

Neutral Citation Number: [2023] ECC Por 1

Petition No 2022-077442

IN THE CONSISTORY COURT FOR THE DIOCESE OF PORTSMOUTH

In re Bishop's Waltham, St Peter

His Honour Philip Waller CBE

Cbancellor

14 July 2023

Judgment

Introduction and summary of conclusions

1. The church of St Peter, Bishop's Waltham is a striking building particularly noted for its post-reformation alterations in late-Perpendicular Gothic style. It is listed Grade II*. Built on the site of an earlier Norman church, it has seen significant changes, with the chancel dating from the 15th century, the imposing West tower from 1584 and the North and South Aisles from 1637 and 1652 respectively. The West end of the Nave was restored in 1849 and further restoration was undertaken by Sir Thomas Jackson in 1897. Internally, it has a North arcade dating from c 1200, resting on circular shafts of 1897, with a similar South arcade from 1897. Interior features include a Norman (or possibly Saxon) font and an important panelled pulpit of 1626, a gift from Bishop Lancelot Andrewes. The Nave and both aisles are furnished with Victorian pews, although some pews have been removed in each aisle and at the front of the Nave under previous faculties.

2. By a petition dated 1 December 2022, the parish now seeks permission for the removal of the remaining pews in the North and South aisles and of two rows at the rear of the North Nave. The purpose is to create more flexible and informal spaces in the aisles for family and children's activities and for an expanded music area and to allow more space at the rear of the Nave for the congregational fellowship between services and similar gatherings.

3. The Victorian Society (VS) has made some helpful comments on the proposal to remove the pews and objections to the proposal have been lodged by Mr Tim Barker, a former member of the PCC and a member of the congregation. Historic England has confirmed that it does not wish to make any comments about the proposal. Neither the VS nor Mr Barker has elected to become a party opponent and the petition is strictly unopposed. However, I have taken account of the points which they have raised in arriving at my decision.

4. The Diocesan Advisory Committee recommends the proposed works for approval, subject to one proviso about a potential trip hazard from the pew plinths, if they remain in place.

5. I have carefully considered all the material submitted in support of the petition, together with the letters from the VS and Mr Barker and the responses from the parish. I understand the

concerns which the VS and Mr Barker have raised, but have concluded that parish's proposals are amply justified by the need to develop the wider mission and ministry of the church and that any harm to the church's historical significance which the removal may cause is firmly outweighed by the potential benefits. The purpose of this judgment is to set out my reasons for that conclusion.

The history and significance of the pews

6. The pews in the church are not referred to in the listing of the building and the combined statement of significance and need submitted by the parish simply includes the following note:

“The significance of the pews is assessed as low to moderate as they are Victorian and the removal of Victorian pews has become very common place over recent years in many churches.”

7. As the VS has pointed out in its response, this is not a reasoned assessment. It says nothing about the history of the pews or their contribution to the historical or architectural significance of the church and the fact that Victorian pews have been removed from other churches is not relevant to this assessment. The VS has questioned whether the pews may be of historical interest as part of the restoration by Sir Thomas Jackson or another restoration scheme.

8. In the light of the comments by the VS, the parish has undertaken further research, which indicates that the pews were installed after May 1867 when the Rev William Brock proposed that the entire building be re-pewed, with the work completed in 1868. The specification for the restoration work undertaken by Sir Thomas Jackson in 1896 shows that this was primarily in relation to three columns. The specification states that all the pews were removed and then put back after the work had been completed. It appears, therefore, that the installation of the pews took place after the restoration of 1849, but before that of 1897, and was not part of a wider restoration scheme.

9. The pews themselves are described as plain, with no decorative ends, unlike the pews in the Chancel which are more ornate and which will remain. The pews are said to be not particularly well made and of no distinction. To an extent these are subjective assessments, but there is nothing in the evidence to suggest that the pews are of particular significance.

10. As noted, a number of pews have previously been removed.

- Four pews at the West end of the North aisle were removed under faculty in 1933 to create the existing small children's area. It appears that there were no objections to the faculty;
- Four pews at the East end of the Nave were removed in 1957 under faculty to accommodate the stone dais-The Faculty was dated 18 October 1957; it appears that the faculty was unopposed;
- Pews were at the East end of the South Aisle to accommodate the existing music area; the date of this has not been established;
- Lastly, box pews under the West end gallery were removed to create an area for a kitchenette and a congregation milling area; while this did not relate the pews in the body of the church, the pews concerned were described as being of no distinction.

The fact that some pews have already been removed does not of course mean that the removal of any of the remaining pews is appropriate, but it does indicate that there are no particular features of the pews themselves which would count against removal.

The justification

11. The parish's proposal for the removal of pews is in three parts:

- (i) removal of pews in the North Aisle to create an enlarged and enhanced family friendly area;
- (ii) removal of pews in South Aisle to create an enlarged and dedicated music area; and
- (iii) removal of two pews at the rear of the North Nave to create a larger area for the congregation and other visitors to gather and for serving refreshments.

12. The need for each of these changes needs to be considered separately; while these proposals may be seen as part of a wider long-term plan, they do not necessarily stand or fall together. The parish is considering, but is not presently pursuing, a more substantial reordering of the Nave, but that does not form part of my determination on the present application. Any wider proposal would have to be the subject of a further faculty petition and be judged on its own merits at the time.

13. The overarching aim of the current project is to create more space in the aisles and the rear of the Nave to provide a more family friendly and informal environment and greater flexibility of use. The plan is driven by the church's mission and ministry of welcome and outreach and is designed to appeal to a wider group of worshippers and the local community, while retaining the church's traditional elements. Significant new housing is being built locally.

North aisle

13. The parish points to the overcrowded nature of the children's area in the North aisle, demonstrated by a photograph of the area in use. The church's Family, Children and Youth team wish to expand and enhance activities and facilities offered to families and children and that would not be possible in the current space. The removal of the pews would create an enlarged and more flexible area for Sunday Groups and activities and for more weekday activities, including a Parenting Course. It would offer better vision of the front of the Church and better storage to maximise floor space for children.

South aisle

14. There is already a space for music activities in the South aisle, but again it is too limited to allow for expansion. The church wishes to be able to expand its musical activities and its outreach into the community, including the creation of a community choir. There is also a need for more storage in the music area.

Rear of the North Nave

15. By removing the rear two rows at the rear of the North Nave, the parish seeks to create a better area for people to gather at the West end of the church and for serving refreshments. This would ease congestion in that area generally and in particular on Sundays when the congregations share fellowship between services. The removal of these pews was agreed as part of the redevelopment of the porch area but this was not taken forward due to a lack of funds and the permission expired some time ago.

The objections

The Victorian Society

16. As noted above, the Victorian Society expressed concern in its response about the lack of detail in relation to the pews. However, I am satisfied that that omission has been sufficiently dealt with by the further information now provided by the parish.

17. As regards the proposed removal of pews, the VS questions whether it is necessary to clear the whole of each aisle and whether any alternative has been considered.

18. It also points to the need any replacement furnishings to be of an acceptable quality of material and design and expresses concern about the risks of leaving the pew plinth in place.

19. The parish has reflected on these comments and is willing to reconsider whether it is necessary to clear all the pews from the South aisle, pending a more detailed analysis of the use of this area. However, it emphasises that there is a pressing need for more space in the North aisle for the enlarged children and families area and that the removal of the two rows of pews at the rear of the North Nave is important to improve the available space and is linked to the proposal for opening up the North aisle proposal.

20. The parish acknowledges that replacement furnishings would be required for the North Aisle and will aim to ensure that these are of acceptable quality and design and fit in with the existing surroundings. As the parish has yet to consider this, provision would need to be made for the approval of replacement furnishings.

21. The parish recognises that the pew plinths, if left in place, would create a potential trip hazard. At present, it does not propose to remove them as that would require wider consideration of the underlying surface and flooring, which does not form part of the present proposal. This will require consideration of how the risks can be minimised and is the subject to the DAC proviso.

Mr Tim Barker

22. In his letter of 12 December 2022, Mr Barker rightly draws attention to the historic character of the church and its appeal. He emphasises the irreversible nature of changes of this sort and the need for consensus where possible. He raises four particular objections to the current proposals, which may be summarised as follows:

Lack of consultation

23. Mr Barker considers that there has been no meaningful consultation, which, he says, should have been undertaken for such an irreversible change. He acknowledges that information was provide by news emails, but says that feedback was not sought and that the public notice process was not sufficient as a means of consultation, coming, as it did, at the time of a postal strike over the Christmas period.

The reduction in seating capacity

24. Mr Barker notes that that removal of the pews would greatly reduce the seating capacity of the church and that pews are capable of seating more people. He accepts that this is not a major issue on a normal Sunday, but he fears that it would restrict seating at larger services, such as

weddings, baptisms, and at Easter and Christmas and that the opportunity would be lost to engage people who do not attend regularly.

Cost

25. Mr Barker raises important issues about the cost of the current proposals and of the purchase and maintenance of replacement seating. He is not aware of the costs or the source of funds and questions whether the potential benefits justify the cost.

The need for additional space

26. Mr Barker rightly points out that there are three elements to the current proposal. In relation to the North aisle he recognises that there may be a need for more space for children and families, but questions whether all the pews need to be removed. He does not accept that more space is required in the South aisle for music-related activities or that there is a need to remove the rear two pews in the North Nave.

The parish's response

27. The parish has responded in detail to Mr Barker's objections and has taken the opportunity to explain more about the process and impact of the proposals:

Consultation

28. The parish does not accept that there has been no meaningful consultation on the proposals. I do not agree that there has been no meaningful consultation with the congregation. The options for re-ordering the church have been considered for some time and the minute of a Development Team meeting on 13 December 2021 notes some congregational support for the removal of pews. The option of removing only some of the pews was raised at that meeting and the current proposal was endorsed by the PCC on 31 August 2022. In addition to the statutory public notice, the parish sent an email message to parishioners on 11 December 2022 setting out details of the proposals and the need for removal of pews; this also included information about the costs and invited any queries, comments or thoughts. In view of the more limited scope of the proposals, the parish did not feel it was necessary to engage the wider community, other than through the public notice.

Seating

29. The parish accepts that there will be a reduction in the basic seating capacity but does not consider that this would be an issue for regular services. Where more seating is required, the aisle spaces will allow the flexible use of setting to accommodate more people. The aim of the project is to create a more welcoming and less formal space, designed to bring more people into the church and to enhance the church's mission. The parish considers that the benefits of this will outweigh any impact on seating capacity.

Cost

30. The parish points out that an estimate of the cost of removal was included in the email of 11 December 2022, which made clear that the costs would be met primarily from a legacy. It accepts that a more precise estimate including replacement seating is not possible at present, but the intention is to use the legacy funds as far as possible.

The need

31. Again the parish points to the email of 11 December 2022 which set out the reasons for and purpose of the proposed changes, reflecting the statement of need. The parish contends that there is a pressing need for more space in the North aisle and that additional space is need to the rear of the Nave. As noted in response to the comments by the VS, the parish accepts that the removal of pews in the South aisle may in practice be delayed while the more critical element relating to the children and families area is implemented.

The court's approach

32. The approach to be followed in determining this matter was set out in guidelines given by the Court of Arches in *Re St. Alkmund, Duffield* [2013] Fam 158 at 199G and summarised in *Re St. John the Baptist, Peshurst* [2015] PTSR D4.

33. In short, when considering proposed changes to a listed church building, the court must undertake an assessment of the extent of any harm to the significance of the church as a building of special architectural or historic interest which would result from the implementation of the proposals and of the justification for carrying out the proposals. Where harm would result, the court must consider whether any resulting public benefit outweighs the harm. The more serious the harm, the greater must be the level of benefit to justify the intervention. In the case of a building which is listed grade I or II*, serious harm should only exceptionally be allowed.

34. In addition, in reaching a decision on the petition, the court must have due regard to the role of a church as a local centre of worship and mission (Ecclesiastical Jurisdiction and Care of Churches Measure 2018, s 35).

Discussion

The significance of the church as a place of special architectural or historic interest

35. St Peter's is a church with a long history which has important architectural features, mainly dating from the 16th and 17th centuries, with sympathetic Victorian restoration. It has a harmonious and attractive interior and is of undoubted historic interest. It is notable, however, that the listing entry for the church, while including some important furnishings makes no mention of the pews. While they are of interest as a Victorian addition to the church and add to the historic feel of the church, they were not installed as an integral part of the Victorian restoration work and do not form part of a complete architectural scheme. In my judgment the principal interest in the church building is architectural. While there are some important fixtures and fittings of particular historic interest, the pews in the Nave and aisle are not, in my view, in that category.

The extent of any harm resulting from the removal of the pews

36. I recognise the concerns of the Victorian Society and Mr Barker that the removal of all the pews in the North and South aisles may detract from the historic atmosphere of the interior. However, some pews have already been removed from each aisle and I do not consider that the remaining pews in the aisles, or those at the very rear of the Nave, contribute greatly to the overall appearance and atmosphere of the church interior. I recognise that the parish is not proposing to remove the pew plinths at present and that will affect the appearance of the aisles. If the pews are removed, work will be needed to address trip hazards and accessibility, but

those matters can be dealt with in consultation with the inspecting architect. The removal of the plinths would be a much larger piece of work for the parish, requiring decisions about the flooring and underfloor services more generally, and it would not, in my view, be justified at this stage.

37. I appreciate, too, that the parish is considering a more substantial re-ordering of the church interior in the longer-term, but my assessment of the potential harm is limited to the current proposals.

38. I have taken full account of the concerns expressed by the VS and Mr Barker but have concluded that in reality the degree of harm which would result from removal the pews now proposed is likely to be small.

The justification

39. I am satisfied that the petitioners have established a clear case for creating more space in the North and South aisle and at the rear of the Nave. The church aims to appeal to broader congregations and extend its offering to the wider community. This is an essential part of its mission if it is to grow and develop its ministry among the local community. There is scope for different views about the spaces required to facilitate this aim. I respect the concerns which the VS and Mr Barker have about the extent of the space required, but in my judgment those who are most closely involved with work with children and families and with music and congregational fellowship are well placed to assess the likely need. I will deal with each aspect of the proposals in turn.

North aisle

40. There is clear evidence that the space currently available for children and families is insufficient. The parish describes the need for more space as ‘pressing’ and I am satisfied that if the parish is to achieve its aim of expanding its ministry among children and families a larger and more flexible area is required. No other location has been identified for this and the reality is that it can only be achieved by removing the remaining pews. In my judgment the benefits of opening up the aisle for this purpose greatly outweigh any harm which may result from removing the remaining pews. I can see no advantage in retaining any of the pews in North aisle.

South aisle

41. There is already a section of the South aisle available for musical activity, including the choir and the case for extending that area depends on the parish’s plans to expand its musical offering, including the creation of a community choir. If those aims are realised, the current space will be insufficient and in my judgment the parish need the flexibility to make a larger space available. The petitioners have indicated that they are willing to review the extent of the space required and may not, in the end, need to remove all the pews. Nevertheless, I am satisfied that the parish should have permission to remove all the pews if it concludes that is necessary. I am satisfied that the parish is driven by the needs of the church’s mission and is not seeking to remove the pews regardless of need. I am confident that the parish will approach the removal of the pews responsibly in the light of the assessed need. Again, in my judgment, the benefits of a larger and more flexible space for music outweigh any harm which may result from the removal of pews.

North Nave pews

42. The parish has identified a need for more space at the rear of the Nave to enhance congregational fellowship and facilitate the service of refreshments. This was envisaged under a previous faculty but was not taken forward. I am satisfied that this is a genuine need. In my judgment any harm resulting from the removal of the rear two rows will be minimal and is greatly outweighed by the potential benefits for worshippers and others gathering in the church.

Conclusion

43. For the reasons given above, I have concluded that permission should be given for all three aspects of the parish's proposal to proceed. The most urgent needs are for the North aisle pews to be removed and for the space at the rear of the Nave to be enlarged. The third element, relating to the South aisle, may need further consideration of the extent of the space required and the number of pews to be removed, but the parish should have the ability to remove all the pews if necessary to achieve its aims for the church's music.

44. Accordingly I shall direct that a faculty shall issue authorising the works specified in the petition. In view of the need for some reflection on the South aisle proposals, I propose to allow a period of two years for the completion of the works.

45. The DAC has recommended a proviso requiring further detail of the treatment of the pew plinths and the faculty will be subject to a condition that the parish, after consultation with its inspecting architect, is to provide the DAC with details of the mitigations that will be necessary to address any trip hazards or accessibility issues arising from the plinths which remain after removal of the pews

46. A condition will also be attached requiring the parish to submit the design, material and colour (if any) of any replacement seating for the approval of the DAC, which may refer the matter to the Chancellor in the event of any dispute.