

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

AND IN THE MATTER OF THE CHURCH OF ST MARY THE VIRGIN, BUCKLAND

AND IN THE MATTER OF A PETITION BY THE REVD CANON CAROL COSLETT, DAVID SAYCE AND TREVOR COOKE

JUDGMENT

Introduction

1. This is a petition by the Revd Canon Carol Coslett, David Sayce and Trevor Cooke. Canon Coslett is the Rector of the united benefice of Betchworth and Buckland and Mr Sayce and Mr Cooke are respectively the Churchwarden and Treasurer of the church of St Mary the Virgin, Buckland. The petition is for the removal of up to three pews at the east end of the nave (two on the south side and one on the north side). The Petitioners are content that, in the first instance, the faculty granted should be for a period of five years so that, if, in practice, the new arrangements were not satisfactory, the work could be reversed.
2. The proposed works were the subject of a resolution by the PCC passed on 9 May 2016.
3. Public notice of the petition in accordance with the rules was given between 23 February 2017 and 25 March 2017 on notice boards inside and outside the church.
4. By Notification of Advice dated 22 February 2017, the DAC recommended the works to the Court. It advised that they were likely to affect the church as a building of special architectural or historic interest. In the light of this, Historic England, the local planning authority and the Victorian Society were all consulted. None objected to the works. The Adviser to the Diocese on access matters, the Revd Timothy Goode has also been consulted. He strongly supports the proposals¹.
5. By a letter dated 14 March 2017, Mr PE Haynes objected to the works on the following grounds:
 -) [they] adversely affect the unspoilt appearance and ambience of this village church;
 -) the space desired has not proved necessary for the past 150 years;
 -) the number of occasions in a year when this extra space will be used is small;
 -) the cost of this work could be better spent within the church and the diocese.
6. Mr Haynes is a resident of the parish and on the electoral roll. He was PCC Treasurer for 20 years and has been a sidesman for over 25 years. He does not want to become a party opponent but wants me to take his objection into account in determining the petition.

Buckland and Buckland Church

7. Buckland is an attractive village to the north west of Reigate. It is mentioned in the Domesday Book. The present church building dates from the fourteenth century, being restored by Henry Woodyer in 1860. It is listed Grade II. There is a debate about how extensive his restoration was: the resultant building was described by Pevsner and Ian Nairn as “Victorian church building at its best”² and by Blatch as “one of Woodyer’s best achievements”³. Apart from being a fine and atmospheric church, it

¹ I am grateful to Mr Goode for his help in this matter.

² See *Surrey* (Buildings of England) (2nd edition) (1971) p121.

³ In *The Churches of Surrey* (1997).

possesses some excellent stained glass⁴. The oak pews are by Woodyer with the exception of those in the south west corner. Woodyer left the area to the west of the font unpewed but pews in a similar style (and also of oak) were installed in 1935.

The proposals and their justification

8. The church seats about 120. The Sunday morning congregation is between 25 and 35 but the church is full for weddings and funerals and at Christmas. The principal justification for removing the pews is:
-) to provide space for those using wheelchairs
 -) to provide space for instrumentalists around a piano⁵; and for singers at concerts
 -) to give space for a projector on the south side for use with a portable screen at all age services
 -) to give more space for the attendants of wedding couples.

Consideration

9. The church has been considering the possibility of taking out the pews in question for a number of years and, for a variety of reasons, it has not happened. The church has functioned with its current configuration of seating since 1935 and the arrangements at the east end of the nave have been unchanged since 1860. Accordingly it is not plausibly possible to say that there is an absolute need to make the changes proposed. This does not mean that there is not a reasonable need to make the changes. The perception of what constitutes appropriate provision for those who are disabled or whose mobility is impaired has changed over the years and is rightly given great weight in today's church and the perception of what constitutes appropriate provision has changed. It is common to try to provide a space between the nave and the chancel for instrumentalists, readers, children making presentations, singers and the like: all of which may both enhance worship and also facilitate secular use of the church (to its benefit). The use of a projector and screen may also enhance services. I guess that a wedding today may be a more elaborate affair than in 1860; it is reasonable to want to make better provision for what is likely to be a bigger party at the chancel step⁶.
10. One could argue that there is no harm at all to the listed building from taking out these pews. The pews, though well made and of oak, are not of particular intrinsic interest. Most of the pews will remain and the building will continue to "read" as a pewed church; the pews that will be removed will be stored; the works are reversible. The character of the church will be unaffected.
11. However I think that it is incorrect to say that there is no harm. There is some loss of historic fabric dating from the work in 1860 which constituted the church in its current form. Nonetheless because the loss is so small and will have such a modest impact on the appearance of the church, it seems to me that the harm is properly categorised as modest. This is confirmed by the fact that Historic England, the local planning authority and the Victorian Society do not object. Even reminding myself that there is a strong presumption against any harm to listed building⁷, I have no difficulty in saying that the reasonable need for the proposals (and the resultant public benefit from meeting that need) outweighs any modest harm arising from them. I am sure that Mr Haynes feels strongly about this beautiful church where he has worshipped for so many years and I think that his instinct – that its particular character should be preserved – is a sound one. I think in fact that the Petitioners and the PCC are of the same mind. The disagreement lies in the fact that the Petitioners do not consider that the proposals will have any significant adverse impact; and in this I agree with them. The modest loss of seating capacity will not affect the regular Sunday congregation. For the biggest services, it might be appropriate to

⁴ The oldest dates from the 14th century; there are windows by Hardman; and the east window is a war memorial by DM Grant. Hard now to imagine in such a peaceful setting, the original east window was destroyed by a bomb in 1941.

⁵ A piano supplements the organ on one Sunday each month.

⁶ The new arrangement will make it possible for the register to be signed in the sight of the congregation rather than, as now, the bride and groom and the witnesses retiring to the vestry.

⁷ See *In re St Alkmund, Duffield* [2013] Fam 158.

introduce some chairs but probably in reality what will happen is that people will “squeeze up” on the remaining pews.

12. Readers of this judgment who are familiar with ecclesiastical law will appreciate that in what I have written in paragraphs 9 to 11 above, I have been addressing matters raised by the *Duffield* guidelines. The *Duffield* guidelines are a series of questions that the Court of Arches suggests that it is appropriate to consider in relation to any proposal to alter a listed church⁸. The questions are as follows:

- 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 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: see Peek v Trower (1881) 7 PD 21, 26–28, and the review of the case law by Bursell QC, Ch in In re St Mary's Churchyard, White Waltham (No 2) [2010] Fam 146, paragraph 11. Questions 3, 4 and 5 do not arise.*
- 3) *If the answer to question (1) is “yes”, how serious would the harm be?*
- 4) *How clear and convincing is the justification for carrying out the proposals?*
- 5) *Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see In re St Luke the Evangelist, Maidstone [1995] Fam 1, 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 I or II*, where serious harm should only exceptionally be allowed.*

13. It will be seen that implicit in the first of the *Duffield* questions are two prior questions, namely,

What is the special architectural interest of the church, and especially the character of that special interest?

*What is the special historical interest of the church, and especially the character of that historic interest?*⁹

14. I think that it will be helpful for completeness if I address specifically each question:

What is the special architectural interest of the church, and especially the character of that special interest?

15. The church which is mediaeval in origin and restored in the nineteenth century is a building of high architectural quality and contains fittings of high quality, without those buildings or fittings being of the highest quality. It is a good example of the work of Henry Woodyer.

What is the special historical interest of the church, and especially the character of that historic interest?

⁸ They are called the *Duffield* guidelines after the case in which they were first articulated: *In re St Alkmund, Duffield*.

⁹ That these questions are so implicit was confirmed by the Court of Arches in *In re St John the Baptist, Peshurst* (9 March 2015) (see paragraph 22).

16. The church is of considerable interest as being a mediaeval church restored in the nineteenth century with fittings from the nineteenth century. It is a good example of the work of Henry Woodyer.

17. I would add that the list description, which is a full one, does not mention the pews, although it does mention the pulpit, font and choir stalls. Of course, this does not mean that the pews are not of architectural and historical interest – clearly they are – but they are not of such special interest as to be particularly identified in the list description.

18. Overall, the building is an attractive and atmospheric church of considerable historical and architectural interest.

Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

19. Yes.

20. Question 2 is not applicable.

3) If the answer to question (1) is “yes”, how serious would the harm be?

21. The harm would be modest and not serious. The works are, in any event, reversible and, in the first instance, a faculty is being granted for a limited period.

4) How clear and convincing is the justification for carrying out the proposals?

22. Although there is not an absolute necessity for the changes proposed, there need for them is a reasonable one and would result in clear and significant public benefit. The cost of the work is modest and I am sure that if Mr Haynes were convinced of the appropriateness of carrying them out, he would not take any point about their cost.

5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see In re St Luke the Evangelist, Maidstone [1995] Fam 1, 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 I or II, where serious harm should only exceptionally be allowed.*

23. The church is listed Grade II and not Grade I or II*; and serious harm would not be caused to it. The modest harm arising from the proposals, which will in my judgment hardly affect the character of the church, is outweighed by the clear and significant public benefit flowing from the proposal, even allowing that there is a strong presumption against such harm.

Formal decision

24. I direct that a faculty should issue. The work is to be completed to the reasonable satisfaction of the Church's Inspecting Architect. The pews are to be stored safely in place approved by the Archdeacon in consultation with the Church's Inspecting Architect. Subject to any further order of the Court, before the expiry of five years from the date of the issue of the faculty, the pews shall be refitted in their current positions to the reasonable satisfaction of the Church's Inspecting Architect. A photographic record of the interior of the church shall be made before the works are carried out and a copy kept in the Church's records, a copies being given to the archives of the District and County Councils.

Expiry of the time limited faculty

25. If the view is taken by the PCC that they want the removal of these pews to be permanent, steps should be taken in good time before the expiry of five years to bring the matter back before the Court.

PHILIP PETCHEY
Chancellor

26 May 2017