

Neutral Citation Number: [2017] ECC Swk 5

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF THE CHURCH OF ST ANDREW, EARLSFIELD

AND IN THE MATTER OF A PETITION BY REVD JONATHAN BROWN, ALEXANDER
NORTHCOTE AND DAVID PRATT

JUDGMENT

Preliminary

1. This is the petition of the Revd Jonathan Brown, Alexander Northcote and David Pratt, Vicar and Churchwardens respectively of St Andrew's Church, Earlsfield. It seeks a faculty for:

Removal of the pews in the nave and their replacement with new Theo oak chairs (from Chorus Furniture) and alterations to the west end of the nave comprising the removal of the existing kitchen and storage installations, construction of a new kitchen/café in the north aisle, installation of disabled toilet facilities in the north-west corner, the creation of more flexible storage arrangements in the north aisle/transept and replacement of current west door porch with wood and glass vestibule with noticeboards inside.

2. At a meeting on 26 May 2016, the PCC resolved without dissent for a petition to be made for a faculty in respect of the works.
3. Public notice of the petition in accordance with the rules was given between 22 December 2016 and 20 January 2017 on notice boards inside and outside the church.
4. By Notification of Advice dated 22 December 2016, the DAC recommended the proposed works to the Court.
5. I visited the church on 23 May 2017, when Mr Brown and Mr Pratt explained the proposals to me. I am grateful to them for their assistance.

Introduction

6. Earlsfield is a suburb to the north west of Wimbledon that grew up around Earlsfield Railway Station after it opened in 1887¹. The Statement of Needs describes Earlsfield as a vibrant area: there are a significant number of young families who have recently moved there as well as many long standing residents; and as a whole there are people from all ethnic backgrounds.
7. There is a service of Holy Communion each Sunday at 10 am and a mid-week Communion at 10.30 am. The church has Brownie and Girl Guide groups and Parents/Carers and Toddlers Group and is host to two local choirs. Nonetheless the church building is closed and inaccessible more than it is open.
8. The proposals is to establish a Community Café within the church. The word "community" in front of "café" indicates that the aspiration is to provide something more than just a café: it is hoped that it will be possible to stage activities in conjunction with the café. These could be classes for adults and clubs for children. Moreover the emphasis would be on home produced and ethically sourced

¹ The station is apparently named after a house which formerly stood on the site. I am not aware of why the house was so called.

products, giving the opportunity for food education². Thus would be provided a valuable new community facility; and with the consequence that the church would be open during the week and on Saturdays. The replacement of the pews³ by chairs will facilitate the flexible use of the nave, in particular at times when the café is functioning.

9. The details of the Community Café project (and a business case in respect of it) have been put together by Mrs Meg Fry and if a faculty issues, she will run it. She is an experienced retail manager, latterly for IKEA, who feels called to this work.

The Church

10. The Church is listed, Grade II. Being a comparatively recent listing (19 April 2000), the description is a full one. It is reproduced in an **Annex** to this judgment.

11. EW Mountford is perhaps principally remembered as the architect of the Old Bailey. I can summarise the list description by saying that St Andrew's is a fine, red brick, Gothic building dating from the latter part of the nineteenth century⁴. Those who know this part of South London will, when they have passed by, remarked upon the fine external clock, which is a memorial to King Edward VII. Inside the church, there have been some changes to its original form. In the 1980s, a Holy Table on a low platform was introduced at the east end of the nave, in front of the chancel. Also, a narthex was created at the west end. This involved the installation of WCs in the north porch; the installation of two "pods" at the north west and south west corners of the church to provide a kitchen and storage space; and the creation of an internal porch to the main west door⁵. The creation of the narthex involved removing a number of pews.

The proposals

12. At the west end of the church, a new internal porch will be provided in place of the existing internal porch. The existing wooden doors will be made to open outwards and behind them will be new glass doors. The two pods will be removed; in place of that in the north west corner, there will be new WCs, including a WC for those whose mobility is impaired. At the western end of the north arcade there will be a kitchen/café counter. The pews will be replaced by wooden chairs of good quality.

Comments on the proposals

13. The Registry has received three letters in support of the proposals, namely from Mr Roger and Mrs Marion Endicott, Hannah Swithinbank and Denise Mumford (a retired Reader at the church). The PCC Treasurer, Paul Lickman, has sent an e mail supportive of the proposals. The Archdeacon of Wandsworth, the Venerable John Kiddle, has written to support the petition. All these correspondents speak of the value of the proposals, as they see them, and the care with which they have been prepared.

² The possibility exists of using the yard to the north of the church as an allotment garden.

³ The pews are more accurately described as benches, which are 12 feet long.

⁴ Famously (at least locally), on a rainy Sunday evening in the winter of 1970, John Betjeman attended service and was made welcome. Like most visitors he was unprepared from looking at the church from the outside to discover how fine it was when viewed from the inside.

⁵ The kitchen has since been renewed. A screen which was erected to divide the narthex from the worship space was felt to be visually unsatisfactory and removed in 2011.

14. An Inspector employed by Historic England visited the church on 15 July 2016 when then the proposals were explained to him. In the light of this, Historic England decided that it did not need to comment⁶.

15. By an e mail dated 8 July 2016, David Andrews, an officer of the London Borough of Wandsworth in the Conservation and Design Group, responded as follows:

I would have no objections to the proposed works within the church. Disruption to the fabric of the building has been minimised and the new structures and fittings seem sympathetic and appropriate.

16. By a letter dated 14 August 2016, the Victorian Society responded as follows:

The [Southern Buildings Committee] remarked at the quality of the building. While simply composed of brick, the interior is elegant and dignified and the church is deserving of a sensitive and sophisticated scheme. We acknowledge that the removal of the current porch and west end screen would be positive changes. Furthermore, in principle, we have no objection to the installation of a café. However, the proposed kitchen and new porch lack the architectural quality of the rest of the building and we would object to their installation in their current form. Both structures are intrusive; the kitchen disrupting the arcading of the aisles; and the style of the porch is especially incongruous with the rest of the building in its materials and form. The proposed structures would cause serious harm to the building. An experienced conservation architect should be employed to design a scheme for the church which better respects its architectural quality.

The pews are significant in the church. They add structure and richness to the interior which would be lost by their replacement with loose chairs. The reason given for their removal is that the parish desires flexible space. However the pews are moveable and already offer a degree of flexibility. In addition the west end would remain a flexible space when the café is not in use. Simply stating that flexibility is desired is not sufficient justification to outweigh the harm caused by the removal of the pews.

17. In the light of the comments of the Victorian Society, I asked the DAC to prepare a document for my benefit addressing the proposals in the context of the Duffield guidelines⁷, giving the Petitioners and the other interested parties (including the Victorian Society) the opportunity to comment thereafter. I incorporate the helpful material with which I was supplied as a result of this exercise into my assessment of the proposal using the *Duffield* guidelines.

Approach

18. In *In re St Alkmund, Duffield*⁸, the Court of Arches gave guidance as to the approach that it suggested Chancellors should take in considering proposals for the alteration of a listed church. The Court suggested that the following questions should be addressed:

- 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–*

⁶ It has since had the opportunity to comment on plans which shows modest revisions to the scheme; it has not altered its position that it did not need to comment.

⁷ The *Duffield* guidelines are a series of questions which the Court of Arches suggests are used to address proposals to alter a listed church: see further paragraph 18 below,

⁸ [2013] Fam 158.

28, and the review of the case law by Bursell QC, Ch in *In re St Mary's Churchyard, White Waltham (No 2)* [2010] Fam 146, paragraph 11. Questions 3, 4 and 5 do not arise.

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

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

5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *In re St Luke the Evangelist, Maidstone* [1995] Fam 1, 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed.

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

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

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

20. I shall consider these questions in turn.

21. I think that the special architectural interest of the church and the special historical interest of the church, and the character of those interests are matters which can be articulated together. St Andrew's is a fine, lofty, Gothic church dating from the latter half of the nineteenth century containing a number of features of particular artistic merit and historic interest. The pew benches are not among those features.

22. The DAC explain that there will be some harm arising from the proposals. The insertion of the kitchen into the north aisle will impinge upon that space in a way that, as the Victorian Society observes, does distract the arcading of the aisles. The removal of the pews, which are apparently contemporaneous to the building, will result in some loss of historic interest. It is hard to see how the replacement of one modern internal porch by another causes harm; I think in fact that the replacement may be an improvement.

23. The Victorian Society asserts that the new structures would cause “serious harm”.

24. As the Society will appreciate, “serious harm” is in the nature of a term of art, being referred to in the fifth of the *Duffield* questions. Moreover, in *In re St John's Church, Waterloo*¹⁰, I expressed the view that, in that question, “serious harm” has the force of “substantial harm”, referred to in paragraphs 132 – 134 of the National Planning Policy Framework¹¹.

25. I do not think that the harm in the present case can be so categorised.

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

¹⁰ [2017] ECC Swk 1.

¹¹ See paragraph 213.

26. The kitchen is situated at the west end of the church, where it is least intrusive, in a part which has already been cleared of pews to form a narthex. I think that a finding that the proposal will cause some harm to the listed building is not strictly consistent with the view that it is “sympathetic” but I imagine that what the officer of Wandsworth LBC is summarising by using this adjective is that, against the background of very modest harm, the proposal is not unsympathetic and, as he expressly adds, “appropriate”. Finally the work to provide a new internal porch and the kitchen is reversible. I consider that this means that any harm that it causes is significantly less than it otherwise would be¹². The pews are not intrinsically significant and I do think that their loss would significantly detract from the character of the church¹³. The pews will be replaced by good quality wooden chairs.
27. The insertion of an internal porch into the church might be viewed as harmful were it not the case that it is replacing the internal porch that was installed in the 1980s. As it is, I do not think the new porch can be categorised as harmful.
28. It is worth noting that aspects the proposals will positively benefit the church as a listed building. The removal of the pod in the south west corner will reveal the south aisle window by Martin Travers. The removal of the WC from the north porch will restore the north porch to its original function: a practical example of how the reversibility of works in a listed church may, in due time, be of benefit to the building in its character as a listed building. Making the existing west doors open outward and installing glass doors behind them (together with the fact that there is a functioning café in the church) will mean that passers by will be able to see into the church; and will be able to enter and look around. These benefits are significant.
29. I consider that there is a clear and convincing justification for carrying out the proposals. Viewing the matter broadly, the community café is an exciting project which is valuable in its own right and which will also be hugely beneficial in enabling the church to be kept open during the working day. Looking at the matter more narrowly, the Petitioners have looked carefully at alternative locations within the church for the sort of facilities that they have in mind and have concluded that the location that they have identified is the least intrusive. They have reached that conclusion in consultation with the DAC, which has recommended the proposals to me. In terms of the benches, the flexibility that flows from the fact that they are not fixed is limited because they are so heavy to move. As to the need for flexibility, it is envisaged that there may well be occasions when it will not be desirable to disrupt the operation of the café but there will be a need for space within the church for, for example, a meeting of the Mothers’ Union.
30. In conclusion, this seems to me to be a clear case where significant public benefit (including benefit to the listed building considered as such) outweighs modest harm so that I give a positive answer to the fifth of the *Duffield* questions.
31. The Victorian Society raises a specific further objection to the proposals as presently constituted. It says

The [revised drawings] are still overly diagrammatic. They do not provide nearly enough information to judge what the porch will look like; frankly. We have no idea from the information

¹² In *In re St Alkmund, Duffield*, the Court of Arches suggests that reversibility may be a positive benefit of a proposal (see paragraph 93). The difference in approach (which suggests that reversibility may be a weightier factor than I allow for) cannot possibly make any difference in the present case.

¹³ Those interested in considering how the church was originally pewed will be able to see in the Lady Chapel benches of the same pattern as those in the nave; and there will be a photographic record of the interior of the church as it now is (see paragraph 37 below).

provided whether or not its final appearance will be of an acceptable quality. The DAC's letter of 12 April 2017 states that "the DAC has taken much trouble to reassure itself therefore that the final product would be of sufficient quality". In the absence of detailed drawings we cannot see how the DAC could possibly do this. In the secular planning system, outline applications for listed building consent are unacceptable, for good reason, and the same should apply to the faculty system. While we are sympathetic to the financial constraints under which the parish is operating, this cannot exempt them from the minimum requirements, in terms of information provided and design quality, for significant alterations to a listed building.

32. This is a separate point to the Society's objection to what it sees as the intrusive form of the proposed new kitchen and porch; what the Society is saying is that, by reference to the plans provided, it cannot assure itself as to the intrinsic quality and detailing of the work.
33. The background to the admittedly diagrammatic nature of the plans is as follows. It is proposed that the works will be carried out at a favourable rate by Babbage Construction Limited on a design and build basis. The background to the firm working on a favourable rate is that Alex Fry, the husband of Meg Fry, is a director of the company; the firm has considerable experience of the sort of work that will be involved, albeit in the context of houses rather than churches. The DAC has satisfied itself as to the quality of work done by Babbage Construction Limited.
34. As the Victorian Society points out, this is an approach which probably could not be pursued in the secular system. Further, it is not usually the way that matters are pursued in the ecclesiastical system. However, one calls to mind the dictum "horses for courses". The church is listed Grade II (i.e. not Grade I or Grade II*). The work proposed is reversible. To require detailed plans to be drawn up would add significant costs and some delay to the project (and would not address the principal objection of the one objector to the project). It is also relevant that neither Historic England nor the local planning authority have expressed concerns on this head.
35. The DAC had to consider whether they would ask for detailed plans to be submitted. It decided that it would not in the unusual circumstances of the case. This was for two reasons. First, it considered that the work should be subject to the supervision of the Church's Inspecting Architect. Second, it recommended that specific matters should be subject to conditions imposed on the faculty.
36. I think that this approach is acceptable. I accept that it is possible that the contract with Babbage Construction Limited may "go wrong" just as a contract with any contractor may go wrong. But this contractor clearly is a reputable company which is responsible for high quality work. In circumstances where one is looking at reversible work, I do not think that the effect of the contract "going wrong" will be worse than if I were at this stage to make it a condition of the grant of a faculty that detailed plans be prepared¹⁴. The situation in the present case is an unusual one and I would not expect it to be often repeated elsewhere, if at all.

Formal decision

37. I direct that a faculty should issue. It will be subject to the following conditions:
-) the work is to be undertaken subject the supervision of the Church's Inspecting Architect and completed to his satisfaction;
 -) the setting out for holes, chases and fixing points for the new structures shall be approved on site by the Church's Inspecting Architect;

¹⁴ I should say that I have no reason to think that the contract will go wrong. I am very grateful indeed for the great amount of work that Mr and Mrs Fry have put into this project, and for their generosity.

-) the fixing of the proposed secondary glazing to the stained glass windows shall be agreed on site with the Church's Inspecting Architect;
-) the final shade of colour for new painted plasterboard surfaces of the new structures shall be agreed on site with the Church's Inspecting Architect;
-) the ceiling of the internal porch shall be clear of the mouldings and details of the existing arched opening in order to leave the arch visible;
-) the bulkhead detail to accommodate the outer glass pivot shall be agreed with the Church's Inspecting Architect¹⁵;
-) details of the fitting of the existing floor with the new porch are to be agreed with the DAC;
-) details of the kitchen extractor flue to be agreed with the Church's Inspecting Architect¹⁶
-) the Petitioners shall make a photographic record of the interior, to be kept with the Church's records; and make copies available to the archive of the London Borough of Merton and the London Metropolitan Archive.

38. In the event of the Petitioners and the Church's Inspecting Architect or (as appropriate the DAC) being unable to agree, the matter is to be referred back to the Court.

Concluding remarks

39. The Victorian Society regrets that, following the Society's response to the initial consultation, the Petitioners did not correspond with them: further consultation could have resulted in the development of a more sensitive scheme.

40. Although it is fair to say that the Victorian Society's initial response made it clear that the Society did not have an in principle objection, the letter dated 24 August 2016 did not invite further discussion. Moreover the objection that this letter conveyed (albeit not an in principle one) was at odds with that received from Historic England and the local planning authority. With the benefit of hindsight, it seems that there may have been merit in the Petitioners meeting the Victorian Society (ie before I asked the DAC for further assistance, with the Victorian Society being given the opportunity to comment further). But I do not think the Petitioners can be criticised for failing to organise this. As it is, I think it unlikely that the Petitioners and the Victorian Society would have established much common ground, the Petitioners being committed to the approach they had adopted, which had commended itself to Historic England and the local planning authority.

41. However I do think that it is helpful to add that once the Victorian Society had responded in the terms that it did, an objection to the proposals was in play which, even if it did not result in the Victorian Society becoming a party opponent, meant that that I would in due course have to consider that objection and assess it in the light of the *Duffield* guidelines. In the present case and in other cases I have dealt with, the Petitioners have been surprised that in order for such an objection to be dealt with it has been necessary at the post-petitioning stage for me to make further inquiries and ask for further submissions – a process which, apart from anything else, entails delay. If, immediately following such an initial unfavourable response from the Victorian Society (or other heritage consultee), there is a discussion with the objector, it is always possible that the objection can be resolved; and even if not, it is likely that the issues between the parties will have been better defined before the petitioning stage. It will be helpful if the DAC could suggest such early discussion when they are first consulted by parishes on proposals to which there could be heritage objections.

¹⁵ This potentially will require revision of the detail shown on Drawing 10794-14 (Rev 1).

¹⁶ It is possible that it will require planning permission. The DAC have pointed this out to the Petitioners.

42. Finally, a small point. The churchwardens' staves are currently incorporated in the arrangements at the west end of the pewed area. I hope that it will prove possible to find a place where they can be visible within the body of the church, at least during services. I think that the tradition that the symbols of the authority of the two leading lay representatives of the parish are thus visible is a good one.

PHILIP PETCHEY
Chancellor

31 May 2017

ANNEX

Parish church, 1889 - 90, west end completed 1902, by EW Mountford. Red brick and stock brick, brown tile roofs, limestone and red brick dressings. Continuous nave and chancel, north and south aisles with porches, north and south transepts, south chancel chapel, north vestries. West end; buttressed angle turrets, faceted above eaves level, that to left carrying an open belfry with tall gabled lights, that to right stair turret with corresponding blind arcade, each surmounted by faceted stone roof. Oak door to each from linking gallery behind parapet. West entrance, pair of oak doors under chamfered brick arches. Above, three lancets between stepped buttress shafts, and under giant brick arch with deep raked stone cill. Blue brick diaper work to parapet; set back, gable with doorway flanked by leaded lights, gable cross. Clock, designed by Mountford, dated and inscribed Edward VII, 1910, installed 1911, iron frame with filigree decoration. Nave in four bays, the western two bays 1902, simple two-light windows between buttresses; aisles, three bays each with two lancets, to the central bay lancets paired with a single cill; the western bay a porch, a pair of oak doors under elliptical brick arch, small foiled light under gable cross, roof swept below eaves. Buttressed south transept; offset to right, shallow porch set tightly between buttresses, entrance under chamfered brick upper arch. Above, five-light foiled window under narrow vent, each with slender cill band. Chancel in three bays; triple lancets under hoodmoulds appearing as relieving arches between stone dressed buttresses, eastern angle buttresses. Two bay south chapel, paired lancets to south, circular east window with inset St Andrew's cross. East end; tall slender profile articulated as three narrow buttressed bays. Slender flat shafts, superimposed at outer bays, rise from buttresses; between, two-light windows with slender tracery under continuous hoodmould carrying across buttresses to north and south elevations, similarly treated cill band. Above, two lancets, flush stone kneelers, small gable cross. North elevation as south except no transept doorway. Attached vestries to north; choir vestry aligned with church, three-light stone dressed east and west windows, linked to church by single storey vestry with ridge stack, arched doorway to west. Interior. Western two bays of nave, 1902, treated identically to earlier build. Stock brick with red brick and stone dressings. Red brick to aisle cill height, with upper two courses also in red brick, red brick diaper work to upper tier of nave and chancel above red brick band, red brick window arches, reveals and cill bands, red brick arcades on stone piers. Nave arcade in five bays, deep red brick arches on stone drum piers. Chancel arcade of brick on square stone piers with shafts at the angles, that to west partly in red brick, some with figure or grotesque stops, one said to be the Architect. Chancel articulated by twin stone shafts carrying pair of roof trusses. Nave and chancel crown post roofs on slender stone shafts and corbels, cutting through cill band. Monopitch aisle roofs with exposed purlins and rafters. West end; a

simple blank wall, lancets under slightly pointed rear arches, all of red brick; angle shafts in red brick. Central aisle paired lancets under a deep single rear arch, with red brick hood mould, reveals and raking cill; flanking bays similarly detailed but each lancet under a single arch springing from central red brick pier. Clerestorey windows set back under red brick rear arches, linked by continuous slender red brick bands, with diaper work above springing level. East end; three cusped two-light windows under quatrefoil set in deep red brick rear arches; below, blind arcade in red brick with cusped heads in stone, above, two short lancets, the reveals echoing the west end. Reredos behind curtain. North and south windows treated as nave, but with steep raking cills. Two bay sedilia, attached piscina and aumbry under cusped stone arches with dragon stops. Chancel screen, in slender wrought iron, set on brick plinth, installed 1920's from church of St. Mary, Trinity Road. North screen, timber, installed 1935. Chapel screen of wrought iron by Starke Gardner & Co. South chapel; east window in form of St Andrew's cross depicting head of the saint, set in stone rose with small circular lights, under cusped stone arch. Altar front, oak with five painted panels depicting saints but with contemporary heads, said to be portraits of those associated with the building of the church. Reredos, a painted triptych of the Transfiguration and flanking angels. Font, resited in south transept, terracotta with blue stone shafts, Doulton & Co., by G Tinworth, with counterbalanced oak lid. Octagonal, with four scenes depicting Finding of Moses, Hannah bringing Samuel to Eli, The Saviour in the Manger and The Saviour blessing little children. Pulpit, a low octagonal stone drum with pierced oak upper tier reached by stone steps. Freestanding brass lectern, Starke Gardner & Co. designed by Mountford. Pews, moveable oak benches¹⁷, those from western two bays removed. Pendant light fittings, that over pulpit not modified. Glass; windows depict British saints, east window by Heaton, Butler and Bayne, south aisle window by M Travers. Vestry retains simple fireplace, choir vestry lined with cupboards, doors and cupboards with reeded architraves.

¹⁷ This is an error. The benches are of pine.