

Neutral citation No [2017] Bla 7

In the Consistory Court of the Diocese of Blackburn

In the Matter of Burnley St Stephen

In the Matter of a Petition dated 26<sup>th</sup> April 2016 presented by Rev Patrick Senior, minister, and Mr James Taberner and Mrs Betty Galloway, wardens

On-line reference 2016-001757

## JUDGMENT

- 1) **The building:** this is a Grade II church dating from 1876-1879, which stands in a conservation area. The architect was John Green. The present proposals relate to the heating and seating, so there is no need to say anything about the exterior. The aisles have five bays and the nave is said to be 'wide'. The listing information does not mention the pews. Significant renovations were needed in around 1960, (the need for which is detailed in the Statement of Significance), which were carried out after a fund-raising drive. The church was subsequently re-opened at Christmas 1962. Subsequently a parish room was constructed at the east end, with kitchen and toilets, and this was upgraded in 2004. New boilers were installed in late 2015 or 2016.
- 2) **Earlier faculty:** Pews were removed from the north and south aisles in 2005, leaving those in the central blocks, each side of the main aisle. I assume they are original and installed when the church was built. They appear to be of pine. As part of that scheme, carpet tiles were laid in a chequerboard pattern of two contrasting shades of blue, over parts of the floor, including the side aisles and the area in front of the chancel arch, and chairs were introduced in the side aisles with blue upholstered seats and backs. The remaining pews can be seen on some photographs.
- 3) As this was done under faculty, I have no doubt the DAC were involved in the usual way. During the present round of consultation in respect of the proposals described below, the Victorian Society ('VS') was highly critical of the earlier decision to allow the pews in the side aisles to be removed, and the further permission to introduce floor covering and the chairs. VS described it as '*insensitive*'.
- 4) During the last 10 years it is fair to observe that thinking in these areas has changed and become far more rigorous, particularly following the structured approach to decisions concerning proposed alterations to listed buildings, set out in the decision of the Court of Arches in *Duffield St Alkmund*, 2013 Fam 158 (see below). The Church Buildings Council ('CBC') has also taken a more active role with the publication of Guidance Notes, including one on seating. Whatever failures or mistakes are now discerned in earlier decisions, one cannot go back; those side aisle pews were removed, and that seating and floor covering were introduced, and the present decision has to proceed against that background.
- 5) **Proposals:** In essence, this present application is similar to many others. It seeks permission for up-dating the heating system, and for removal of the remaining pews in the central area, each side of the main aisle. In the result, it has proved more difficult and time-consuming to resolve than anyone would have wished. It has involved at least three previous sets of directions, incorporated within quite lengthy narrative, to assist the petitioners to understand what I required in order to resolve the petition. In particular, I have made it clear that the petitioners needed to decide on the chairs and floor covering they wanted to install, if the pews were removed. *These were matters entirely omitted from the petition as originally framed.* I said I would not be prepared to sanction removal of the pews, *if otherwise justified*, unless this was done. The **Statement of Needs** relied on creating '*a more flexible space*', which lacked detail and is in itself an insufficient justification.

- 6) When the need to specify replacement seating was first raised with the petitioners, they said, as I understood it, they wanted to use chairs they already had available. The Ven. Mark Ireland, the Archdeacon of Blackburn, inspected these on my behalf and, on behalf of the Diocesan Advisory Committee ('DAC'), advised that they were suitable for that role in the particular circumstances of the church. At a later stage, they indicated they wished instead to introduce more of the kind of upholstered chairs they had been permitted to introduce under faculty in 2005, and also lay more carpet tiles.
- 7) At an earlier stage, as I have indicated, consultation took place with HE and VS. HE stated on 15<sup>th</sup> December 2015: *'The church is built from rock-faced sandstone with a slate roof. Key elements that add to the significance of the church include the quality of the Gothic design; the craftsmanship in the implementation of the design and for the use of good quality materials. The pews appear to be standardised catalogue pews; however they do add to the character and appearance of the interior of the church. This application is accompanied by a clear and convincing justification of why this harm is necessary to meet the needs of your expanding congregation. We recommend that the diocesan Chancellor balances whether the harm of the removal of the pews is outweighed by the benefits of the scheme in line with the 2013 Faculty Jurisdiction Rules and paragraph 134 of the National Planning Policy Framework'*. They also referred to their Practice Guide *New Work in Historic Places of Worship*. HE made no mention of the earlier changes in 2005, which may or may not be of significance. However their advice is clearly measured and not entirely critical. (I believe the framework outlined within which decisions have to be made is in essence covered by the Court of Arches decision in *Duffield* referred to below.)
- 8) The Victorian Society saw things very differently, as appears from Mrs Sophie Laird's letter of 27th January 2016. They were well aware of the earlier changes. *'Sadly it seems that the church has suffered insensitive alterations in the last ten years with the removal of the pews from the side aisles and their replacement with upholstered chairs as well as the provision of carpet tiles on the floor. Upholstered chairs and carpet are inappropriate for the interior of a historic church. This view is in line with the guidance issued by the Church Buildings Council and Historic England.'*
- 9) Mrs Laird then sets out the central passage from the CBC Guidance Note on Seating, which I think originally appeared in 2013, and which has been republished with the central thrust unchanged in January 2017. That strongly rejects the use of upholstered furniture on several grounds and asserts that *'it is not consonant with the quality of a highly listed church.'* I had occasion to consider the Guidance Note at length in my recent decision concerning *West Burnley, All Saints*, presently unreported, and I do not think it will be helpful to repeat the relevant sections here at any length. However I there considered the decisions of Chancellor Eyre QC in *Long Itchington, Holy Trinity* [2016] ECC Cov 7 and *Salford Priors, St Matthew* [2016] ECC Cov 4, where he refused to allow upholstered furniture to be introduced, in reliance on the CBC Guidance, and also the decision of Chancellor Turner QC in *Ashton upon Mersey, St Mary Magdalene* [2016] ECC Chr 1, where he did allow upholstered seating, expressing some concerns about the views expressed in the Guidance. Both Chancellors considered the Guidance Note at length, and weighed the parishes' arguments in the light of that. Each decision must of course depend on its special facts, but differing perspectives on the Guidance Note were apparent. I also considered the Effect of this being *'statutory guidance'* and how far that required strict adherence to the advice put forward.
- 10) Mrs Laird then refers critically to the *'bright blue upholstered chairs'* already in the church, and the carpet over the pew platforms, which in the words of the HE guidance in *New Work*: *'tends to create a domestic character at odds with the interior of an historic public building'*. Also she said *'The blue carpet tiles negatively impact the aesthetic quality of the interior. More of these inappropriate tiles are proposed...'* She considered the remaining pews *'to be handsome fittings which provide valuable definition to the interior architecture of the church. While the loss of these pews is regrettable the acceptability of their removal is in part dependent on the proposed replacement fittings. The proposed fittings are not appropriate for the interior of the church. The bright blue upholstered*

*chairs are discordant with the aesthetic quality of the interior and in line with the CBC advice, they are inappropriate.* On that basis the Society objected to the removal of the pews and suggested the parish look instead at wooden chairs or stackable benches. The Society also felt the Statement of Needs was vague and did not explain why the already cleared side aisles gave insufficient space or flexibility.

- 11) Mr Taberner responded on 11<sup>th</sup> February. There is no church hall. The parish was seeking to fulfil its mission statement by making St Stephen's the centre of Burnley wood – where it stood – by providing a more flexible use of space for community use such as an under 5's playgroup, rehearsal space for the St Stephen's Players amateur dramatic group, fitness classes, youth groups and social events such as the celebration of Queen Elizabeth's 90th birthday. *"The church depends on fund raising events in order to remain financially viable. Our weekly gift aid envelope collection is simply not sufficient to keep the church going. The costs of maintaining a Victorian building is a significant financial responsibility. It is essential for our future that we "free up" the space inside the church to hold fund raising events such as Christmas Fairs, Table Top Sales, concerts, plays and formal "round table" functions. The removal of the pews would also produce a more flexible worship space where the seating can be arranged in response to a particular service'*. He then referred to issues about the new heating and said: *'The removal of the pews is essential to accommodate the column radiators. These are 'necessary due to the unusually wide dimensions of the church which makes it impossible to adequately heat the centre of the church with just side radiators.'* (I shall return to those observations later.) He also relied on observations from the Bishop of Lancaster, Rt Rev Geoff Pearson, widely circulated in the diocese, to the effect churches had to respond to the needs of today and get rid of uncomfortable pews and put in comfortable seating (my brief and possibly inadequate summary).
- 12) Mrs Laird responded in an email of 11 March 2016. She accepted the additional justification for removal, provided there was appropriate replacement seating and floor covering. The then proposals were not appropriate. She also regretted the comments of the Bishop, and took issue with them. Thus something of an impasse had been reached.
- 13) Neither HE nor VS wished to complete Form 5 when given the opportunity, and so neither has become a party opponent. I make clear that the decision not to do so does not devalue the level of opposition voiced by the Society. It has limited resources and finances, and cannot take its criticism as far as is possible on every occasion. These comments of HE and the Society must of course continue to be taken into account in my decision.
- 14) **Current Proposals for seating and floor covering:** By a letter of 24<sup>th</sup> May 2017, Mr Taberner, who has had the major input in dealing with this petition, clarifies their current proposals. They wish to carpet the interior of the building, both areas presently with carpet and the areas with carpet tiles, in a blue 'York' twist pile Wilton broadloom carpet over an underlay. This will be nearly £11000 plus VAT for the main body of the church, and nearly £2000 plus VAT in the chancel. Further, as the exact model of chair previously obtained is no longer available, they wish to acquire 100 Maxim Deluxe stacking chairs, the current equivalent design, from the Rosehill Furniture Group. These will have a beech (coloured) wooden frame, and Stirling fabric seats and backs in indigo. These will cost a little over £9000 plus VAT. The tops of the backs are straight, but they are somewhat deeper in the middle of the backs. Mr Taberner has helpfully supplied photos of the present chair, and the proposed one. My impression is that the indigo colour is softer and warmer than the original blue.
- 15) **Steps following current proposals:** As the petitioners' current, and hopefully final, proposals were only made known within these proceedings in late May 2017, I directed that a fresh and comprehensive **Public Notice** should be exhibited, and the Registry has informed me on 13<sup>th</sup> June, that has been done (although I am not certain when the 28 day period expires). I am sure that no opposition will be forthcoming locally, (just as was the case with the initial Notices.)

- 16) I am also informed that the **DAC** considered these latest proposals at its meeting on 9<sup>th</sup> June, and indicated its approval to the choice of chair and floor covering. (It had recommended the changes to the heating and the proposed removal of pews, on 8<sup>th</sup> April 2016.)
- 17) Although I anticipated that the objections of VS made earlier would apply to these latest proposals as well, I have ensured that the Society is informed of them, and has had an opportunity to make any further comments it wishes. Its former objections did not need to be repeated; I would continue to consider them. The Director of the Society, Mr Christopher Costelloe, has taken the opportunity and I set out what he says below.
- 18) Removal of the pews would cause *'some intrinsic aesthetic harm..... because of the way in which they structure the space, point the eye towards the altar, set up a rhythm of pews that matched that of the rafter (sic) overhead, add a richness of material and tone to the interior, and make the church a cohesive Victorian interior.'* He envisaged greater flexibility being achieved, to minimise the damage, with a stone or timber floor with a contrasting central aisle to lead the eye towards the altar. It would involve un-upholstered fixed (sic) seating, and he instanced a suitable type of chair and bench and their respective manufacturers. It seems strange to me that parishioners would wish to remove fixed wooden pews – however uncomfortable – and put in fixed wooden chairs or benches, at great expense, but there it is. Mr Costelloe also said *'The chairs chosen are a decent choice if it is accepted that there should be upholstered chairs. At least they have wooden frames and flat rather than rounded tops. We would much rather see an un-upholstered chair'* and he referred again to the CBC Guidance. *'The choice of blue upholstery is very unfortunate, as it is a strong colour which will tend to dominate and overpower the natural earth tones of the high quality natural materials of the rest of the interior.'* This colour would cause extra harm.
- 19) I think Mr Costelloe was looking at the photo of the chair already in the side aisles, rather than the similar one with *indigo* coloured upholstery proposed for the new furniture. However, I do not believe that rather softer colour would escape the same strong strictures. I can say, speaking purely for myself, that whatever else can be said about upholstered seating or floor coverings, it is always a surprise that church congregations do choose these strong colours, for chairs and floor covering, which attract the eye unhelpfully away from the altar and other features of the sacred space, towards what in the end are functional objects. Blue is indeed dominant and cold. Earth colours are so much more restful.
- 20) He considers carpeting will cause *'significant visual damage'*, giving an *'inappropriate domestic character'*, it will *'severely dampen the acoustics'*, will require cleaning, and replacement at great cost, the blue colour will be *'the dominant note of the whole interior'*, like a bingo hall or doctor's surgery. He cannot see how the choice of a strong blue colour and carpeting can outweigh the aesthetic harm they will cause.
- 21) It may be helpful to deal with the seating questions first, and the heating later. **The test (or framework or guidelines)** within which the court is **required** to come to decisions about proposed alterations to listed buildings is set out in paragraph 87 of the decision of the Court of Arches (the ecclesiastical court of appeal) in the case of *Duffield, St Alkmund* 2013 Fam 158 in a series of questions:
- 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 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 be exceptionally be allowed.*

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

- 22) The answers to Questions 1 and 3 are 'Yes', and 'Low moderate'. In coming to that evaluation, I accept the views of HE and the Society on the merits of the Victorian interior; further that those merits have been damaged by the changes made 10 years ago. However, as I said earlier, one cannot go back. It is impossible to ignore the changes then effected, and the path then taken to re-order the building. Moving on to Question 4, Mr Taberner has set out the parish's reasons for wanting these further changes, in response to Mrs Laird's objections. Without simply leaving the strength of any justification to the petitioners, I think one has to allow them to evaluate the circumstances of their church and parish, and its mission locally, and how that is to be carried forward. The advice and comments of the VS do not, and possibly cannot, engage with the parish's views on that topic. Mr Costelloe in his comments states that: *'the Victorian Society's job is to stand up for the character of these great, irreplaceable, historic buildings'*. But the church is a local centre of worship and mission and decisions have to be made on that basis. The picture painted by Mr Taberner, which I accept, is that in order to have a realistic prospect of a continuing congregation worshipping *within this building*, various activities need to be undertaken there to generate the necessary funds to carry on the work of mission. For that, changes to the interior need to be made.
- 23) I am not unsympathetic to many of the points made about carpeting, and the colours chosen for seating and carpeting. But the strong blue was introduced under faculty many years ago, floor covering is already there, and upholstered chairs are already in place in the side aisles. I can only think a single blue carpet is better than a mixture of carpet and two tones of carpet tiles, and the choice of indigo covering is more gentle than introducing even more blue. Overall I conclude the proposed changes will give a more unified appearance and will serve the aims that the petitioners seek to achieve. They will have a building better suited to the needs of the congregation and its attendant bodies, like the drama group, and better adapted to welcome in the surrounding community for other functions and activities. These are real benefits that will outweigh any further harm to the appearance of and significance of the building. Question 5 is resolved; the balance is tipped in favour of the proposals. They are approved.
- 24) **Heating:** I turn now to the other area of the proposals that has not attracted any objection or adverse criticism.
- 25) Mr Taberner described the parish's intentions in regard to the heating in February 2016. *'One of the problems with the centre aisle pews is that the four best radiators in church are attached to the front and back pews on each side. It is planned to relocate these radiators to the south side of the church and each side of the font to replace the old inefficient radiators. Due to the unusually wide dimensions from the north wall to the south wall, this would not provide sufficient heat in the centre of the church. In order to rectify this problem, it is planned to install new column radiators attached to the three pillars on each side of the central aisle. These would be slim-line, tall, slightly curved and painted to blend in with the colour of the stone pillars. To complete the project, seven new radiators would*

*be fitted to replace old inefficient thermalrads in situ around the church.* (The font is centrally placed at or towards the rear of the nave).

- 26) The scheme was prepared by Mr J R Book, who is a very experienced heating engineer, and the DAC Heating Advisor. The column radiators were to be on the inside of the pillars only. Because it was apparent from an early stage that the heating proposals were separate from any other proposals, it seemed to me that it might well be helpful to the parish to allow them to implement those parts of the petition, prior to what was going to be a more prolonged process resolving issues about seating. However, would the new heating be possible without removing the pews and/ or causing irreparable damage to them? I indicated I would give permission for the heating work to begin if I had an appropriate assurance from Mr Senior. I received it and on 8<sup>th</sup> August I emailed him as follows: *'Having received your assurance in writing based on Mr Book's advice that the radiators etc can be fitted without removal of the pews, I am happy to confirm that that part of your petition can now go ahead, prior to resolving the seating issues, and even before the formal faculty re the heating is issued from the Registry.'* (I have seen Mr Book's brief note to that effect.)
- 27) It was consequently not a surprise that the parish pressed ahead with this work. It is however a surprise to read in Mr Taberner's letter of 24<sup>th</sup> May 2017: *'... in the original plans, John Book had included radiators attached to the columns in the main body of the church. This would only have been possible with the removal of the pews. The DAC objected to this proposal '(I am not sure what he is referring to by that wording)'so Mr Book amended his plans so that extra heating would be around the perimeter of the church'.* Different messages are being given!
- 28) I do not believe I have ever seen any amended plans for the heating, and plainly my approval was for the scheme as originally given. However the scheme as installed seems to be different in two ways. The column radiators, (so necessary to heat this wide church adequately, apparently), have been omitted and some new heating radiators have been added round the side. In strict theory, a faculty permission is permissive, not mandatory, so leaving out what has been given permission, is generally a matter for the petitioners. However additional radiators ought to be the subject of further permission. As there is no indication the present heating scheme as actually installed is otherwise than satisfactory, and obviously largely follows the original plans, and it has had the DAC's blessing, I intend to simply give confirmatory approval for it. This whole matter has been unduly complicated to date with far too many changes being made. Much greater efforts should have been made to fix on the final proposals far sooner.
- 29) **Summary:** I believe all outstanding matters of substance have been resolved. The petitioners have **approval to remove and dispose of the remaining pews, to carry out any necessary making good, and to introduce the carpet and underlay, and the new seating** as described under **'current proposals'** above. Any replaced materials may be disposed of as thought fit. They have 12 months to carry out this work, (or such further time as is granted). I grant a **confirmatory approval for the heating scheme** installed, the greater part of which I approved earlier and gave the green light for in August 2016. They have **liberty to apply** by letter to the Registrar for further directions in case of difficulty in implementing the above permissions or otherwise. The petitioners must pay **an enhanced correspondence fee** to the Registrar to cover the considerable extra work involved in resolving this petition. The amount will be determined by me in due course.

John W. Bullimore  
Chancellor  
21<sup>st</sup> June 2017

