

Neutral Citation No. [2020] ECC Nor 2

IN THE CONSISTORY COURT

DIOCESE OF NORWICH

**In the matter of
Hingham, St Andrew**

-and-

In the matter of

**A Petition for certain works by the Reverend Colin Bryher Reed, Rector,
Michael David Jones and Janet Southall**

Judgment of the Chancellor

1. By Petition dated January 24, 2020 the Petitioners seek permission to install lavatories and re-locate the kitchen servery, removing 10 pews from the end of the nave and 6 pews from the east end of the nave.
2. The church was constructed between 1320 and 1360 during (principally) the reign of Edward III. It has a tower rising 120ft with 6 storeys, an open style nave with two aisles and is a particularly striking example of the Decorated Period with fine windows. It is unusually large.
3. It is listed Grade 1 and has a number of striking features and artefacts. The combination of these is important to the consideration of any changes proposed to its interior but in view of the issues that are contentious in this application, the feature I am going to consider in particular is the pews. The proposal is to lose 16 of a total of 60 pews. These pews are described in the Statement of Significance as having finely carved pew ends from the Victorian Arts and Crafts Period. At the time of the Statement of Significance the proposal was to lose 10 pews. An addendum to the Statement gave further observations. It is said that this would create a more open appearance and be more sympathetic with its mediaeval origins. The Statement acknowledged that this might cause some loss in diversity of the carved ends.
4. Historic England makes this observation in its recent report: “We have previously requested a detailed assessment of the pews and are pleased to find a thorough study has been carried out and careful thought given to the proposed disposal. The pews date from 1871-72 and were designed by James Forsyth, a noted sculptor of the period. Not only are they a notable collection, but they make significant addition to the interior of the church. The subject matter of the bench end carvings includes local fauna and flora, giving them a particular connection to the area. Losing any of the pews would detract from the whole, but we are sympathetic to the desire to create more flexible space inside the church. The proposal to only dispose of pews where the end designs are duplicated on other pews seems a reasonable compromise and we would not, on balance, wish to object to this scheme.”

5. In the Statement of Need with Addendum, the Rector says: “This option will provide us with two toilets, one with disabled access. They will be housed in a discreet and soundproofed area. It will also require that the existing kitchen area be moved forward from its current site to the next pillar to the East. It will still face East. To enable ease of access without trip hazard we will also need to remove some pews from the central aisle between the first and the second pillars. The removal of pews will also have the effect of providing a larger open area at the back of the church. It will improve health and safety (we have had incidents of trips around the font because the area can become congested), create a better area for families during baptism and harmonize the rear end of the pews across the width of the church. It will also be synergistic with the overall aim of the improvement works to heating/lighting and toilets of making the church more usable as a venue for a wide range of activities alongside the provision of worship. For the latter it will also provide a large open space, which can be used for worship in the round, something that is currently only possible in the limited space under the chancel arch.”
6. He goes on to explain the need for additional space in light of the activities that now take place in the church. He describes the need for the indoor lavatories and commends what is called “Option 5” of those considered and commented upon in the early stages of the proposal. Having read the responses by those consulted, the consensus is that Option 5 is the preferred one. I do not intend to go into detail as to the various elements because there is wide agreement with the general nature with the proposals that are needed in this church. The Rector says that, even at the time of his appointment in 2010, the question of lavatories and the needs of the church for its wider functions was uppermost in the minds of the PCC.
7. Therefore, absent the removal of the pews, the proposals clearly satisfy the necessary balancing exercise when determining petitions affecting listed buildings attracting the ecclesiastical exemption, namely
 - (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historical interest?
 - (2) If the answer to the first question is in the affirmative, it is necessary to ask how serious the harm would be;
 - (3) Then, it is necessary to assess how clear and convincing is the justification for the proposals;
 - (4) Generally, the greater the harm, the greater the benefit will need to be to demonstrated to justify the proposals and, importantly, in the case of a building that is listed grade 1 or II*, if serious harm would result then the justification would need to be exceptional.
8. The proposals that are generally agreed upon by everyone would cause some harm to the significance of the church in the terms set out in the test but a low degree of harm in my judgment and a strong need has been clearly established.
9. As far as the pews are concerned, two issues have arisen, expressed in their most direct form by the Victorian Society. One relates to the degree of harm caused by removing *any* pews and the other is the degree of harm caused by the *number* of pews being removed.
10. The Victorian Society (“VS”) makes a point about the quality of the consultation material and the fact that when initially asked to comment there were a number of options and the number of pews sought to be removed represented the first time that the VS understood that pews, certainly in this number, were to be removed. Sometimes, the evolution of schemes does mean that proposals change or are modified in the course of the Faculty process. I agree with the VS that it is important this should not happen

in such a way that makes the original consultation ineffective. Indeed, this is why I specially cited the VS to obtain its further comments or objection. At the very least, this can delay the process. However, I can see that this whole proposal is a longstanding one that has so far been unsuccessful. I can also see that the petitioners have taken into account observations they received in the course of the original consultations.

11. The VS goes on to say this: “the pews in this church are particularly impressive, both individually and as an ensemble, and their contribution to the special historic and architectural interest of the interior is considerable. Their significant erosion, which seems to be what is now proposed, would undoubtedly undermine and harm that special interest. While the church has a clear case for introducing facilities, such as a lavatory and a servery, we are by no means convinced of the need to remove as many benches as is currently proposed, in the process causing undue harm to the special interest of the interior. In accordance with good conservation practice, we advise that the parish’s intervention is the minimum necessary to achieve its demonstrable needs; in other words, that it retains a larger block of nave benches than it proposes to.”
12. There is no dispute that the pews are impressive and that they make a marked contribution to the special historic and architectural features of the church. It is good practice to intervene to the minimum necessary for the demonstrable needs of the petitioners. However, I consider there is one caveat to that. It is important churches assess what their needs are and produce coherent proposals for change. Piecemeal changes have their own dangers and lead to fresh proposals sooner rather than later. A ‘drip’ effect also means that the court can find it difficult to see what the final position will be at any one time.
13. The Rector has explained the need for more flexible space for events and attendees that will be able to utilise the servery and the lavatories. I accept this.
14. Nevertheless, the pews are significant and therefore I have looked to see the degree of care that the Petitioners have taken to reduce the risk of serious harm. I am, as is Historic England, impressed with the careful research that has taken place. There has also been thought as to how to lower the risk of harm being caused. In particular, pews with end-carvings that are duplicated and, in some case, whose condition is poorer have been selected. This is with the intention both of causing less harm to the diversity of the end pieces and maintaining the pews which are in the best condition.
15. The Church Buildings Council did not object to the proposal and Historic England felt that its concerns had been met, particularly in respect of the pews, sufficiently and on balance did not wish to object to the proposals. The VS does not wish to become a Party Opponent to the petition although it does wish the court to take its comments into account. I have done so, of course, and indeed a number of them echoed the issues I would have considered in any event.
16. I have thought carefully about the petition and reviewed the materials. I agree with the general view that the proposal, apart from the removal of the pews, is justified and any harm caused, in the sense of the legal test, is justified by the need. The harm is low and the need is clear, convincing and also long-standing.
17. The pews are another matter. I assess the harm caused here is moderate. I reach this conclusion in view of the mitigating action taken by the Petitioners assisted ably by the Curate, the Reverend Doctor Sally Wallace-Jones. Had that action not been taken, I would have considered the harm to be moderate to high. As far as the need is concerned, I am satisfied that there is a substantial need to create a more flexible space for those who will be using the church for additional activities particularly when the new facilities are in place. I also accept that thought has been given to the aesthetic of the

space as a whole in formulating these proposals. I am satisfied that the moderate degree of harm is justified by this need.

18. Accordingly, I grant this petition as requested and order that it should pass the Seal. There is one standard condition that I am imposing at the moment in view of HM Government's restrictions imposed to deal with the Covid-19 pandemic. All permissions given by way of Faculty, of which this is one, are subject to the condition that no work must be undertaken that would place the petitioners in breach of the restrictions unless express permission has been given by this court on grounds of health and safety.

Etherington, QC
Chancellor
May 27, 2020