

**Neutral Citation Number: [2021] ECC Chr 1**

**In the Consistory Court of the Diocese of Chester**

**In the matter of Edgeley and Cheadle Heath: St Matthew**

## **Judgment**

### **Introduction**

1. By a Petition dated the 29<sup>th</sup> January 2021 the Vicar and Churchwardens of the Grade II church of St Matthew seek permission for various alterations to and re-ordering of the church interior.
2. There are some thirteen elements to the proposals noted in the Schedule of Works, the bulk of which are uncontroversial and require little or no comment here.
3. Five aspects of what is proposed do however require greater consideration:
  - (a) The re-modelling of an internal timber porch to include glazed oak entrance screens and a ceiling access hatch;
  - (b) The removal of central aisle pews and their replacement with a suitable lightweight, stackable chair;
  - (c) The introduction of a nave dais with a shallow ramp, with the communion rail relocated from the sanctuary;
  - (d) The removal (and disposal) of servers' stalls on either side of the chancel to create a functional prayer space;
  - (e) The relocation of the font from the tower to a new stone plinth to the south east of the west entrance, including necessary under floor works.
4. Somewhat misleadingly, the estimated cost of the project set out in the Petition was stated as £53,700. This immediately struck me as an optimistic figure. In fact, it was explained, this was merely a figure for a (notional) 'Phase 1', the true cost being estimated at some £117,000.
5. It is important that estimates given in Petitions are accurate, or, at the very least, adequately explained or qualified.
6. More encouragingly, it appeared the parish was in fact in funds for the project from a mixture of parochial giving and grant assistance.
7. Although the Petition was formally unopposed, aspects of the works, as I shall explain, were contentious and, in particular, reasoned objections and concerns had been raised in writing by both the Victorian Society ('VS') and Historic England ('HE') which plainly warranted careful appraisal.
8. I directed special notice to each. Neither group wished, for reasons I can understand, to become a party. I have taken their written objections and observations into account.
9. Ordinarily, a Petition such as this would readily have been capable of determination upon written representations.
10. Unfortunately and, in this diocese most uncharacteristically, an unwelcome act of illegality by the petitioners occurred in March/April 2021 when, without faculty, there was a purported sale of some twenty pew/benches from the nave. Their availability had been

announced on a Sunday and via social media, and disposal to a variety of interested parties, locally and further afield, had occurred at £70 per bench.

11. I was alarmed to be informed of this blatant pre-emption of the faculty process, as were the Archdeacon and the Diocesan Advisory Committee (DAC).
12. The Vicar, as I shall explain, was immediately contrite and shouldered full responsibility. I directed steps be taken forthwith to recover the benches and that purchasers be advised property had not passed. Monies received were to be returned.
13. Approximately half the benches were successfully recovered. It followed that others were not.
14. Socially distanced arrangements during the COVID pandemic had meant that the benches themselves had not been in use for some time. Existing chairs from the side aisles had been used in the body of the nave for the reduced numbers attending Sunday worship and community events.
15. I determined that a Consistory Court hearing, in person, must be held for the full circumstances of this most unfortunate situation properly to be explored.
16. The hearing occurred in the church on the morning of the 17<sup>th</sup> July 2021. The petitioners were not legally represented.
17. I welcomed the opportunity to visit and inspect the church, to hear oral evidence from the Vicar, from Mr Taylor, Chair of the Buildings' Group and former Churchwarden, and from Mrs Mitchell, a petitioner and current Churchwarden.
18. I also had available in a substantial hearing bundle, witness statements from those individuals and from twelve other supporting witnesses whose personal attendance I had not required.
19. Those witnesses included Mrs Robinson, the parish's obviously effective Community Development Manager, the Revd. Brian Statham, priest in charge 2003-2010, several local councillors, the local primary school Head, the convenor of a community toddler group and a number of leaders or representatives of regular charitable and other 'user groups'.
20. The wealth of written support for the project was striking.
21. I also had a full and careful letter of the 21<sup>st</sup> May 2021 from the Archdeacon of Macclesfield, whose personal attendance at the hearing was prevented by a prior personal commitment, the Statements of Significance and Needs prepared by the parish, the drawings and plans considered by the DAC and a written response from the DAC to the observations and concerns (principally) of the Victorian Society.
22. I am grateful to the Registrar and to the Vicar and Churchwardens for the practical arrangements made to enable an effective hearing in difficult times.
23. Regrettably, it became apparent that this was not the first instance of illegality in the life of this parish or building. It was beyond the scope of the present hearing to explore how precisely it was that, in 2010/11, prior to a merger of three congregations in the present building which came about in 2011, various other significant works were carried out without faculty.
24. A DAC Certificate (as was then the description) dated the 6<sup>th</sup> August 2010, recommended, inter alia,
  - (a) Replacement of the pipe organ with a Makin 'Westmorland' digital organ;
  - (b) Removal of all the internal organ workings (keeping the facade with pipes) to create a storage room for the church (alterations to form a door in side panel);

- (c) Removal of old pine pews from north and south aisles to be replaced by chairs.
25. Despite the certificate making clear on its face it did not give permission to proceed unless and until a faculty was granted, it appeared these works had been done – without faculty – now a decade or more ago.
  26. No application for a confirmatory faculty appeared to have been made. I am presently unclear as to why it was the matter was not clarified (and the Petition followed up) rather earlier by the Registry, the then Archdeacon or the DAC.
  27. Mr Statham's statement suggested that the north and south aisle pews were 'temporarily removed' in 2008 to allow access for the installation of radiators and to provide access for redecorations. Whilst stored, they were found to have deteriorated, been contaminated by pigeon faeces and to have woodworm.
  28. It was said that the then Archdeacon, when consulted, had advised they 'should not be returned' and Mr Statham had thereafter 'considered the matter closed'. He left to take up a new appointment in July 2010.
  29. I was told the intention had been to apply for a 'retrospective' faculty, but this had, somehow, been 'forgotten' until preparation for the current Petition.
  30. This chapter, I regret to say, has plainly been irregular and unsatisfactory.

## **The Church**

31. The church is an imposing building constructed in 1855 in hammer-dressed sandstone with a tower added in 1866. The exterior is tall, slender and elegant and is studiously Gothic in its design.
32. It is listed Grade II, the entry citing three reasons for its designation: *'A well proportioned and accomplished Gothic Revival church of the mid 19<sup>th</sup> century. A good example of the influence of the Ecclesiological Movement. As a largely unaltered example of the work of the notable Manchester architect and restorer J.S.Crowther'*.
33. The church sits in large, grassed, grounds set in a grid-like pattern of streets. It forms the current and historic centre of a local community. There are a number of attractive features, fixtures, fittings and detail. The present building has undergone a number of changes already. Aspects, especially of the nave, may be said to lack coherence.
34. The interior has a certain grandeur, marred somewhat at present by a cheerful, if over 'busy', accumulation of storage cupboards, displays and 'subdivisions'.
35. The Archdeacon was, to be blunt, right to characterise it as 'a bit of a mess'. I agreed with his observation that, despite some (approved) lighting alterations, the 'stunning space' is not seen in the way it should be and still feels somewhat 'dark, cold and unwelcoming'.
36. That said, I was in no doubt as to the commitment and motivation of the congregation, currently founded upon an Electoral Roll of 98, with about 75 attending across two morning services. Nor was I in any doubt about the extensive, regular, strategic and imaginative community use which, in recent years, has grown, developed and become a key aspect of the church's life and mission. The papers and oral evidence amply detailed that use.
37. The present parish was formed in 2007 as an amalgamation of three. At Easter 2011, after a period of consultation, three congregations merged at the St Matthew site, under the Vicar's leadership, with the closure of the other two churches.
38. The Archdeacon paid well deserved tribute to the Vicar for his effective leadership during a challenging period of transition and re-structuring. The various procedural shortcomings I

have mentioned were, to some extent, mitigated by that context and by what, I suspect, may have been a time of impaired communication and 'ownership' of various initiatives.

## **Consultation**

39. There has been congregational, parochial and national consultation across a significant period. I recognised (at a late stage) that consultation did not appear, as required, to have taken place with the local authority. The DAC had (mistakenly) not advised that at the appropriate time, but I did not consider that omission should, in the circumstances, further delay my consideration of the Petition.
40. The parish, it was clear, had considered a variety of internal and external 'solutions' in their quest for flexibility and to enable the most effective use of their building. The appointment of a Community Development Manager in 2012 had significantly strengthened the local 'network', but at the same time highlighted the serious shortcomings of the facilities offered.
41. Whereas in 2007 St Matthew served a community of some 4000, the number now was more like 17,000.
42. The Statement of Needs detailed consultations with church members, visitors, user groups and community groups in February and March 2020. A substantial majority favoured the changes proposed.
43. The Parochial Church Council (PCC) strongly supported the various works.
44. There were no objections upon public notice.

## **Historic England**

45. H.E. considered 'the most prominent alteration' to be the proposed porch. There was no objection in principle, given the presence of an existing porch. The design was not objected to, nor the desire to create a more open view into the church. There was concern about limited information about the existing porch and, as such, some hesitation in assessing its relative significance. It was said that finishes and detailing required some further consideration.
46. The movement of the font was destined to alter its prominent visual character, but the extent of movement involved was 'minimal' and 'the font would retain its location at the rear of the church, adjacent to the entrance'. Any resulting harm would be at a 'very low level'.
47. The nave dais was aimed at seeking to improve accessibility and functionality, not least through the use of a ramp. It was said this would be 'visually prominent' and raised 'considerable concerns'. It was not clear there was 'a convincing justification'. It was suggested this element of the scheme be removed and that thought be given to a 'temporary ramp'.
48. The pews/benches were considered to be 'relatively attractive if not exceptional', to form 'an important element of the 'unaltered' character of the church' and to be a 'key element in defining its current visual and architectural character'. They were said also to be 'one of the internal features of a church which most readily exhibits the function of the building to the casual observer'.

49. It was recognised that 'some pew removal' had already taken place and that there may be arguments for greater flexibility demonstrable as necessary to secure the church's continued use.
50. It was suggested the dais and pew aspects be 'omitted', unless 'the decision maker believes that a clear and convincing justification has been provided which would outweigh the harm which these proposals would cause'.

### **The Victorian Society**

51. The Society acknowledged very fairly that most of the proposals were 'uncontentious' and were 'backed by a robust Statement of Need'.
52. It shared the concern of HE about the porch detailing. It considered the dais and font relocation would have a 'high visual impact', but said that both proposals had been 'considered sensitively'.
53. In terms of the dais, it would only extend the existing chancel step, improving access and allowing for a more dignified setting for the liturgy.
54. Despite the move, the font's 'prominence and dignity would be preserved'.
55. 'Most concerning', it was said, was the proposed removal of the benches. Unsurprisingly, the Society shared my dismay at what had occurred.
56. The benches were said to be 'not of the highest individual significance' but to be 'attractively designed' and to 'lend dignity and order to the interior of the church, positively contributing to the space'.
57. Proposals to improve 'coherence', it was suggested, could and should be addressed by attending to the later 'additions' (and, by implication, unauthorised changes) rather than by interfering with 'furnishings original to the church'.
58. The Society's view was that the presence of a significant amount of historic benches in the nave was 'integral to the reasons cited in the listing entry' and that the 'presence of original benches designed or chosen by Crowther contribute to it being an accomplished Gothic Revival church'.
59. It was argued that 'removal of all the original nave seating would irreparably damage the largely unaltered nature of the church...in total the removal of benches would significantly harm the building's significance'.
60. There was, in the event that I might disagree about the significance of the removal of remaining benches, further objection to the suggested replacement (upholstered) chair. This was contrary to well established official guidance and, it was said, nowhere near sufficiently justified by the petitioners.
61. The Society added some comments about the general handling of the application and expressed frustration, with which I had some sympathy, that very little true discussion had occurred before the DAC recommended the application to me at a time when the Society had not had any opportunity to respond to the parish's comments – and perhaps even to achieve some further compromise.

### **The Church Buildings Council**

62. The Council expressed itself 'content' with the proposals but wished to highlight its published seating guidance note.

### **The Diocesan Advisory Committee**

63. By its Notification of Advice dated the 29th January 2021, the DAC recommended the works. It considered the arguments about the 'unaltered character' of the church to be overstated, given removal of the side pews and earlier interventions.
64. It considered the pews were not of notable quality and there were already a substantial number of upholstered chairs in use in the side aisles. The balance of opinion and argument appeared to the Committee to support removal.
65. It supported the quest for flexibility and considered chairs needed to be stackable to minimize the need for storage space.
66. Mindful of the guidance, the DAC had approved upholstered chairs in a number of suitable cases, of which this was considered one. The intended chair would be a reasonable match in style and tone with what was there.
67. The Committee conceded consultation with VS was 'not optimal', and regretted the apparent failure. Although correspondence had initially come from the DAC office, VS had replied directly to the parish. It was recognised, and regretted, there had been a failure to provide VS with information requested, for example in relation to the porch. The Committee's view was that, given the issues, further dialogue may not have altered the Committee's decision to recommend the works.
68. The Committee resolved (rightly in my view) to endeavour to ensure for the future that dialogue with amenity societies was more thoughtfully pursued at the appropriate time.
69. The Committee's overall conclusion now was that this was a relatively poor parish which urgently needed improved facilities. The proposals afforded flexible space for the whole community, good facilities for hospitality and improved scope for collective liturgy and worship. The missional case had to be considered, not least as the church emerged from the pandemic to the challenge of re-building to pre-lockdown levels.

### **The Archdeacon**

70. Despite the illegality which he deprecated, the Archdeacon also strongly supported the project. He considered the pew/benches 'destroy flexibility in a space that cries out for flexibility'.
71. He said that the space as currently configured was 'not conducive to an atmosphere of engagement and welcome'.
72. He considered the dais and nave altar would 'offer a more communal experience of worship that will allow an inclusive experience'.
73. He thought the changes to the entrance and font would 'open the church to the wider community, inviting them inside rather than effectively barring the way into church'. It would also, he thought, 'make practical sense for funerals, weddings and baptisms'.
74. The evidence of the Vicar to me was to the same effect. He highlighted convincingly a number of logistical and 'circulation' issues linked to the present configuration.

75. The Archdeacon recognised the church 'can carry on' with existing facilities, but feared the 'confidence, excitement and hope' that had been engendered through the process of re-imagining ministry will 'evaporate' and he feared the congregation 'would quickly lose heart'. That, he added, 'could have serious long term consequences for ministry in Edgeley'.

### **The Law**

76. In considering the proposals I have adopted the now well known framework of guidance provided by the Court of Arches in Re St Alkmund, Duffield [2013] Fam 158 at paragraph 87 as supplemented by the observations in Re St John the Baptist, Penshurst (9<sup>th</sup> March 2015). It is unnecessary to set out the 'questions' in full. I have them well in mind. I have also considered carefully, as is also now established practice in the consistory court where harm will be caused to a listed church, whether or not some alternative, less harmful, means of achieving the same result is practicable.

### **Discussion and Conclusions**

#### **The porch and font**

77. In his evidence the Vicar spoke convincingly of the need for visibility into the church from the street gates. 'Openness' mattered, symbolically and practically. There were a number of circulation problems currently experienced in connection with weddings and funerals. Coffins needed to be admitted by a side door.
78. The present porch was not an original feature of the church. Its leaded lights echo the shape of the west window but its woodwork did not match the other woodwork in the building. As one looked backward towards the west end the porch did not look particularly attractive or present a significant view such as to enhance the west window.
79. Further, the space within the porch is too small to be significantly useful or adaptable; it is, in effect, a constricted, 'blind entrance' to the church which is not now satisfactory.
80. Moving the font the short distance suggested was an essential feature of the scheme which, it was argued, would make entering the church less foreboding, improve visibility and access including disabled access, signal a more welcoming atmosphere, improve heat conservation and mitigate an entrance which, frankly, felt somewhat gloomy and uninviting.
81. I consider the impact of the porch proposal, if implemented, to be moderate and that of the font relocation to be minimal. In both cases, however, I find the justification for the proposals amply demonstrated. These changes will, I am persuaded, improve the entrance area significantly to the advantage of mission and ministry, congregation and community.

#### **The pews/benches**

82. The Vicar stressed the sheer difficulties experienced by the volunteers (mostly aged 50-80 years) who, at least once a week, had the arduous and unwelcome task of moving (or at the very least rotating) the heavy benches to create the space necessary for existing community activity. He questioned if it was sustainable. The ability to move the benches of course created an element of flexibility, but not enough, he judged.

83. The remaining benches, which I was able to examine, struck me as of little artistic merit. They were in poor condition, heavily worn and scratched. They were singularly uncomfortable and wholly unsuited to flexible 'community' use. They did not feature in the listing description.
84. I cannot accept the VS appraisal of their significance in the building as it currently is. The reality is that the side aisle pews were removed a decade or more ago. What has remained has been an uneasy blend of benches and chairs. It is to overstate the case to say the interior is 'largely unaltered'.
85. It is not uncommon for petitioners vaguely to assert 'flexibility' as a justification for change. I was wholly persuaded here that, given the growing and evidentially demonstrated emphasis on community use, the benefit of removal of the remaining benches was amply established. I say that having concluded, as I do, that the balance of professional evidence suggests that harm occasioned by their removal is significant.
86. The reality is that there are now available, in any event, insufficient remaining benches to achieve any sort of attractive or practicable seating configuration in the nave.
87. I make clear that, even absent any element of illegality, I would have still have decided on the evidence before me that the justification for the removal was established. The Chair of the buildings group explained that he saw the re-ordering of seating as, quite literally, vital to the survival of the church and its congregation. I accepted that view.

### **The replacement chair**

88. It became clear during the evidence that the chair proposed in the Petition and, I believe, considered by the DAC (an Alpha, light, wooden, stackable to 6 chair) had already been re-visited by the petitioners and an essentially similar Alpha chair (stackable to 12) had now been identified. It was evident upon further inquiry that insufficient thought had been given to issues such as arms and book storage. Nor was it clear that there was any firm decision about when and if the existing upholstered chairs were to be replaced. It was not satisfactory merely to be told that the petitioners had 'intended' to consult the DAC again.
89. Both proposed chairs were considered by the parish to be aesthetically pleasing, comfortable and practical. Both have modest upholstery which was intended to be of a suitable colour to match existing upholstered chairs which, in turn, match the colour of existing carpeting. I note that the existing benches have themselves had suitably coloured cushions or runners.
90. Much of the carpet in the nave is, fortunately, to be removed and the floor (in wood and stone) is to be restored. That, in my judgment, can only improve the appearance of the building.
91. I am very familiar with the CBC seating guidance note (to which I attach considerable weight) and am alert to the objections of VS to upholstered seating. This is a matter upon which I have had to rule before in the diocese (see the detailed discussion in [Ashton Hayes: St John the Evangelist](#); 6<sup>th</sup> July 2020).
92. I intend to reserve the question of the specific chair as a matter for further advice from the DAC and my subsequent approval. I am, however, exceptionally, persuaded here by the arguments of the petitioners that, on balance, a light weight, wooden, but upholstered chair is acceptable.



93. Arguments about comfort are, of course, highly subjective but, not for the first time, the petitioners stressed the need of a chair perceived as comfortable given the wide community use envisaged. I found that persuasive here on balance. The petitioners know their community well and are keen to serve it effectively.
94. The church has had a decade of experience with a much more heavily upholstered wooden chair. The replacement has been widely discussed, if not finalised. I am not persuaded here that an un-upholstered chair in this church will be significantly better. The proposed chairs will, I am satisfied, be a significant improvement on the present arrangements. My view is that the chairs should all be replaced at one time if finances permit.
95. I will expect the petitioners to present to the DAC a final proposal with proper costing, numbers, chair specification and proposed colour of both staining and upholstery.

### **The nave dais**

96. The dais as a structure will be no higher than the current chancel step. The wheelchair ramp will be concealed within the dais so as not to be visible from the nave. The need for a temporary ramp, with all that that signals, will be avoided. The existing (heavy but moveable) nave altar will be utilised much as at present on the chancel step. Altar rails used on the dais will be moveable. More permanent accessibility to the chancel with a larger area and improved circulation can, I judge, only be an advantage and extra space at the front of church will offer greater possibilities for both Holy Communion and performance and other events involving schools and musicians.
97. I judge the impact of this proposed change to be moderate but, again, am readily persuaded of its justification and intend to permit it.

### **Removal of Servers' Stalls**

98. It became apparent during the hearing and upon my inspection that these not unattractive pieces of furniture, whose removal and potential disposal had not raised undue concern, bore professionally various carved (monogrammed) initials. It appeared these may have been given by a family, possibly to commemorate loved ones. I considered that inquiries into the provenance of these items, which were relatively modern, had, at best, been superficial and inadequate. There appeared to have been no proper investigation in the church's records or archive or in faculty records.
99. Again, I considered it right to reserve this item for further advice from the DAC and consideration by the court. The risk of casual disposal, upon inadequate information, causing distress, seemed real. A proper attempt had to be made to find the source of this donation to the church.

### **The Petitioners' Conduct**

100. I conclude with observations on the illegality which has occurred here.
101. The partial disposal of benches, in advance of faculty, was wholly wrong.
102. It was the responsibility of all the petitioners and of the Churchwardens at the time.
103. Although the Vicar shouldered blame unequivocally, others were well aware of what was taking place and should have intervened or objected.

104. The Vicar has been ordained since 1999 and indeed been Rural Dean from 2017. He plainly should have known better than to act illegally. He explained that he was deeply ashamed of his error of judgement and, had he been asked for advice, he would have told any colleague in no uncertain terms not to act until a faculty was granted.
105. His protestation that 'we are amateurs' rang somewhat hollow. It is the duty of any member of the clergy, or a churchwarden, to acquaint themselves with the basic requirements of this particular jurisdiction – or at the very least to seek advice when in doubt. This diocese has the immeasurable advantage of approachable and helpful Archdeacons and an equally helpful Registrar. Advice is never more than an e mail or telephone call away.
106. The Vicar explained that a timetable and costings for works had been agreed. There had been no objections from public notice; a tentative start date had been identified; the DAC had been supportive and he had assumed, wrongly as he now accepted, that a faculty would be 'almost a fait accompli', 'only a formality'.
107. He said he had believed, 'stupidly', that the grant of a faculty was 'almost guaranteed'. There had been 'high interest' in members and others obtaining pews. He had, he explained, been 'overwhelmed' by wanting to press on and did not 'want to lose momentum or enthusiasm' for the project.
108. He admitted that he knew what he was doing was wrong, that no one had challenged him despite understanding he knew he should not be doing what he was doing, and that others had assisted practically with the disposals. I asked why he thought others had not challenged him and he responded, with some emotion, 'they maybe trusted me too much'.
109. I was satisfied that the Vicar's regret and shame were wholly genuine and that the Churchwardens shared those sentiments. A significant error of judgment was made. This was not, I am wholly satisfied, a cynical attempt to cut a corner or wilfully to short circuit due process.
110. The Vicar is a well liked, well regarded, talented, prayerful, enthusiastic priest who has invested immense energy in the parish and in this project. The Archdeacon has spoken highly of him - and deservedly so. The hearing in this matter was, without question, a visibly painful experience for the Vicar. I had not the slightest reason to doubt the genuineness of his regret, shame and embarrassment. He sought to blame or implicate no one but himself.
111. I am confident a line can now be drawn under this episode and my hope is that he will, with all the passion and energy he has thus far displayed, continue to lead the church family of St Matthew to the conclusion of this project and their greater effectiveness in mission and ministry to God's glory in the area.

## **Disposal**

112. I grant the faculty sought. The works are to be completed within 18 months or such extended time as the court shall permit.
113. The issues of the final identification of a replacement chair and of the disposal of the servers' stalls shall be reserved matters, not to be proceeded with in advance of further advice from the DAC and approval of the court.
114. The works shall be subject to the following conditions:
- (a) They shall be under the direction and subject to the inspection of the church's architect;

(b) Any electrical works should be carried out by an electrical contractor accredited with the NICEIC or ECA, to the standards recommended in the Churchcare 'Guidance Note: Electrical Wiring Installations in Churches'.

115. The Petitioners shall pay the Registry costs of and incidental to the Petition in a sum to be agreed with the Registrar or determined by the court. I confirm there are no Chancellor's fees sought.

2<sup>nd</sup> August 2021

David Turner

His Honour Judge David Turner QC

Chancellor of the Diocese of Chester