for worship and community outreach eg a new successful Messy Church has begun. The chancel area, following the temporary removal of the pulpit, has enabled a more flexible worship area, used by the school for different services, creative worship services, community and choir events and a music group to lead the worship.
28. These representations are more than convincing in rebutting the presumption of the continuance of the status quo. This finding is sufficient to be dispositive of the proceedings in favour of the petitioners and it is unnecessary to answer questions (4), (5) and (6). But were my primary conclusion to be in error, I would have assessed the

seriousness of the likely harm to have been low, and the justification to be compelling. Better than any erudite prose is the blunt portrayal of the gritty reality of a Christian community witnessing to its faith through the lived reality of worship and mission. The public benefit, all the greater in the tough inner city, outweighs the modest harm by a considerable margin.

29. I therefore order that a faculty pass the seal on condition:

- a. That the pulpit is not to be physically removed from the church until further order of the court;
- b. That the Victorian Society be afforded six weeks, should it wish, to come up with alternative proposals for the altar following its removal from the church;
- c. That the matter be referred back to court in six weeks to consider to where and on what terms the pulpit is to be removed.
- d. The additional court costs are to be paid in full by the petitioners prior to the removal of the pulpit.

The Worshipful Mark Hill QC  
Chancellor

2 August 2017