

Neutral Citation Number [2018] ECC Der 4

In the Consistory Court of the Diocese of Derby

In the Matter of Breaston: St Michael, and

In the matter of a Petition dated 14th March 2018 presented by Rev'd Christopher Smedley, Rector, and Mrs Janet Wilkinson and Mr Anthony Irwin, Churchwardens

JUDGMENT

- 1) Breaston St Michael is a semi-rural parish forming part of a united benefice, lying to the east of, and a few miles outside, the City of Derby. The petitioners seek permission to carry out substantial works of renewal and renovation affecting many parts of the interior of this Grade 1 church. I summarise these as follows by reference to the Schedule of Works or Proposals, in accordance with the explanatory documentation supplied:
 - i) to remove the existing radiant heaters and install 16 storage heaters at various points around the church
 - ii) to install an improved audio-visual system
 - iii) to undertake electrical works, and building works in relation to the floor areas below some of the pews and to the walls of the nave
 - iv) to remove and dispose of the remaining pews and install Chorus Theo design stackable chairs (around 92 or so, according to one drawing)
 - v) to remove and dispose of the pulpit
 - vi) to relocate the choir stalls and organ from the rear of the south aisle to the rear of the nave in front of the bell tower and to relocate the refreshment area closer to the kitchenette
 - vii) to level the floor of the north aisle, including removing the pew platform, and to install a new lowered wooden boarded floor and to sand and re-seal the present parquet floor
- 2) These various aspects will have to be considered in greater detail below. The total cost is estimated at around £105000, according to a figure in [2018]recently supplied. The PCC unanimously approved the work at its meeting on 13th November 2017. It is intended to start early in 2019, and as the church will then be unavailable for use for some 8-10 weeks, the (now retired) Bishop of Derby, the Rt Rev'd Alastair Redfern, gave consent for alternative arrangements for public worship to be made.
- 3) The Diocesan Advisory Committee has been involved in the proposals over many months and offered help and guidance, and sought clarification of aspects of the scheme. I am satisfied they have looked carefully at the proposals. The Committee considered the proposals on 12th March 2018 and formally *Recommended* their approval, subject to four fairly minor conditions. The DAC rightly considered that the work or part of it was likely to affect the character of the church as a building of

special architectural or historic interest and advised that under Rule 9.9, notice on the diocesan website was required. That has been done. They recommended consultation take place with Historic England, SPAB, the Victorian Society, the Church Buildings Council and the local planning authority (Erewash B. C.). At one stage communication was made with CPRE, but that body is not a statutory consultee under the Faculty Jurisdiction Rules 2015, and its views are not required.

- 4) **History:** The church dates from the C11th and stands in the middle of the village, and so within the Breaston conservation area. It is located within a closed churchyard. It consists of a nave, chancel (also C11th), a tower at the west end, which is surmounted by a spire, and a south aisle (C14th), a vestry, which stands at the east end of the aisle adjoining the chancel, was added around 1871, when a wide-scale re-ordering to the body of the church was carried out, and a porch was built on in the early C20th, giving access into the nave on the north side.
- 5) I have been supplied with helpful photographs and plans of the church as it is presently laid out, and as the petitioners hope it will be. I have minutes of a DAC visit, and various trade documents from contractors. The petitioners have an experienced architect in Mr Richard Smith.
- 6) Many changes have taken place in the layout over the years, some of which are described in the listing particulars, and some by the petitioners in their application and the documents in support. At various times, steps were taken to increase the height of the nave and alter the pitch of the roof, and re-position doors and windows. In 1871, major changes were effected by the firm of Evans and Jolly of Nottingham, including removal of a gallery at the west end, removal of the box pews in the nave and possibly the aisle as well, and to introduce the present pews. In the 1890's the successor firm to Evans and Jolly carried out further re-ordering, the nature of which I do not know. More recently the chancel has been re-ordered by the removal of the choir stalls, and introduction of carpeting and 24 upholstered chairs, and this makes a quiet area that can be curtained off. The choir has been relocated to the rear of the south aisle. The organ is at the west end of the south aisle, and new choir stalls in light oak have been installed close by. This necessitated removal of some of the rearmost pews and associated panelling. Toilet and kitchenette facilities have also been created in a former engine shed nestling against the tower on the north side.
The marble font (1720) stands on a circular plinth opposite the main entrance, at the west end of the nave.
- 7) When the pews in the nave were introduced in the late C19th, C17th and C18th panelling, probably from the box pews, was re-used by being placed between the pews against the walls up to dado height, which is plainly visible. It is proposed to remove the panelling, along with the pews, thus exposing more stonework, and tidying this up, as required. The petitioners contend that the many dates and styles of the interior will be harmonised by the further changes proposed. New cabling will be hidden or coloured to blend with the background. The existing flooring is of various types and set at various levels and this will be rationalised; the

plinth or platform on the north side will be removed. It may be necessary to fill voids under the plinth.

- 8) Many changes were effected a long time ago, and must have altered the appearance of the church in earlier times significantly, and more changes have obviously been made over the last twenty-five or thirty years, which have continued to 'nibble away' at the appearance of the interior. I appreciate these changes have been effected under faculty, so that the DAC, amenity bodies and myself, as chancellor have all been involved in our various capacities, before the necessary permissions have been given. However the basis on which such decisions need to be made, has become much more focussed and structured since 2013, and required much more clearly articulated justification, particularly in regard to widespread re-ordering of listed buildings, when the Court of Arches (the ecclesiastical Appeal Court from the Consistory (diocesan) Courts) gave its seminal judgment in *Re St Alkmund Duffield* 2013 Fam. 158. Earlier applications were not decided on the same criteria that were laid down in *Duffield*, and might have now been decided somewhat differently. That decision significantly altered the basis on which such decisions had previously been made. In a series of questions within paragraph 87 of the judgment, the Court of Arches suggested how the 'new' approach could in practice be followed.

- 9) The framework or guidelines within which the court is now **required** to come to decisions about proposed alterations to listed buildings is this:

- 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 then 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 exceptionally be allowed.*

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

- 10) While some individual elements of the proposed changes may have little or no effect on the significance of the building, it is plain that *overall* the removal of the pews and the panelling, the alterations to the floor, and the introduction of a substantial number of a new and different type of chair, will have at least a **moderate** degree of harm on its historic and architectural significance.
- 11) Looking at the questions generally, it will be seen that there is a '*strong presumption*' against changes being made to listed buildings, and that is particularly so in the case of Grade I churches, like St Michael's. ***A clear and robust justification for any changes causing harm is required from the petitioners.*** It is not for instance sufficient to say that the amenity societies and other heritage bodies do not object, or that the DAC is in favour of the changes, or that the proposals will simply make things better; they need to demonstrate convincingly that the changes are necessary for the well-being of the life and mission of the church, or that other public benefit will result, to outweigh any harm that arises.
- 12) In a lengthy Note on 19th September, I drew the petitioners' attention to the *Duffield* case and invited them to make further submissions, concentrating in particular on setting out rather more of the context of the present work at St Michael's and the justification they put forward to support the proposed changes. In addition I sought clarification on one or two factual points, where my understanding was not as clear as it needed to be. The petitioners responded very fully in a letter of 24th September, for which I am grateful.
- 13) The *Statement of Needs* is usually the place to look for the sort of clear and robust explanation that is needed before permission for the proposals is given. In my view the petitioners really had not previously done themselves justice in that document, so their further letter was necessary. While they doubtless always had well in mind the various areas where I needed help, they have to spell them out for me, and not leave me to guess. Apart from the other information, they were able to provide some more photos, some figures relating to attendances and some of the recent history of the congregation and local needs. Further, the DAC Secretary supplied a copy of a letter from English Heritage (as it was then) of 17th December 2010, sent to the parish during earlier re-organisation in relation to the west end, to which Historic England refer in their recent correspondence.
- 14) Let me therefore give something of the more recent history of the life and work of the church, as it has been relayed to me, and the hopes and intentions of the clergy and congregation.
- 15) From 2012 the church has engaged enthusiastically with the MAP process or initiative that the diocese has undertaken. Several priorities were identified early on, especially the need to engage with the physical and spiritual well-being of young people and children in the village and

neighbouring communities, both for the future of Breaston, and the church, and this was to be done in part by the appointment of a youth worker. Second, the heating was identified as inadequate and ineffective. Third, the pews were in a fixed layout and thus their use was restricted and inflexible, and they were also uncomfortable. The PCC and congregation accepted these points and agreed to address them.

- 16) The congregation at that time provided a mostly older profile, and the amount of youth and children's work was relatively small and headed by volunteers. (I do not underestimate at all the valuable input of those individuals; such work is demanding and requires much energy, drive and commitment). Steps were taken to identify a trainee youth worker to assist, and she worked 'enthusiastically' over a three year period to further the work, and also set up a youth café on Friday nights. Thereafter funds were raised, partly through the diocese, to further develop the enterprise. Simon Bentley was appointed, at first three days a week, later four, and then full-time, and remarkably the continuing costs are now fully met by the growing congregation. It is estimated that income has doubled since 2011.
- 17) Several new families have joined the congregation. Attendance at the 'family-friendly' mid-morning Sunday service has grown, although gone down somewhat at the early service and evensong, which mainly attracted older worshippers. It is estimated that over 200 children from the youngest group up to teenagers, have at some time attended. In times when many churches have suffered significant numerical decline, this is a remarkable achievement.
- 18) **The building:** The petitioners recognise that this is a beautiful Grade I building, and much loved by its congregation. They are anxious that it continue to serve as a living and vibrant place of worship, where its mission can be lived out locally, and that it does not become simply a little used historical monument. They contend the plain, pine pews are relatively modern and lack any particular merit, and are not of historic significance. In their letter of 17th December 2010, English Heritage (sic), said, in relation to a proposal to remove the pews, '*we are able to offer our support for the removal of the pews*' while making more critical comments on the proposed site for a proposed toilet and kitchenette. They described the pews as late 19th century and '*very simple in form*'. '*St Michael's is a relative small church having a single south aisle, and it is felt that the large pews significantly restrict the ability to use the interior for either other forms of worship or events.....In light of the relatively low significance of the pews we would not object to their removal, although we would recommend an example is retained within the church*'. Obviously the pews were not removed at that time, for whatever reason. While recognising that this advice was given two or three years before the *Duffield* decision was handed down and became the 'new' approach, English Heritage were plainly making a judgment on the historic and architectural significance of the seating, which, in my view, holds good today, whether they then *supported* the removal of the pews, or would *not object* to their removal.

- 19) There is nothing in that early letter about the wooden panels, visible between the pews, that the petitioners now wish to dispose of. They have recently described them as a *'hotchpotch'* of recycled pew-ends (from the earlier box pews, presumably,) or similar. They do not form a continuous run along the walls, but occupy the space between one pew and the next. They recognise the greater historic importance of these panels than the pews themselves, and say they would welcome appropriate advice from the DAC's advisers how they (or some of them) might best be displayed. They make clear that if the pews are removed they would take the opportunity to level the flooring, largely by removing the plinth on the north side, and try and make it more of a unity. If allowed to remove the pews, which are in good physical condition, the petitioners wish to dispose of them, probably locally, if possible.
- 20) At an earlier stage, the removal of the pews was being commended to a significant degree as being necessary to fit the 16 radiators that figure in their proposals, and underplayed their real (and much better) reasons for wishing to remove them. In particular they want to release the interior as a more flexible and usable space. The introduction of the proposed stacking chairs, which are of a type widely recognised as suitable for use in churches, would enable this aim to be realised. The chairs are not upholstered (and thus meet the published advice and guidance of the Church Buildings Council); they are wood-framed with a plywood seat and back, and they intend to have them in a light oak finish, as recommended by the DAC's adviser, Professor Janet Spencer. They have in mind the easier use of the building for more informal worship, concerts, other activities requiring open space, a new Women's Institute group, Parish Council meetings, and activities for village groups, celebrations and festivities, and also as a polling station, (so avoiding the local school having to close on those days).
- 21) Mrs McIntyre, a Reader at the church, contends that chairs will assist in the effective provision of a more contemporary style of worship, alongside the more traditional services, as many of those they hope to attract are 'unchurched'. This will allow more interactive teaching, with small groups, in flexible ways. The Rector also commends chairs as allowing the premises to be used more conveniently for a 'mums' and babies' group ('Sunbeams'), initiated by the youth worker. At present this has to take place in the local Methodist church, for which a charge is made. It is hoped to expand this work to several days in the week, but to do so in hired premises would be 'exorbitantly expensive'. The desire is to make the church building a village resource to meet local needs, as well as a place of worship. Although there is a church hall, it is small and already used by the local playgroup every day, and for other things in the evenings. At the moment the church is hardly used, and overall there is a shortage of space for activities. In summary, I hear them saying, flexible seating (and good heating) would transform the possibilities for using the church building creatively.
- 22) **Consultation with heritage and amenity bodies:** a number of bodies have to be approached for a scheme such as this. I have already referred

to a letter from English Heritage in 2010. **Historic England** was consulted again more recently, and I have their letters of 23rd January, responding to earlier requests for more information, and 7th March 2018. The January letter is cautionary in view of the listing of the church, but is not unsympathetic to the proposals overall. A copy of this letter has been annotated in a reply by the petitioners. The March letter was happy at the choice of the Chorus chairs, and glad too to see the petitioners had ditched earlier thoughts for carpeting, so the wood flooring would be left exposed. They express concern at the number of replacement electric heaters, but note that the petitioners are still in discussion with the contractors (Chris Dunphy Ecclesiastical Heating), and defer to the DAC on this aspect. They maintain their view the panelling should be retained within the church but I sense that HE may not have fully understood that the panelling is simply a filler between the individual pews, and not a continuous run along the walls. They offer sensible advice about re-arranging the furniture at the west end – organ, choir stalls and refreshment area, and defer to the DAC about these items, and the removal of the pulpit.

- 23) **SPAB:** although contact was made, no reply was received.
- 24) **The Victorian Society** sent a lengthy letter on 20th February setting out their many concerns about the scheme as it then stood, such that *'cumulatively these works would have a quite radical impact on the character and appearance of the church'*. The society believed the parish's needs could be met by relatively modest interventions. The parish treasurer provided a response on 24th February. There is no doubt that many of the aspects then being criticised have been altered for the better since then as a result of these comments or those of others. Nonetheless removal of all the pews, the new projector screen, and, introduction of the radiators are still part of the scheme. The Victorian Society was subsequently offered the opportunity to become formal objectors, but indicated on 14th August, that they simply wanted me to take their objections into account.
- 25) The **Church Buildings Council** have been involved, and made various suggestions about the heating, that were followed up, and by an email of 9th March on other matters of concern, deferred to the DAC.
- 26) The Conservation Officer for **Erewash BC** has seen relevant correspondence with HE, the VS and DAC, and by an email in May, did not offer any objections on behalf of her Authority.
- 27) **Local objectors:** Mrs Mary Cutts, Mrs Mary Thomas and Mrs Janet Williams raised the objections to the proposal in April. All have decided not to become parties to the proceedings, but ask that I take their objections into account in reaching a decision. This I will of course do. I am grateful for their patently genuine and deep-felt concerns about the proposals, and having the courage to go on record in expressing them. They are members of the congregation.
- 28) Mrs Cutts summarises the proposals, and urges me to the view that *'the fact that St Michael's church Breaston is Grade I listed, is sufficient reason for the above details (pews, pulpit and panelling), to remain intact.'* On that basis, no change for which permission would otherwise be required

- under the faculty jurisdiction, would ever be justifiable. Mrs Cutts obviously likes the church as it is, which is a defensible viewpoint, but she does not grapple with the reasons advanced by the petitioners for making these changes, or give any other reasons of her own for objecting.
- 29) Mrs Thomas believes the *'lovely old building....needs to be preserved for future generations'*. Removing the pews, pulpit and panelling, and adding two screens and stackable chairs *'makes it a place of entertainment rather than a place of worship'*. The recently renovated church hall is the place for such activities. She says the whole project is about to be carried out in a very underhand manner.
 - 30) Mrs Williams says she has only just found out about the proposals in April. The lovely 12th century church is going to be *'vandalized'*. Surely the needed new heating system does not require removal of the pews, panelling and pulpit? Many of her friends are as appalled as she is, and she *'protests most strongly'*.
 - 31) Both these objectors suggest in their own way, that the proposals have only recently been made known. There is a statutory process of giving notice of the changes proposed. That has been complied with. But further, I find that complaint very hard to accept. These objectors have seen the physical changes made in recent years, and must be aware of the enlarged scope of activities being undertaken as a result, and I cannot believe there has not been a great deal of talk among members of the congregation and from the Rector, about hopes for the future, and what that will entail.
 - 32) I am afraid that to speak of *'future generations'* is not to talk of something that is inevitable – that people will simply roll up and join up, and replace those who have lived their lives in Breaston, and worshipped faithfully over many decades, and for one reason or another no longer attend. The Church of England, especially in more rural areas, is experiencing tough times and is no longer part of most people's daily lives. New converts and disciples, and new worshippers, have to be won and not simply welcomed as they come flocking through the doors. Imagination, leadership and vision are required, not only to *'grow the church'* but also to meet the wider needs of the congregation and community.
 - 33) Church buildings are enormously expensive to run and maintain, to heat and insure, and their use has to be expanded beyond the three or four hours that the regular services take up during the week. What was acceptable and *'normal'* in our church buildings, and in their particular fixtures and fitting in the past, (and what most of us grew up with and valued in our lives as worshipping members of our local churches), has to be weighed in relation to what is required today.
 - 34) That is not to say that any and every proposed change is to be allowed. The *Duffield* approach makes that very clear, but it also makes clear that well-thought out plans, with realistic aims for mission and ministry, can and should be permitted and encouraged. Historic churches are not museums, just as they are not laboratories for any and all experiments. A careful balancing of competing arguments is required. Retaining the pews is no more a recipe for meeting mission needs, than bringing in chairs. New seating is part of an overall vision. A concentration on what

is being aimed at, and joining and supporting that mission endeavour will help all those who are affected, and at present are upset, to redefine their own feelings and emotions about the present proposals. All of us grow attached to what has been familiar and has supported us over many years, but those things are not necessarily what is needed for the future, nor to ensure our churches can grow and flourish – or even survive – in our local communities in the years ahead.

- 35) **Discussion and decision:** The way the individual proposals are listed in the petition, is not the best way in which to consider them. Some items are dependent on others being permitted. Overall the question of the pews dominates. It seems to me that their proposed removal, alterations to the floor and removal of the panelling and pulpit are closely linked. These would be changes amounting to a *moderately significant harm* to the appearance of the interior of this Grade I building, and to that part which, instinctively, worshippers and visitors will see as ‘theirs’. The nave and south aisle comprise an area approximately 15m, east to west, by 10m, north to south. It is not large. It is proposed to remove the remaining *pews*, some having been removed at the west end in the 2012 re-ordering. **Have the petitioners justified this proposed change?** It seems to me the church as a whole is engaged in a process of adapting the building for greater flexibility, and making it more comfortable and user-friendly, both for worshippers and other users. This has been going on for a number of years, and the present proposals carry the process on. The scheme is by no means just a dream for the future. The steps that have already been taken, show the determination of clergy and congregation over a number of years to develop their mission more widely and effectively. The pews themselves are plain and simple pine pews, with no distinguishing features. The proposed replacement seating is plain and un-upholstered in a light oak finish. It is a style of chair much used in similar projects up and down the country. It will afford flexibility, and is light and easily stackable, when clear spaces are required in the body of the nave. I am satisfied (subject to a condition I raise below) that the petitioners have demonstrated a convincing case for removing these fixed pews and replacing them with this choice of chair.
- 36) **Flooring:** Once the pews are removed it will be sensible and safer to remove the plinth and level the floor. The petitioners have I believe adopted a method that will leave the present appearance of the flooring as unchanged as is consistent with opening the area up, as possible. To make the matter abundantly clear, I do not approve the introduction of any floor covering – carpet or carpet tiles or anything similar - in the areas to be cleared.
- 37) **Panelling:** I can see why there is reluctance in some of the submissions to clear out all the older panelling. It remains over from earlier times and an earlier style of seating, and seems to have been in place – like the present pews – for around 150 years. But it was literally a stop-gap, positioned between the ‘new’ pews, and obviously preferred by those then re-ordering the building, to leaving the stone walls exposed. If movable chairs are now to be introduced, it will serve no discernible

purpose any more and will remain simply as a series of disconnected wooden panels along the walls. It does have some intrinsic interest, and I make it a **condition of its being removed generally that not less than 6 of the panels are to be placed somewhere in the building** along with some explanatory wording to indicate how they came to be in the church.

- 38) For the same reason, **I direct that one pew be retained** within the building as an example of the seating in place for the last 150 years. These 'reminders' should be placed in their future locations within 6 months of the grant of this faculty, with the help of the church architect.
- 39) The wooden **pulpit** is shown on photographs. It stands by the northern side of the rather small chancel arch, is raised up and access gained by a small number of steps with the help of a handrail on the wall side. I am told it is rarely if ever used now. It was apparently given in memory of a Mrs Constance Whitehouse around 1945. Despite efforts to do so, no family members have been identified as still living in the area. Little else is known about it. It adds little to the church in appearance or function, and its loss will have little significance. **I approve its removal**, along with the handrail, if desired.
- 40) I have looked at the details of the proposed **new heating**. **I approve** removal of the old and inefficient heaters and the introduction of the new 16 radiators. Their final positions are to be decided in conjunction with the church architect.
- 41) **Re-arrangement of furniture and organ at the west end of the south aisle and nave.** The serving area is to be placed nearer the kitchenette, and various cupboards and display shelves moved to the south-west corner of the nave from the locations they have had over the last few years. In addition the choir stalls and organ are to be re-located from the end of the south aisle to places at the west end of the nave next to the bell-tower. Some of those consulted suggested various points of detail about this, but none of that was major, and overall it seems to me to have the significance that moving round the furniture in your front room has, and no more. The new configuration, it is thought, will 'work' better. It causes no appreciable harm to the appearance of the building. **I approve.**
- 42) **New audio-visual scheme.** Details of this are in the quotation and other documents from the contractor. Overall the cost is put at around £20000. This is intended to replace and modernise the present scheme. The most significant item is the introduction of a motorised projector screen to hang in front of, that is, to the west of the chancel arch, rather than in the more normal and preferred position, behind that feature, so it is hidden when not in use. I am satisfied that the particular features of this arch do not allow that, so it has to be on the nave side. These are detailed in the architect's letter of 18th January to the church treasurer. I am satisfied that care is being taken to make it as little visible as possible when not being used. In addition a TV monitor is to be introduced for the benefit of those in the south aisle, who cannot see the screen.
- 43) It may be that **minor works** of 'making-good' or new power points are needed as the work progresses. I give permission for this. The various conditions on the DAC Notification are to apply.

- 44) The petitioners may have leave to seek **further directions**, if required, through the Registry, by letter or email.
- 45) The work is **to be completed** by the end of September 2020.
- 46) **Costs:** It is apparent that a large amount of effort and planning has gone into this from the parish. Equally this petition has involved far more work than can be absorbed under the normal 'correspondence fee', and the Registrar has asked me to award an additional such fee. I am satisfied the figures she has suggested do **not** realistically cover much of the time spent by her and the Registry staff in moving this application ahead. I authorise a figure of £385 plus VAT. The petitioners will be relieved that there has been no additional fee charged in addition to the basic petition fee, in respect of the request for further information or the preparation of this judgment by the chancellor, such fees being allowable under the relevant Fees Order.

John W. Bullimore
Chancellor
3rd October 2018