

In the matter of St Peter, Brighton

Andrew Johnson Esq, solicitor of Messrs Batt Broadbent, Salisbury for the Petitioners
Matthew Roper Esq, counsel, for the Victorian Society, Party Opponent

Judgment

1. By a petition dated 28 October 2011, the Reverend Richard (Archie) Coates (vicar) and Ms Camilla Footitt and Mr Benjamin Jacob (churchwardens) seek a faculty for two matters: first the continuation for a further period of works undertaken pursuant to temporary reorderings authorised by archdeacon's licences; and secondly the removal and permanent disposal of choir stalls and nave pews.
2. St Peter's, Brighton is a Grade II* listed building of architectural merit. It occupies a prominent position within the city. The proposals are significant and unsurprisingly they generated expressions of concern from various consultative bodies. In view of this, and of the pioneering nature of the new ministry at the church, I considered it proper to hold a hearing which would enable a reflective and deliberative consideration of the petition within the church building during which differing views could be ventilated. The Victorian Society applied to be joined as a party opponent, and I have been greatly assisted by the Society's measured intervention, by the thorough and realistic evidence tendered on the Society's behalf, and by the written and oral submissions of Mr Matthew Roper of counsel who ably represented it. The court was equally fortunate to have the assistance of Mr Andrew Johnson, solicitor, not least for the timely preparatory work which he undertook and the focussed economy of his submissions.

Background

3. Since matters crystallised during the hearing, I can deal with the background relatively briefly. The church was designed by the distinguished architect Charles Barry and was constructed between 1824 and 1828 as part of the Regency development of the fashionable part of Brighton. A substantial reordering of the church took place in 1876 for which George Somers Clarke was retained. This saw the installation of the current nave pews in substitution for the box pews of Barry's design. Between 1889 and 1906 the church was reordered and substantially extended by the demolition of Barry's polygonal apse and the construction in its place of a very large chancel for which choir stalls were fabricated and installed in collegiate formation. Although the join between the two sections may not be entirely successful, and the overall design of Clarke with JT Micklethwaite not realised in its totality, the resultant sacred space is by any measure vast. It was probably intended as a 'cathedral' for this part of the diocese in the style of the Tractarian movement.

4. By the recent turn of the millennium, however, something of a crisis had arisen in Brighton and Hove: an over-abundance of churches each with dwindling congregations. This led to a review and recommendations for closure and amalgamation not all of which – perhaps regrettably – have been carried through. At St Peter’s, congregations rarely exceeded twenty and the cost of keeping this jewel of a building in serviceable repair had become beyond the PCC’s reach. In 2009 the church was closed.
5. Shortly thereafter, an innovative venture came into existence. Holy Trinity Brompton took over St Peter’s by way of a church plant. The Reverend Richard Coates was instituted as vicar by the Bishop of Chichester. A lease of the building was taken for a period of 125 years and thirty people moved from HTB to make St Peter’s the regular place of worship for them and their families. The numbers grew steadily. The pattern of worship on Sundays now comprises a small 8.30 am Eucharist with larger services of praise, teaching and prayer in the morning and evening: the former being focussed on families with activities for children and the latter aimed at young adults. Regular attendances of several hundred are now the norm and the trend is for further growth. The self-evident passion of Mr Coates in the exercise of his calling is in no small part responsible for this revival. The Archdeacon of Chichester, who was formerly a vicar of this parish and whose own tradition is very much on the catholic wing of the Church of England, supplemented his detailed letter of support with oral testimony as to the positive way in which this venture is re-evangelising Brighton.
6. This past and future growth is compromised, however, by the poor state of repair of the building and by the internal furnishings which are inimical to the mode of worship. Works of repair are underway (and continued noisily during the hearing of parts of the evidence and submissions) in order to render the building structurally safe and watertight. The archdeacon’s licences for temporary reordering have facilitated certain of the ambitions of the congregation by clearing away many of the pews in the nave and creating a level carpeted floor; and audio visual equipment has also been introduced.

The timing of the petition

7. This petition has the unique characteristic of being both overdue and premature. It is overdue because each of the archdeacon’s licences was strictly limited to a period of fifteen months, being the maximum permitted period permitted under rule 9(1) of the Faculty Jurisdiction Rules 2000. The first was dated 16 July 2009 (expiring in October 2010), and the second was dated 31 March 2010 (expiring in June 2011). The petition was not lodged until 28 October 2011. I note that an application was made to the DAC for formal advice on 27 June 2011 but this does not equate to the lodging of a petition. Rule 9(4) provides that where a petition for a chancellor’s faculty is submitted to the registry at least two months prior to the expiry of the licence then the reordering scheme is deemed to be authorised until the petition is determined. Absent such petition, authority for the reordering ceases upon the expiration of the licence.
8. On behalf of the Victorian Society, Mr Roper (wisely in my view) did not press this matter with the court. However, it is a cause for censure and I make it plain that the

court will take a very dim view of any repeated flouting of its jurisdiction. Had a petition been lodged in a timely manner its determination could have been stayed on terms likely to have facilitated a more orderly approach to addressing the emergent proposals for St Peter's. These breaches of ecclesiastical law preceded the retention of Mr Johnson and I am confident that if, as I expect, he will continue to be retained there will be no recurrence. In the circumstances, mindful that the oversights were based on an excess of enthusiasm and not a contempt for the faculty process, I shall draw a line under the matter.

9. The reason the petition is premature, as Mr Roper properly noted, is that the parish's long term plans for a more permanent reordering are yet to be formulated. I think Mr Roper's criticisms of the parish in this regard were somewhat harsh. The new regime has been in operation for less than three years, in the course of which a crumbling roof and other structural problems have been a considerable diversion and have necessitated the erection of scaffolding in much of the body of the church. The parish has found £200,000 for this emergency work, match-funded by an equal sum from English Heritage. Only as the venture has grown has the parish been able to assess its future needs and aspirations. They are now engaging professional help in this regard and I anticipate that they will be in a position to submit an appropriate faculty petition in the relatively near future.

The presenting issues

10. As the hearing progressed, I sensed a narrowing of the matters calling for an immediate determination. The continuation of the terms of the two temporary licences proved uncontroversial provided the time-frame was not open ended. Although the subject matter of the archdeacon's licences were at the outer margin of the scope of permissible works, everything was wholly reversible. What the petitioners now sought in their petition, however, was the permanent removal and disposal of two items of church furnishings: the nave pews and the choir stalls. Different considerations apply to each of these items and I propose to take them in turn.

(i) The nave pews

11. The nave pews, probably designed by Clarke, were introduced in 1876 in replacement for Barry's box pews. They are well fabricated and carry some attractive individualistic carvings, but as all consultees agree, they are not of particular heritage value. Applying the *Bishopsgate* questions, the petitioners' case for their removal satisfies the necessity test by a considerable margin and it is unnecessary for me to rehearse the evidence presented during the hearing nor the documentary evidence of English Heritage, the Church Buildings Council, Brighton and Hove City Council and the Diocesan Advisory Committee. I think the concession made by Mr Thomas Ashley in his evidence was generous and gracious and shows the willingness of the Victorian Society to be pragmatic and realistic in recognising the needs of worship and mission in the context of a heritage building.
12. As to whether the removal of the nave pews would 'adversely affect the character of the church as a building of special architectural and historical interest' I am far from convinced. They are neither original nor of particularly high quality. Even if the

effect were adverse, I would unhesitatingly resolve the balance of discretion under the third *Bishopsgate* question in favour of the petitioners. The presence of these pews in the nave impedes not only the liturgical use of the church but – equally importantly – the bulk storage of such a vast number of workaday pews acts as a constraint on the completion of the emergency building works and of conceptualizing future plans for the best use of the church.

13. Subject to retaining half a dozen of the best quality pews representative of the differing carving and styles, the petitioners have satisfied me that the nave pews may be permanently removed and disposed of.

(ii) The chancel choir stalls

14. These are unquestionably of a higher quality than the congregational pews in the nave, as evidenced by the views also expressed by English Heritage, the Church Buildings Council and Brighton and Hove City Council. I note that a robed choir last made use of them in 2002 and that the likelihood of their being used in the immediate future is remote. However they were designed as an ensemble specifically for the chancel and contribute to its architectural achievement. It would be premature for this court to authorise their disposal, and the court would take considerable persuading that they were not to be retained. I confess that I was disappointed to note how badly they were currently being stored at the back of the nave, unloved, uncovered and susceptible to damage from falling plaster and other causes.
15. I am satisfied, however, that it would not be right to order their immediate return to the chancel. The parish is entitled to experiment with the use of the building, particularly with the likely increase in the number of people attending for worship and for the other myriad uses to which the church is put. Mr Roper, on instructions, did not press for the immediate return of the choir stalls to the chancel but made submissions on putting a time limit on the period for which they might be displaced from their original position.
16. It seems to me that it is eminently sensible that this court gives approval to the consensus which emerged during the hearing, and accords with the views of other interested parties who did not participate in the hearing, namely to insist upon the retention of the choir stalls (and related chancel furniture) pending the submission of a further petition dealing with the long-term reordering of the interior of the church.
17. In adopting this course I make plain that I am not in any way pre-judging the determination of that petition. The heavy presumption against change still applies, particularly having regard to the quality of the choir stalls and their contribution to the chancel. The petitioners will have an uphill task to discharge the legal burden which lies upon them in accordance with the well-known case law painstakingly collated by Mr Roper. The default position is that the stalls, at the end of the period which I shall determine, will be returned to their original position in the chancel. It should not be assumed that an extended period of storage will create a new *status quo*. It will not. Indeed, the fact that neither the vicar, Mr Coates, nor the architects, Mr Dyson and Mr Fryer, could postulate an alternative location for the choir stalls

within the footprint of the church could be said to militate in favour of their return to the place which they were designed to occupy.

18. I also make it very clear that I expect the choir stalls and chancel furniture to be stored in a much better way than at present during the intervening period. I appreciate that this will be made easier by the removal of the vast majority of the nave pews but I will require written certification (including photographs) from the vicar and inspecting architect that the choir stalls and chancel furniture have been cleaned, carefully stored and covered in tarpaulins to the court's satisfaction.

Timing

19. Neither Mr Johnson nor Mr Roper considered my suggestion of three years to be an unreasonable period bearing in mind that continuing liturgical experimentation was necessary. This could not sensibly resume until the emergency scaffolding is taken down, the majority of the redundant nave pews are removed and the choir stalls and chancel furniture securely and tidily stored in a convenient unobtrusive location within the church (or off site in the event of suitable affordable space becoming available and prior approval from the Chancellor being obtained). Unlike with the archdeacon's licenses, this deadline is to be strictly adhered to. In the event that further time is required then an application should be lodged at the same time as the petition giving a progress report and stating why a stay of the petition would be beneficial.

Ancillary matters

20. The temporary carpeting which covers the nave platforms and extends into the chancel is not a suitable floor covering for this – or any – church. There is considerable scope for returning to the original floors, refurbished and levelled as necessary. The clear delineation between the nave and chancel will be more easily secured once more of the vast nave is restored to congregational use. I can see considerable force in restoring the chancel in its original form and utilising it as a Lady Chapel with collegiate seating in the restored choir stalls whilst providing unhindered and flexible use of the entire nave. I commend the parish and its professional advisers to give serious thought to this as a long term solution as it seems to me to have considerable advantages and few disadvantages in striking the balance between the liturgical use of sacred space and safeguarding the architectural and aesthetic value of the grade II* building. However, these suggestions should not be taken as a pre-judgment of any of the issues to be determined when the forthcoming petition is lodged. It will be determined on the merits based on the evidence led by the parties at that time.
21. The balance between mission and heritage, the spiritual and the secular, creates a dynamic tension into which Consistory Courts are obliged to enter on a regular basis. I am sure there is considerable rejoicing in the diocese and beyond that the HTB church plant at St Peter's has proved so successful. Not everyone will share this particular style of worship and evangelism, but the church is the people of God and the trajectory of growth is universally acknowledged and a cause for thanksgiving. Success in the numbers game promotes the redeeming work of Christ and produces much needed income for the building and its contents. Such success however, does

not give *carte blanche* to alter the building of which the current congregations are but the temporary custodians. It is for this court to balance competing interests, and the starting point is always a heavy presumption against change.

22. There is a provisionality to the order which I make but I trust this brief summary judgment sufficiently states the reasons for it. A faculty will therefore issue as follows:

- (1) that the works authorised under the archdeacon's licences dated 16 July 2009 and 31 March 2010 respectively shall continue to be authorised until 1 July 2015;
- (2) that, save for six specimen pews (chosen for their quality and demonstrating a cross-section of carvings) which are to be retained, the petitioners are to be at liberty to dispose of the nave pews on such terms as they see fit. Proceeds of sale are to be retained in a designated fund for the purpose of the repair, maintenance and improvement of the church building;
- (3) that the choir stalls, platforms and frontals formerly situated in the chancel together with all lighting and other fixtures and every item of furnishing and furniture from the chancel are to be retained;
- (4) in respect of the items to be retained under (2) and (3) above, they are first to be thoroughly cleaned and prepared for storage, and they are to be safely and carefully stacked in such location within the church as the archdeacon may approve and to be completely covered in a tarpaulin or otherwise. Certification of compliance with this condition signed by the archdeacon and inspecting architect is to be lodged with the registrar within 7 days of completion;
- (5) time for completion of items (2) and (3) shall be 1 October 2012 or such later date as may be ordered by this court upon prior written application for an extension of time;
- (6) that on or before 1 December 2013, the petitioners are to lodge with the registry a brief progress report concerning work to the fabric of the church and any draft proposals for its long-term reordering to include costings and an outline of current and prospective fundraising;
- (7) that the inspecting architect shall ensure adequate ventilation to the void beneath the carpet and take all reasonable steps to prevent damage to the floor of the chancel and nave;
- (8) that the petitioners and the party opponent shall be at liberty to apply to the court for such further directions as may be deemed appropriate at any time during the currency of the extended period during which the archdeacon's licences are in force.

In accordance with the well-established practice of consistory courts, the court costs of and occasioned by this petition, including a correspondence fee for the registrar, will be borne by the petitioners. There will be no *inter partes* costs order.

23. During the three year lifespan of this current faculty I will suspend the archdeacon's jurisdiction to issue faculties or licences in respect of St Peter's, Brighton and require all matters to be referred to me irrespective of their nature. This is not meant to be

punitive on the parish (the lower fee will still be payable), still less should it be interpreted in any way as a criticism of the archdeacon whose conduct has been exemplary. The reason is simply to ensure holistic consistency of decision-making in relation to matters concerning the fabric of the church by reserving them all to the Chancellor. It also releases the archdeacon from the onerous responsibilities of the faculty jurisdiction for this particular building and enables him more freely to continue to give this venture the pastoral and spiritual support it so richly deserves.

The Worshipful Mark Hill QC
Chancellor

22 June 2012