

IN THE CONSISTORY COURT OF THE DIOCESE OF EXETER

In the matter of the Church of: Devonport: St Budeaux

Application reference: 2020-056279

JUDGMENT

1. By a Petition, dated 13th November 2020, Revd Stephen Beach and two churchwardens of the parish church of Saint Budeaux in Devonport applied for a Faculty granting permission for certain internal reordering of their church. In summary, the proposed changes involve the creation of a disabled access toilet, a relocated and expanded kitchenette area and the removal of some pews at the front and back of the main nave pew block to enable greater freedom of movement and flexibility of use.
2. The proposed changes have the support of the PCC and, subject to one caveat, have been approved by the Diocesan Advisory Committee ['DAC']. Three of the parishioners, who are concerned about the proposed changes, have set out detailed points of opposition in letters/emails to the Registrar. The points raised have, in turn, been the subject of written response from the Petitioners to which those in opposition have also replied.
3. In view of the reasoned objections that had been submitted I determined that it was necessary to visit the church in order to understand more clearly what was being proposed, and to hear directly, albeit on an informal basis, from those on each side of the debate.
4. On 12 October 2021, I visited the church, together with the Registrar, and met the following individuals:
 - Mr David Manners, Churchwarden
 - Ms Lyn Crews, PCC Member
 - Mr Louis Neale, a previous PCC member
 - Mrs Price, one of the Objectors
 - Amanda Le Page, Architect

5. Unfortunately, the date chosen for my visit fell at a time when it was not possible for the vicar and two of the three objectors to be present. Following my visit I was able to conduct meetings over Microsoft Teams with Revd Beach and Mr Peter Sparkes. It was not, however, possible to meet with Mrs Bates, despite a number of attempts to do so.
6. Under Faculty Jurisdiction Rules 2015, r 10.3, an 'interested party' (and all three of the objectors are 'interested parties') should be offered the choice of either becoming a formal 'party opponent' in the Consistory Court process, or simply leaving the Chancellor to take their letter of objection into account in reaching a decision without becoming a party to the proceedings. Formal notice, by letter, was sent to Mr Sparkes on 21 January 2021 and to Mrs Bates and Mrs Price on 4 February 2021 explaining the choice to be made by them under r 10.3. Neither Mr Sparkes nor Mrs Bates has applied to become a party opponent and both have, as I have indicated, submitted further written responses for the court to take into account. The Registry has not, at any stage, received any separate communication from Mrs Price and all communications with her have been made on their joint behalf by Mrs Bates. I had the pleasure of meeting Mrs Price and hearing directly from her during my visit to the church.
7. It follows that all of the written and oral observations that have been made by the three objectors are to be taken into account by the court, but none is a formal 'party opponent' within the proceedings. Whilst dealing with the strict procedural position, I wish to record that I have found each of the specific observations made by the three objectors to be focussed, pragmatic and of assistance in clarifying the issues that are thrown up by the various elements of the proposed reordering.
8. The Statement of Significance describes St Budeaux church and, rightly, stresses both its historical importance and its most pleasing aesthetic impact on any visitor. This Grade II* listed building is on the site of an original 12th or 13th century church. The church was extensively rebuilt in the middle of the 16th century and, some nine years after the building work was completed, it was the church at which Sir Francis Drake was married. At that time it will have been a country parish church near to the city of Plymouth, positioned in a prominent position overlooking the river Tamar. Whilst both the church's architecture and its stunning position remain unchanged, the hinterland around it are now wholly different from the scene that would have been observed by those attending that famous wedding. St Budeaux sits in what is now the suburb of

Devonport which, as the Statement of Need explains, is an area of significant social deprivation and economic need. Despite the startlingly different social and architectural context within which it now sits, the church maintains what one commentator has previously described as “an almost cosy” and welcoming feel. The congregation, whilst not very large, is active, and the building is plainly admired and cherished by all those who have communicated with the court over these proposed changes.

9. The Petition has been submitted to meet a number of stated needs:
 - a. provision of a disabled access toilet (the present toilet is in a cramped space and is accessed by a steep step down);
 - b. if, as is suggested, the only location for the new toilet is the current vestry, there is a need to relocate the kitchenette which currently sits immediately outside the vestry;
 - c. the creation of space in line with the central block of pews for the use of those in a wheelchair attending services [rather than wheelchairs having to be positioned in the nave aisle as is presently the case];
 - d. more generally, creation of additional space at both the East and West end of the central block of nave pews to allow for greater freedom of movement in those areas and, with respect to the space created at the front of the nave, to increase flexibility of use.

10. The DAC recommends that the proposed work be approved subject to a single caveat, namely that the existing door to the proposed WC is retained; and the timber to be used for the servery is confirmed prior to works commencing on site.

11. The DAC did not recommend consultation with any of the heritage bodies, and none has been consulted.

12. Having referred to the DAC it is right to record that in February 2021 the DAC chair wrote to the Petitioners to inform them that their application had been selected as meriting a DAC award. Since 2007 the DAC for the Exeter diocese has, each year, reviewed the applications that had been before the committee during the previous 12 months in order to identify those regarded as excellent in terms of the content of the proposals and/or the engagement with the Faculty process. In his letter to the petitioners the DAC chairman stated:

‘It is with great pleasure that I am able to inform you that your application for the DAC’s advice on the reordering of St Budeaux was felt to be suitable for an

Award as it was agreed that the design was appropriate to the context and will enhance the building both visually and in its use. The presentation was clear, comprehensive and to the point.

Naturally I am very pleased to be able to congratulate you on receiving this special recognition of the high quality of work submitted by you to the Committee. I would of course be most grateful if you could convey the Committee's congratulations to all those involved with your excellent application.'

13. In order to consider this application I propose to take each element in turn, identifying both the asserted merits and the matters of concern that have been raised.

Disabled Access WC

14. The Statement of Need puts the case for provision of a disabled access toilet in straightforward terms:

'The present toilet is inaccessible and embarrassing. We have wheelchair users in our congregation who have had to go home instead of staying for worship. Additionally, anyone feeling unwell is not going to risk the indignity of our present system.'

and:

'Our awareness of the importance of good accessibility has grown. This has been made more urgent as we have 4 wheelchair users in our congregation. Others tell us that if they are feeling a little fragile, they just won't come to church anyway. There are more voices now wanting to see change in this area'

15. In his email of January 2021, which is the primary statement of his objections, Mr Peter Sparkes accepts that there is a need for the provision of a disabled toilet and he further agrees that if one is to be provided then the chosen location is really the only viable option. He does, however, question the lack of privacy that those using the facility would have given its relatively prominent location off the western end of the side aisle. He is also concerned that the proposed kitchenette area is close by and there may be concern with respect to hygiene.

16. In their joint letter of objection, dated February 2021, Mrs Bates and Mrs Price accept that there is a need for a new toilet. They are, however, concerned that the proposed location makes it difficult to ensure sufficient privacy and they question how practical it will be for anybody to assist a disabled person without exposing the user to public view. They, too, point to the close proximity of the proposed kitchenette and,

separately, the potential for odours to be emitted from the toilet area into the nave if used during a service.

17. In his reply to Mr Sparkes' objection, the vicar points out that the location of the proposed toilet and kitchenette have been approved by the architect, the DAC and by the PCC in a unanimous vote. Alternative proposals, including those put forward by Mr Sparkes, were considered, but rejected on practical grounds.
18. The vicar's letter of reply to the points made by Mrs Bates and Mrs Price is in similar terms. Concern that a person using the toilet may be seen by those in the nave is rejected. The facility is to have a large door which opens in such a way that those inside will only be seen when they are exiting, and not before. The suggestion that odour may be a problem is also rejected on the basis that the door is sound, will close automatically and the facility will be externally ventilated.
19. In his further response, Mr Sparkes again accepts the basic case for the provision of a disabled access toilet located in the proposed position. He repeats his concern about the proximity of the kitchenette and he considers that those using the facility may have difficulty in accessing it when other church users are standing near the servery. In their further response, Mrs Bates and Mrs Price repeat that they accept the need for the provision of a disabled access toilet, but question some of the practical consequences.

Kitchenette and Servery

20. It is proposed that four of the short pews at the West end of the block running along the South wall be removed in order to make space for a kitchenette and servery in that area. The petitioners consider that it is necessary in modern times to be able to provide refreshments to those attending the church for services, meetings or other functions. The proposal is put forward on the basis that it is both modest and essential.
21. Mr Sparkes does not object to the provision of a kitchenette. His concern relates to its location. Rather than having the facility immediately adjacent to the new disabled access toilet, he suggests that a different position up at the East end of the South aisle, directly in front of the organ, is preferable. Mrs Bates and Mrs Price adopt a very similar position, stating that, if there has to be a kitchenette, it should be positioned away from the new toilet and near to the organ.
22. As already stated, the petitioners do not accept that the issue of hygiene, upon which the objection to the proposed location is based, is in fact going to give rise to difficulties.

Removal of Pews

23. The current pews, which were made by James Hine, were installed in 1876. They are in good condition. There is no suggestion that they are of any historical significance, but their presence undoubtedly contributes to the overall feeling of warmth and structure within this church.
24. In addition to removing the four short pews in order to make room for the new kitchenette, it is proposed that the next to last pew on each side of the nave is taken out and the rear pew moved forward into its place. The pews stand on a wooden plinth which will have to be adapted to accommodate this change. Finally, the front row of pews on the North side of the main aisle and the front two rows on the South side are to be removed. The justification for both of these changes to the main body of pews is to increase the space at the front and back of the nave so as to ease movement, and at the front, provide additional space for wheelchair seating and, generally greater flexibility of use if needed for performances or other activities.
25. Whilst Mr Sparkes accepts that the pews are not of any significant historical interest, he considers that the detriment to the internal landscape of the church arising from the proposed removal of pews is not justified by any suggested need.
26. Mrs Bates and Mrs Price believe that there has for some time been an ambition by some for the wholesale removal of the pews from the church. The issue has been raised from time to time and, although the current proposal is more modest, their letter of objection indicates that they see this application as being something of the thin end of a wedge. They consider that the pews represent the heart of the church. They question each of the reasons put forward as justification and, as with Mr Sparkes, their overall position is that the case for removal is not made out.
27. In response, the Petitioners argue that the visual impact of removing these pews is likely to be positive. When entering the church there will be a broader more open view of the West end of the nave which is likely to be more welcoming and less cluttered. Wheelchair users will have a choice as to whether to sit at the back or the front of the church, rather than, as now, in the central aisle. The increased flexibility generated by the space at the East end of the nave will be useful.
28. The final response of Mr Sparkes and Mrs Bates and Mrs Price is to repeat their overall position which is that the proposed changes are not needed. It is also suggested that

those members of the congregation using wheelchairs have indicated that they would feel uncomfortable if required to sit at the front of the nave.

Discussion

29. The various applications that fall for consideration within this Petition will only be granted if the evidence shows that there is a need for each of them and that the changes proposed are proportionate to that need when set against the default position which is that there should be no change to an historic building such as this, the importance of which is acknowledged by the attribution of a Grade II* listing. In the present case I have already recorded the particular welcoming and positive atmosphere that is generated by the current interior layout and furnishings of this old church. I have approached the decision in this particular case with that background very much in mind so that no change will be approved unless a clear need is established and the change can be achieved without unduly compromising the overall integrity of the character of the building.

30. Before turning to the details of the application, I should also observe that there is a palpable undercurrent within the communications that have come from the three objectors, the theme of which suggests that they object as much to the way in which the present plans have been developed and brought on, as much as they do to the substance. The implication is that the process has excluded some of those who care for and regularly attend this much-loved church. Whether that is so and, if so, whether it is because of deliberate action, misunderstanding, lack of foresight, or simply poor communication, it is of course regrettable. It is not, however, the role of the Court to investigate such matters and I am most grateful to all involved for the polite and mature manner in which they have engaged in communicating with me, so that focus has been maintained throughout on the fabric of the church and the various pros and cons of each proposal for change.

Disabled access toilet

31. The installation of a disabled access toilet in the proposed location on the South side of the nave is not actively disputed. There is an established need, both generally in terms of modern provision in a building to which the public have access, and specifically in this church where a number of the regular congregation have disabilities, for the introduction of such a facility. It is agreed that it is not possible to adapt the present toilet for disabled use, given the small space and the fact that access is via a substantial step. The proposed location of the new toilet in the current vestry is also

accepted by all to be the best, in fact the only, option if access is to be from inside the church.

32. Having had the benefit of seeing the current toilet facility, it is clear that, even for more able-bodied users, entry into and use of the small space may be something of a challenge and the whole experience is likely to be less than commodious.
33. Those objecting point to the potential lack of privacy for those who may resort to the toilet, given its relatively prominent location (where the entrance can be viewed by those seated in the rear pews in the nave). Whilst the space is larger than the present facility, a question is also raised over the ease with which a carer might enter or be in the space in order to provide assistance if needed. Further concern is raised on grounds of hygiene given the proximity to the proposed servery and kitchen, and there is a worry that unwelcome odour may at times escape into the servery and nave area.
34. The starting point in considering this element in the application is to acknowledge that all those who have made representations accept that there is a legitimate need for a disabled access toilet and that the chosen location is the only viable option. The evidence therefore establishes that the proposed change is necessary and the question, therefore, moves to consideration of the various consequent negative concerns that have been raised as to its operation; are those concerns sufficient to rule out a proposal that is otherwise justified and needed.
35. In short, and having considered this matter carefully both during my visit and since, I am satisfied that the potential concerns that have been raised, either individually or taken together, are not sufficient to justify refusing the proposal. With respect to the risk that a user of the toilet may be embarrassed by being on view to those in the rear of the nave, the dimensions of the room suggest that this is unlikely to be so. The vestry space has something of a 'Tardis-like' character in that the doorway is comparatively narrow when compared to the square room that lies behind it. Further, the plans show that the wc will not be placed directly opposite the door, but will be towards the East side and out of the direct line of view. The door itself will be substantial and will open outward. Each of these factors reduces the chance of inadvertent display of a person during their use of the facility.
36. Given the acknowledged need for a disabled access wc, the question of its proximity to the proposed kitchenette falls for consideration when looking at that latter proposal and it is not, in my view, a reason for refusing the application with respect to the toilet.

37. Concern over leak of odour is met, I accept, by the extractor that is to be installed above the wc which will vent out through the roof. Finally, the degree to which a carer may be able to assist a disabled person in the space should not be an issue given the substantial space shown on the plans for a turning circle for a wheelchair and where the wc unit will take upon only about $\frac{1}{4}$ of the depth of the room, leaving $\frac{3}{4}$ which should be sufficient for two people and a wheelchair to manoeuvre.
38. The proposal involves the conversion of a vestry and will not impact on the internal architecture of the church itself. As such the heritage impact is not extensive.
39. Having considered these issues, and in particular having noted the common accord as to the need for this facility and the acceptance that it can only be in this location, I am satisfied that permission should be given this element of the application.

Kitchenette and Servery

40. In relation to the kitchenette and servery, there is broad acceptance of the need for improvement in facilities for catering provision within the church. The issue is more one of location rather than of justifying the need. I have rehearsed the arguments for and against the proposed location along the North side aisle. Those objecting suggest that a better location would be at the East end of that aisle, near to the organ. The competing proposals have been long debated in the PCC, which unanimously prefers the proposed location. That choice has been endorsed by the DAC, which has marked the quality of the overall proposals with an excellence award on the basis that the design is appropriate to the context and will enhance the building both visually and in its use.
41. In relation to the issue of hygiene, on the basis that the proposed location is too close to the new disabled access toilet, it is of note that this is not a concern for the DAC and, of course, the proposal has been put forward by the church architect who must take account of such matters. In proceedings of this nature, those objecting should not be expected to provide professional evidence of their concerns, but it is the case that the court does not have any evidence that there is, or may be, an enhanced risk of unhygienic conditions if the kitchenette is in the proposed location, as opposed to some 10 or 15 feet further away from the toilet. Other than raising the general concern, those objecting have not explained how germs may be carried from the toilet to the kitchen area. If transmission is achieved through poor hygiene practice in terms of insufficient

hand-washing, for example, then presumably the risk will apply whether the kitchen is near to the toilet or, indeed, on the far side of the church. It is not easy to understand how germs could travel the distance through the air or in some other unspecified manner given that a solid, self-closing door, which opens out towards the counter will be in place. Further, general experience of visits to small tea shops, cafes and similar premises indicates that it is not uncommon for the entrance to a toilet to be some few feet away from the area for food preparation. The key to good hygiene is good training and practice for those handling the food. In my view, the case that the proposed proximity between toilet and kitchenette creates an enhanced hygiene risk is simply not made out.

42. Having seen the two competing locations during my visit to the church, the Petitioner's preference for the facilities to be down the side aisle, rather than at the front of the church near the organ, is easy to understand. For there to be tea and coffee ready and available immediately at the end of a service, those working in the servery are likely to be engaged in preparation during the closing stages of the act of worship. It is clearly preferable for this activity to be conducted on the side and towards the rear of the nave, rather than up front and in full view.
43. In the light of my clear conclusion on the only significant objection to the location of the kitchenette, namely that relating to hygiene, and given the general acceptance of the need for improved facilities, I consider that the case for granting permission for the proposed kitchenette and servery is made out and that the modest removal of pews and construction involved is necessary and proportionate. Permission for the proposed kitchenette and servery will therefore be granted.

Removal of Pews

44. Before turning to the detailed, and limited, application for the removal of pews that is made in the present Petition, I should be plain in stating my overall evaluation of the importance of the general body of pew furniture in this church. Whilst no application has been made for the wholesale removal of all the pews, and the Court has not therefore had any evidence as to the pros and cons of such a proposal, it is right that I should indicate my preliminary view if such an application were to be made.
45. In some churches the total removal of pews is justified and this Court has on a number of occasions granted permission in such cases. My preliminary view in relation to St

Budeaux is, however, that the body of pews in this small church are an integral part of the overall interior architectural environment. It is indeed a church which has a 'cosy', warm and welcoming feel. How such a response is generated in the human visitor is, of course, likely to be due to a whole range of features, but the solid and ordered body of pews would seem to be a prominent component here. It is easy to understand why Mrs Bates and Mrs Price consider that the pews represent the heart of this church. Although the pews may not be of historical or artistic note, it is simply their tone, structure and presence in the overall interior balance of the building which is significant.

46. In determining the present application, the Court is doing no more, and should not be seen as doing any more, than deciding whether the application to remove the limited number of pews that is under consideration should be granted. Grant of permission now, should not be seen as the thin end of any wedge, or the indication of a green light for the removal of a greater number of pews in the future.
47. Turning to the application itself, having walked through the areas at the rear and at the front of the nave, the need to free up some space in these two places is clear to see. When the kitchenette is in use, the space for users to gather immediately in front of the counter will be limited. There is a need to open up additional space near to, but away from, the immediate counter area.
48. More generally, the increased number of wheelchair users justifies the creation of a space for them to occupy during services other than being positioned in the central nave aisle at the end of the pews. Removal of the front pews, as proposed, is in the overall body of furniture proportionate in order to create a space for wheelchairs. It will also open up a flexible space for use during worship, for concerts or other activities.
49. I have already indicated my preliminary view as to the importance of maintaining the overall body of pews in this church. I do not, however, consider that the current proposals will compromise the impact and importance of the remaining pews in the interior landscape of the building. As have the PCC and DAC before me, I am persuaded that the needs that have been identified justify these proportionate proposals and that the freeing up of space in these two areas will be of benefit to those using the building. The application for the removal of pews at the front and rear of the nave will be granted.

Conclusions

50. It follows from the decisions that I have already explained, that I shall direct that a Faculty be granted in the terms sought in the Petition, subject to a condition that the caveat attached to the DAC Notice is satisfied.
51. Before ending this judgment, I wish to repeat, firstly, what I have said about the assistance that I gained from the focussed and pragmatic submissions that have been made by the three objectors. I have not agreed with them, but I respect their views and have valued their contributions.
52. Secondly, I repeat my gratitude to one and all for the civilised manner in which this process has been conducted.
53. Thirdly, and finally, it is clear to this outside observer that the promotion of these proposals has caused, to some degree, a fracture in relationships amongst the small group who attend this church, which is deservedly much loved by them all. It is to be hoped that the issuing of this judgment, with the final determination of the outstanding issues, can be a moment at which a line can be drawn, so that the current dispute is at an end, and so that bridges can be built, lessons learned and communication improved.

The Rt Hon Sir Andrew McFarlane
Chancellor of the Diocese of Exeter
31st January 2022