

**In the Consistory Court of the Diocese of Worcester**

**Archdeaconry of Worcester: Parish of Cropthorne: Church of St Michael**

**Faculty petition 2018-027581 relating to reordering of church building**

## **Judgment**

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### **Introduction**

1. This is a petition for a faculty to authorise the carrying out of a reordering scheme at St Michael's Church, Cropthorne.
2. Historic England summarises the significance of the church, and in particular its interior, as follows:

“The Church of St Michael is a significant Grade I listed church dating from the 12th century. The present building is thought to date from c.1100, and it is reputed to have been a partial rebuild of an earlier structure. The church was further altered during the 13th, 14th, 15th and 19th centuries. In particular the 15th century alterations raised the tower to its present height and added the clerestory. The church is of very high significance for its historic, aesthetic, communal, and evidential value as a centre of worship for over 900 years, and also for its architectural interest.

“The interior maintains a strong liturgical arrangement which boasts attractive pews, the fine Norman chancel arch, a wall painting to the arcade, and an important collection of large tombs. Some of the carved bench ends, and front and back panelling to the nave seats date from the 15th century. Although there is evidence of some alteration to remove pews in the north-west corner and box pews from the south aisle, the interior is highly significant for its sense of antiquity, its aesthetic value, and high historic interest.”

3. The main entrance to the church is via a porch on the principal (“front”) side of the nave. There is also a disused door, immediately opposite, on the north side.
4. The parish wished to introduce an accessible WC and a tea-point, which are needed both for the benefit of the existing congregation and to enable the building to be used for community purposes. Commendably, it examined very carefully a number of options as to where these facilities could best be provided, in conjunction with the DAC.

5. As for the proposed WC, the parish initially considered but rejected the following options:
  - a freestanding building in the churchyard (which, it was considered, would be very visible, complex to achieve, and less convenient in use),
  - a largely new building on the site of the existing boiler house (also very visible, at a very prominent location, and complex to achieve),
  - a new building behind the tower (which would be unobtrusive, but difficult to gain access to, requiring complex internal works)
  - a conversion of the base of the tower (which would be up two steps from the nave, and require the items currently stored there to be relocated), and
  - an internal structure, in the south aisle (which would be intrusive, and unsatisfactory in use).
6. After further investigations, the parish decided that the best solution was to construct a lean-to structure to the north of the nave, tucked between two buttresses, to which access could readily be gained by opening up the north door. This would minimise any impact on historic fabric. The proposed form of this extension was also the result of considering several options.
7. The tea-point is to be housed at the west end of the south aisle. Additional space is to be created by the shortening of the four pews and one frontal to the west of the cross-aisle. This would bring the south side of that block of pews in line with the south side of the block to the east of the cross-aisle.

## **Consultation**

8. The Diocesan Advisory Committee (DAC) recommended the proposed works, subject to a number of provisos.
9. The Church Buildings Council (CBC) considered the works, and commented as follows:

“The Council is content with the proposed new extension to house an accessible toilet, and also with the proposed servery at the west of the south aisle.

“It noted that the parish had prepared a careful options appraisal which demonstrated that the locations chosen for the proposed new facilities were the most appropriate ones available. The interior of the building is sensitive and offers little scope for interventions. The Council agrees with the chosen locations. The Council encourages provision of accessible toilets accessed from within the church where this is possible. The proposed modest extension on the north of the church will make appropriate provision without impact on the interior, and with little impact on the exterior views of the church, and none from the principle access.

“The proposed design is subservient to the building and will require only minimal intervention with the historic fabric. The Council noted that an archaeological assessment will be required for the site, and the provision of drainage. It also noted

that there is a rainwater drainage channel around the church that the new extension will impede. The impact, if any, of this on the rainwater disposal needs to be assessed and any necessary mitigation provided.

“To make the proposed servery work effectively it is proposed to shorten the pews to the west of the south door. Once shortened they will match in length those to the east of the door and give a useful area to enable effective use of the servery, circulation and effectively a small free aisle in this otherwise pewed building.

“The Council would not wish to object to the proposal to remake the pews slightly shorter. In reaching this view it noted that the pews are made of materials of several dates, some being of great antiquity. The amount of the oldest material that will be adjusted to remake the pews will be low. The pews have been adapted and partly remade already and will bear further work.

“It would help the parish to make the case for permission for this aspect of the work if the statement of significance looked in greater detail at the pews and discussed the various ages of the different materials within them. This would usefully accompany a drawing with sufficient detail to identify material that will be lost or remade.”

10. The Society for the Protection of Ancient Buildings (SPAB) – which had apparently intervened in 1896 to prevent the pews in the south-west corner being altered in a manner very similar to the current proposal – explicitly declined to make any comment on this occasion.
11. The Victorian Society has declined to comment.
12. The local planning authority has been consulted, but has not yet made any comment. Planning permission will be required for the extension on the north side, but has not yet been granted.
13. Historic England has twice commented on the proposals. In its first letter, dated February 2019, it stated that it was sympathetic to the parish’s desire to provide toilet and servery facilities at the church. However, it had considerable concerns regarding the appropriateness of the proposed extension and the potential harm to the 15<sup>th</sup> century pews.
14. As to the proposed extension to house an accessible WC, it commented as follows:

“In reviewing the proposed extension, we note that you have given consideration to the location and scale of the proposed structure. However, we have concerns regarding the proposed use of timber cladding, and the design of the external door and roof lights, which we feel suggest a domestic aesthetic which is inappropriate for this Grade I listed church. We are also unclear as to the requirement for an external door in this location, or for the roof lights.

“We note from your minutes of the Committee Meeting, that several options were considered for the design of the extension. However, it is unclear how the final design has been informed by the building. We would suggest that a solid slated roof, pitched to match that of the adjacent aisle, and coupled with rubble stone cladding, would make the extension a more considered addition to the church. More detailed drawings are also required which outline how the extension will interface with the

church wall. Given the very high significance of this Grade I listed building, the materials and finishes selected must be of the highest quality.

“As discussed above, we strongly suggest that consideration is given to creating a larger extension to house the W/C, tea point, and storage facilities. We suggest the parish look for other examples of similar extensions in order to inform the development of their proposals.

“Finally we have concerns about the proposed trench-arch system and the depth of the foundations as indicated by the proposal drawings. The suitability of this drainage system needs to be investigated further, compared to alternative options. We suggest that discussion with the Environment Agency and the DAC archaeological adviser should take place to inform the development of proposals for the drainage of the W/C extension. This should consider the route to be taken by the trench through the churchyard, as well as any archaeological implications of the foundations. Engagement with the Local Planning Authority will likely also be required.”

15. The greatest concern of Historic England, however, related to the alterations to the pews proposed to create the tea-point. Its initial views were as follows:

“From discussions during our site visit on 6 February 2019 we note that, although the proposal drawings show two pews in the south west corner of the church being shortened to allow installation of the tea point, it is planned to extend this to shorten all of the pews in this corner. The pews incorporate fabric purported to date from the 15th century. Although partially altered, they are of exceptional quality and character. We note that it is intended to reuse the carved pew ends and shorten the benches to match the existing pews in the east end of the south aisle. This is proposed to provide a flexible space for the tea point and additional community activities, though the nature of these activities is not explained in detail in the submission.

“Given their age and the contribution they make to the interior of the church, we have strong concerns regarding the shortening of the pews. More robust justification is needed regarding the proposed alterations. During our site visit, we noticed that there is an existing area of open space at the eastern end of the south aisle. Therefore we recommend that further consideration is given to how the existing space could be used to meet the needs of the parishioners without altering the historic pews. Furthermore, additional information is needed with regard to the significance of the pews. In the first instance we would suggest that a survey of the pews, carried out by a suitably qualified expert in church furniture should take place to inform the development of proposals. The historic pews are of considerable age, and it is vital that any works preserves and enhance their significance, in addition to meeting the needs of the parishioners. Without further information it is impossible, at this stage, for us to take any other view than the pews are exceptionally significant, and that it would be extremely harmful to shorten them as proposed.

## **Review of proposal**

16. In the light of the comments of the CBC and Historic England, the parish commissioned an assessment of the significance of the pews to be altered, from Rock Davidson Associates (RDA), a firm of historic buildings conservation consultants based in Malvern. In their report (dated October 2019), after a very

careful analysis of the history of pews in general, and of the church at Cropthorne in particular, they conclude as follows:

“The furnishings in St Michaels Church including the well-maintained oak medieval pews in the nave are rare, and the quality of these internal fittings are exceptionally high. There are few surviving examples of 15th century pews in England and few in Worcestershire. The pews in St Michaels are only one of two tracery examples in Worcestershire, the other example being at the Church of St Nicholas, Middleton. Many other early pews in Worcestershire were swept away with restorations to parish churches in the 19th century. Worcestershire is blessed with medieval examples of misericords but not so with early pewed out naves. The 15th century pews in St Michaels make a significant contribution to the special interest of this building.

17. In passing, I note with interest that the RDA assessment wisely makes no attempt to justify or criticise the proposed works, merely commenting on the significance of the pews to be altered, which is the specialist area of expertise of the authors. That is commendable, in contrast to the approach of many consultants who attempt to undertake the balancing exercise (harm versus need) – a matter as to which they have no particular expertise.
18. In the light of that survey, the parish’s architects re-assessed the proposals for the servery. They considered a number of alternatives to the proposed location:
  - a servery in the south-west corner, as proposed but altering only the westernmost pew (considered to provide insufficient space, either for operation or for users);
  - a servery in the north-west corner (but the organ takes up most of the space here, and it would be impractical to move it, and the existing radiator);
  - constructing a larger extension accessible through the north door, to house both the WC and the servery (a design that minimises intrusion into the churchyard and avoids disturbing recent graves would be contrived in layout, cramped, and extensive).
19. They therefore decided (in a report dated November 2019) that the proposed location was the best option, as the greater impact on the pews would be justified by the quality of the space created, and its location in relation to the rest of the church.
20. Historic England, in a second letter (of February 2020) considered the heritage assessment, although made no comment on the servery options appraisal. It stated that it was unable to support the proposed removal [sic] of the pews, and would be minded to lodge an objection. It has been asked whether it wished to become a party opponent, but has not responded. Nor has it made any further comment on the proposed WC extension. However, as will be clear, I have fully taken into account its representations in reaching my decision.

## The relevant legal principles

21. The issues at stake, in relation to both elements of the proposed works, are their impact on the character or significance of the church as a building of special architectural or historic interest, and the extent to which they are required.
22. In the light of the decision of the Court of Arches in *Alkmund, St Duffield*, the correct approach to be taken by a consistory court in such a case is to consider the following 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 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.<sup>1</sup> 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,<sup>2</sup> 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.”<sup>3</sup>
23. In a subsequent decision, *St John the Baptist, Peshurst*, the Court noted that, in answering question (1), it is necessary first to consider what is the special architectural or historic interest of the church in question.<sup>4</sup> It also observed that the grade at which the church has been listed will be highly relevant.
24. Various decisions of consistory courts since then have followed the principles set out in *Duffield* and *Peshurst*; they are still good law. Most recently, three decisions of consistory courts – *St Peter and St Paul, Aston Rowant*, *St Michael, Llanyblodwel* and *All Saints, Wellington*<sup>5</sup> – have highlighted the desirability of considering whether an identified need could be met in a way that caused less harm than the proposal forming the subject of a petition.

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<sup>1</sup> *Peek v Trower* [1881] 7 PD 21, Court of Arches, at paras. 26–8, and *White Waltham, St Mary (No. 2)* [2010] Fam 146, Court of Arches, at para. 11

<sup>2</sup> *St Luke, Maidstone* [1995] Fam 1, Court of Arches, at para. 8.

<sup>3</sup> *St Alkmund, Duffield* [2013] Fam 158, Court of Arches, at para. 87.

<sup>4</sup> *St John the Baptist, Peshurst* (2015) 17 Ecc LJ 393, Court of Arches, at para. 22.

<sup>5</sup> *St Peter and St Paul, Aston Rowant* [2019] ECC Oxf 3, and *St Michael, Llanyblodwel* [2019] ECC Lic 6 and *All Saints, Wellington* [2019] ECC Lic 7.

## Discussion

25. I consider first the point raised in *Penshurst*. St Michael's Cropthorne is a Grade I church; and I am in no doubt that it is of considerable significance as a building of special architectural or historic interest – although I note that it has been altered on a number of occasions since it was first built. The north (rear) elevation of the church is a part of its significance, as is any principal elevation of any church; but it is not of crucial importance. However, the largely intact pewed interior is a major element in that significance; as emphasised in the assessment by RDA, “the furnishings ... including the well-maintained oak medieval pews are rare, and the quality of these internal fittings is exceptionally high.”
26. In the light of that conclusion, I turn to the first and third of the *Duffield* questions. I consider that the addition of the modest WC extension on the north side of the church will clearly be an alteration to the external appearance of the church, in that it will be visible; but I agree with the CBC that its design means that it will be subservient to the main building, tucked between the two buttresses, with access via an existing doorway. It will thus involve minimal intervention with historic fabric, and will have no impact on any of the principal elevations.
27. As for the proposed alterations to the pews, the impact will be significant, but they will remain broadly in their existing form, with the ends re-used. The proposal retains the block of pews in its existing configuration, but simply shortened to match the block to the east – it certainly does not amount to the “removal” of the pews, as hinted at by Historic England. And it is significant that the new southern end of the pews is to the south of the columns (again, matching the position to the east). Clearly the joinery details will need to be carefully considered, but this should not be impossible. In short, I consider the impact on the character of this block of pews – for example, in the view shown on the front cover of the RDA assessment – will be relatively modest.
28. It is also worth noting that the question, as posed in *Duffield*, focusses on the impact of proposals on the significance of a church as a whole, not on that of the element in the church that would be directly affected. That seems to me the right approach, as any modest alteration may significantly affect some part of the church, but not necessarily the significance of the church as a whole. On the other hand, that argument should not be taken too far, as I am aware that a succession of modest changes to a historic building can cumulatively have a seriously detrimental impact on its significance.
29. I therefore conclude that the proposals would result in harm to the significance of St Michael's as a building of special architectural or historic interest. However, the harm caused by the proposed WC extension would be minimal, and the harm caused by the proposed shortening of the pews would be modest. I thus agree with the approach taken by the CBC rather than that of Historic England. And I note the absence of comment from the SPAB.
30. In the light of that conclusion, I have considered carefully the justification for carrying out the proposals. In doing so, I have in particular considered the alternative locations for each of the proposed facilities, as outlined earlier in this judgment. I also note that Historic England has expressed sympathy with the

parish's desire to provide them. And the CBC has also supported them in principle.

31. In short, I am entirely convinced by the case put forward by the parish's architect, and the various assessments of alternative locations, which I do not need to repeat. They comprise a model of how a parish should go about seeking to accommodate modern facilities in an important historic church such as this, with minimum impact on its special character.
32. I am mindful that there is a strong presumption against proposals that will adversely affect the character of a listed building, especially a Grade I building. But I have no doubt that such harm as will be caused by the works proposed in this case – which I have found will be modest – will be more than outweighed by the resulting improvements to the way in which St Michael's can be used, for worship and mission.

### **Conclusion**

33. I am therefore content that a faculty should issue to authorise the proposed works, subject to the following conditions (generally reflecting the provisos to the DAC recommendation):

- (1) All works shall be started within 36 months of the date of the faculty.
- (2) No work shall be carried out on the WC extension (to the north) until:
  - (a) full details of construction, finishes, new electrical works (including distribution board), existing and proposed drainage, and routeing of associated services, and
  - (b) an archaeological watching brief relating to the construction of the extension and the associated service runs

have been supplied to and approved in writing by the DAC or, in default of such approval, by the court.

- (3) No work shall be carried out on the creation of the tea point and the associated alterations to the pews until
  - (a) full details of construction, works to existing joinery, finishes, new electrical works (including distribution board), and routeing of associated services, and
  - (b) an archaeological watching brief relating to the associated service runs

have been supplied to and approved in writing by the DAC or, in default of such approval, by the court.

- (4) The works are to be carried out in accordance with the details and brief approved under conditions (2) and (3).

- (5) Access to the church and churchyard shall be afforded at all reasonable times before, during and after the works to an archaeologist approved by the DAC to enable the monitoring of the works and the recording of finds.
  - (6) All cabling within the new extension and tea point to be in FP200, or otherwise as approved in writing by the DAC.
34. It will be noted that the wording of the first two conditions allows for the two elements of the scheme to be carried out as discrete operations, which may be necessary if funding is not immediately available for the whole operation.
35. I have not imposed a condition to reflect proviso 1a to the recommendation – “Best endeavours should be made to incorporate the removed wood from the pew shortening into the new designs either within the extension or within the tea point” – not least as such a condition would not be enforceable. I am also doubtful as to whether it would be appropriate to include such recovered timber in the WC extension, which will be at a completely distinct location from the altered pews. But the DAC, when considering the details submitted for approval under the first two conditions, will no doubt be aware of this issue – and of the sensible point raised by the CBC as to the drainage arrangements.

**CHARLES MYNORS**

Chancellor

6 July 2020