

IN THE CONSISTORY COURT  
OF THE DIOCESE OF CARLISLE

RE ST MARY AND ST MICHAEL CARTMEL

JUDGMENT  
delivered on 14 December 2017

*Introduction*

1. By their Petition dated 6 October 2017 the Revd Nicholas Devenish [Team Vicar], Dr Roger Baxter [Churchwarden] and Mr John Iveson [Churchwarden], [together described as 'the Petitioners'], seek a faculty for the following works at Cartmel Priory, namely:

- [a] removal of the pews to the nave west of the crossing;
- [b] replacement of the pew radiators with new in column position;
- [c] making good of all floors beneath the pews;
- [d] relocation of the square font from the nave to the south aisle;
- [e] re-siting of the medieval font on the east/west axis; and
- [f] replacement of the pews with new specified chairs.

2. As hereinafter appears most of the proposed works are uncontroversial. The only matters which require to be addressed relate to the removal of the pews and the relocation of the Victorian font.

3. The estimated costs of the proposed works are £ 80,000.

*Cartmel Priory*

4. Cartmel Priory is a Grade I listed church. It was established by William Marshal for the Augustinian Canons in about 1189 and over the years this community of monks developed the monastery. Although the main purpose of the church is a place of worship for the local congregation and wider community, it welcomes about 60,000 visitors throughout the year and is a hub for the local communities.

5. The church is cruciform and divided by its central crossing. Transepts, north and south, choir and chancel to the east with open nave to the west all with flanking aisles north

and south. The area affected by the proposed works is the nave of the church interior, west of the crossing.

6. The use of the church is somewhat restricted as the pews define the inner space as a place solely for daily worship. Visitors and community groups generally congregate in the aisles, one of which is taken up by the priory bookshop. The spaces are limited and generally unsuitable for growing community activity. With increased services and community activities the interior space has the potential in some areas to be adapted to accommodate varied uses and mission.

7. It is thus proposed to remove the western block of 18 oak pews introduced by Paley in about 1881 and to replace them with Howe 40/4 chairs which are in use in many cathedrals. Such chairs can be compactly stored on their wheeled storage dollies. The preferred choice is the veneered version in ash but they can be stained in one of numerous natural wood finishes. It is contended that the pews would be difficult to reuse following removal but conceded that the pew fronts will be suitable for reuse in a later scheme and could be stored for such purpose.

8. It is also proposed to relocate the Victorian font, also by Paley, to the south aisle under the western most window. This font and its base have been found to be inconvenient and hazardous in position and in use and it is proposed that the medieval font in the Town Choir, which it is believed is more aesthetically pleasing and useful will be brought into the new open space in the nave. The Victorian font will be positioned for display in the south aisle.

9. The removal of the pews, which are structurally subservient to the historic fabric of the church, will have a direct impact on the radiator heating system because the radiators and their associated pipework are currently fixed to the oak pews and pitch pine base. It is proposed to position new radiators at the base of each of the four columns facing into the nave and their type and position have been chosen to minimise visual impact and modestly increase the heat output.

10. The laying of the new heating pipes will require small excavations in the north and south aisles. Although the locations of such excavations will avoid any grave stones with inscriptions, it is conceded that the experience of laying the original pipes in 1990 suggests the possibility of finding small fragments of burials going back to the 17<sup>th</sup> and 18<sup>th</sup> century. It is stated that the architect and archaeologist will be involving in logging any finds.

11. The proposals were unanimously supported by the Parochial Church Council at its meeting on 26 July 2016.

12. At its meeting on 21 July 2017 the Diocesan Advisory Committee [DAC] recommended the proposed works subject to the following provisos:

- [a] the fronts of the existing pews from the nave block in the south transept are re-used due to their quality; and
- [b] the chairs are stained to harmonise with existing timberwork.

*Prior consultation*

13. Before seeking advice from the Diocesan Advisory Committee ['DAC'] the Petitioners consulted Historic England and the Victorian Society and gave them full details of the proposed re-ordering of the Church.

14. Historic England confirmed that their views as follows:

"Nave pews - the pews are likely to date from the Paley restoration and will have significance from that historical association. However, they are a relatively standard design and are likely to sit on the stone floor rather than being structural integral to it. The removal of the pews would allow the impressive space of the nave to be fully appreciated, as well as providing a flexible space for events. Therefore we believe it should be possible to balance the benefits and loss of fabric as part of the justification for need. We recommend that the design and position of the existing gift shop in the aisle is also considered as part of the work to open the nave.

Victorian font - again, the font was designed by Paley (1867) and is a significant feature of the Priory church. However, the medieval font has already been moved to just in front of the crossing and we recognise that the large Victorian font could compromise the flexible use of the nave. We are therefore content for the font to be moved, provided that it remains within the Priory.

15. The Victorian Society stated:

"I can confirm that our views remain the same on the matter of the removal of the nave pews and the relocation of font. We do not wish to object to the removal of the nave pews and have no objection to the provision of the Howe 40/4 as replacement furniture. We would advise that these chairs would fit more harmoniously into the interior if they were stained to match the remaining historic joinery. I can also confirm that we do not have an objection to the proposed location for the Victorian font."

*The Public Notice and the responses*

16. A Public Notice in respect of the proposed works was displayed between 26 August 2017 and 24 September 2017.

17. Such Public Notice caused two persons to communicate with the Diocesan Registrar.

18. By her letter dated 21 September 2017 Mrs Catherine Thorburn objected to the removal of the nave pews to the west of the crossing. She believed that this would create a `vast space` and she questioned the need for such space. She suggested the retention of the front four pews with the removal of the rear four pews as this would be `more in keeping with our historic church`. She also questioned the suitability of the proposed replacement chairs which she believed looked `cheap and not really fit for purpose`. She also believed that the Victorian font should be retained in its current position and that the proposed relocation of the medieval

font would constitute a nuisance for people going up for communion. She stated that she was speaking on behalf of herself and some of the older members of the congregation.

19. When asked whether she wished to become a party to the proceedings or for me to take her views into account in deciding the application for a faculty, Mrs Thorburn withdrew her objection. Such withdrawal notwithstanding, I will take her views into account in determining this application.

20. By her letter dated 18 September 2017 Mrs Francis Jarvis asked for the retention of the first four pews to the west of the crossing. As a person who spent several hours each week on the reception desk she believed that modern chairs would adversely affect the awe which visitors would experience. She also believed that the chairs would be very uncomfortable for short people.

21. When asked whether she wished to become a party to the proceedings or for me to take her views into account in deciding the application for a faculty, there was no clear response from Mrs Jarvis save that she wished her views to be taken into account and I will take them into account in determining this application.

22. In responding to Mrs Jarvis's comments, the Petitioners recognise that Mrs Jarvis is a loyal and valued member of the congregation who, notwithstanding her advanced years, gives regular and valuable support to stewarding the shop. They agree with her comment as to the awe filled experience of many visitors when they first enter the Priory building but reassure her that the presence of the replacement chairs in the western nave is not generally intended as the purpose of the removal of the pews is to create a large uninterrupted space towards the west end, thereby increasing the potential for inspirational awe. The chairs will only be used when necessary. As to the suitability of the chairs, they observe that these chairs are in use in many leading cathedrals, are of standard height and were believed to be equally fitting for Cartmel Priory.

#### *The relevant legal principles*

23. In *In re St Alkmund, Duffield* [2013] Fam 158, at paragraph 87, the Arches Court of Canterbury agreed that diocesan chancellors should be freed from the constraints set out in the *Bishopsgate* questions, approved by that court in *In re St Luke the Evangelist, Maidstone* [1995] Fam 1 because there was a danger of imposing an unduly prescriptive framework on what was essentially a balancing process and stated that chancellors might be assisted by the following approach of asking:

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, 26-8, 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 exceptionally be allowed.

#### *Determination of the application*

24. Notwithstanding that the DAC opined that the proposed works were not likely to affect the character of the church as a building of architectural or historic interest, I disagree. I am satisfied that the proposed works are likely to affect the character of the church as a building of architectural or historic interest.

25. However, given that the pews to be removed are only those to the west of the crossing and that all other pews will remain in situ, I am satisfied that the degree of harm is very small.

26. I am satisfied that the benefits which will flow from the removal of these pews are significant in that the removal of the pews will allow the space of the nave to be better appreciated and will allow the use of such space for a variety of activities. Even bearing in mind that this is a listed building, I am satisfied that there is a clear and convincing justification for the removal of the pews which outweighs such small degree of harm.

27. I am fortified in my conclusion in the knowledge that neither Historic England nor the Victorian Society object to what is proposed.

28. Whilst I recognize that both Mrs Thorburn and Mrs Jarvis genuinely believe that all the pews to the west of the crossing should not be removed, I note that they both would be content with the removal of half of the pews. It seems to me that such concession, properly made, puts their representations into context.

29. I am satisfied that the proposed replacement chairs are wholly appropriate and have seen photographs of them in situ in other churches.

30. Accordingly I grant the faculty sought on the following conditions

- [1] that the fronts of the existing pews are retained for reuse in a later scheme and stored in a suitable place as directed by the Team Vicar;
- [2] that during the works of excavation to the church floor the church architect and an archaeologist shall have a watching brief; and
- [3] the replacement chairs are stained which in the opinion of the Archdeacon of Westmorland and Furness harmonises with the existing timberwork.

31. In accordance with the practice of this court the Petitioners must pay the costs of the determination of this Petition.



**GEOFFREY TATTERSALL QC**

Chancellor of the Diocese of Carlisle