

## In the matter of St John the Evangelist, Hoylandswaine

### Judgment

1. This is a petition for the reordering of the interior of the church of St John the Evangelist, Hoylandswaine to facilitate toilets, kitchen, storage & improved heating.
2. Although there is no party opponent, certain aspects of the proposals are controversial and the court must therefore take into account written objections from various sources, the detail of which is set out later in this judgment.
3. On 17 June 2021, I directed as follows:

Having regard to the fact that (a) no individual or amenity society has elected to become a party opponent and (b) the petitioners have indicated a preference for the matter being determined on written representations, I am satisfied that it is expedient to direct as follows under FJR r 14.1:

(1) That this matter be determined by written representations;

(2) That the petitioners be at liberty to lodge witness statements or other written representations in support of their petition. All documentation to be lodged within 28 days. If the petitioners are content to rely on the documentation already lodged at court, they should confirm this in writing;

(3) The petitioners are reminded that the burden of proof lies on them to satisfy the Court that a faculty may be granted, and are referred to the "Duffield framework" which sets out the court's approach to cases of this type.

4. The petitioners rely upon the papers lodged in connection with the petition, together with additional documentation served in accordance with these directions. The Court has been particularly assisted by:
  - i. The Statement of Significance;
  - ii. The Statement of Need;
  - iii. Undated observations from the parish's inspecting architect, Mr Adam Clark;
  - iv. Undated note on village hall and housing expansion;
  - v. Submissions focussed on the *Duffield* framework;
  - vi. Responses to observations from various consultees.

#### **The church**

5. St John's, Hoylandswaine is a grade II listed building, built in 1869 by architect W H Crossland. The listing statement reads:

Church. 1869. By W. H. Crossland. Tooled squared stone. Slate roof. West tower, three-bay nave with south porch and lean-to north aisle. Two-bay chancel with north vestry. Gothic revival in Decorated style. Three-stage west tower with reducing, angle buttresses. 3-light west window. Large, paired, bell-chamber openings, louvred and with deep, hollow-chamfered reveals. Crocketed corner pinnacles. Stair tower on south side. 2-light nave windows, paired to bay 2, with traceried heads. Similar, shorter chancel windows. Similar 3-light east window. Square-headed north aisle windows of 2-lights.

Interior: three bay arcade to north on short octagonal piers, except that to left which is round. Wagon roof to nave and chancel, with scissor bracing to nave apex.

### **The petitioners' case**

6. The PCC's primary objective is to ensure that the church building stays open for worship for the foreseeable future preventing possible closure and redundancy of the building. The Statement of Need speaks of growing the church community, keeping the interest of current youngsters and attracting further people in order for the church to survive as a viable worshipping community with a caring arm reaching out to a changing community whilst remaining financially viable.
7. Reference is made to less formal services such as Messy Church, providing flexible space for large and small gatherings; and community events such as a village festival and additional community space. A substantial grant allocated to the church from Section 106 monies apparently stipulates the need to preserve and enhance the church as an asset for community use as well as worship.
8. The current church hall, a temporary second hand RAF hut, was installed in 1970 after the previous building was destroyed by a runaway lorry. It is now beyond practical and economic repair, and – in any event – does not meet modern health and safety, or energy efficiency standards and disabled access is dangerous. It houses the only toilets and kitchen available for church use, along with a hall and storage facilities used for other activities. The diocesan Buildings for Mission Officer in consultation with the Archdeacon advised that a new-build was unlikely to be supported by the DAC, and the DAC's subsequent advice was to reorder the interior.
9. A redundant church building would be detrimental to the village, as confirmed at two public consultations. Hoylandswaine Events Group might find such a prospect attractive for art and craft exhibitions, concerts, drama, fashion shows, ceilidhs etc. The elderly persons' lunch club has a waiting list and is anxious to expand given the space and improved kitchen facilities. The church's own fund raising relies heavily on events needing use of the kitchen and hall space. Reordering the church would enable the demolition of the existing hall that is rapidly becoming an eyesore, freeing up outdoor space for additional parking or a patio/garden for other outdoor community activities.
10. The foregoing summary has been derived from across the various documents lodged at the registry by the petitioners. It is a notable feature that documentation largely consists of assertions and generalisations, rather than direct evidence of the particular. There is little by way of detailed evidence of the manner in which the current interior arrangement of the church directly impacts upon the sacred and secular use of the building. Nor is there evidence from third parties giving clear particulars, upon which the Court could rely, of the future use that they might make of the church in the event that the proposals were permitted.

### **Historic England**

11. In a letter of 7 May 2021, Historic England described themselves as being 'supportive of the principle behind the proposals'; but expressed concerns about the cumulative impact of certain aspects of the works. It commended the use (if possible) of the flagstones underneath the timber pew platforms. It commended the retention of a representative sample of the nave pews but, recognising this may not be possible, ultimately it deferred to the DAC. It expressed a preference for a more thoughtful subdivision of the north aisle, and concern for the creation of storage space at the mezzanine level. The petitioners have provided a response to these observations.

### **Church Buildings Council**

12. The CBC has commented on various iterations of the proposals, noting how the parish has been responsive to the observations of consultees, making some revisions to the overall reordering scheme. It welcomed the omission of the glass screen to the chancel and the retention of the choir stalls, as part of the original suite of furnishings by W H Crossland. The Council expressly deferred to the DAC on the issue of the removal of the nave pews, suggesting that perhaps a pair could be retained and made freestanding or fixed against a side wall. It described the re-design of the mezzanine storage as an improvement, drawing on a similar project at Hopton church. The Council deferred to the DAC on the specification of the new floor on the proviso that the detailing of the porcelain tiles adjacent to the pier bases is assessed for breathability. It wished the PCC every success for the project.

### **Barnsley Metropolitan Borough Council**

13. Special notice was given to the local planning authority in April 2021, but they have not engaged with these proceedings.

### **The Victorian Society**

14. The letter of objection from the Victorian Society dated 14 June 2021 was technically out of time, but I was satisfied that the interest of justice would be served by taking it into consideration, and I therefore afforded the petitioners the opportunity of commenting upon it. The letter raised various matters which had already been the subject of earlier correspondence in the consultation process. The Society observes:

... this is a Grade II listed church of national architectural and historic significance designed by the important nineteenth-century architect W H Crossland. Crossland was responsible for a number of significant and prominent buildings, including the Founders Buildings at Royal Holloway and Rochdale Town Hall, both Grade I listed. In terms of his ecclesiastical work there is little that survives which was either designed entirely by Crossland or that survives substantially intact. While a small building, Hoylandswaine is significant in that it is reasonably intact and a holistic and good quality design by Crossland, with important historical connections and with some individual elements of very high quality. As stated in our previous letter 'It is difficult to see many – or indeed any – of Crossland's Grade II-listed churches that might be considered the equal of Hoylandswaine in architectural interest, consistency and quality, or that remain so well preserved'.

As proposed the internal re-ordering would seriously damage the integrity of Crossland's church and harm its significance substantially.

Taken as a whole, the alterations to the chancel seating, removal of nave benches, replacement floor and interventions within the north aisle would seriously harm the significance of what is well a preserved single-phase church by an important architect. Proposals such as upholstered chairs (in direct contravention of official CofE guidance on replacement seating in historic churches) would compound that harm yet further.

However, perhaps more worrying than the general harm that would be wrought by the proposals is the inadequate justification underpinning them. While the petitioners undertook a consultation to demonstrate the need for the proposals, there was a low level of response, with single figure support for many of the proposed activities, and only a single person who positively responded that the church should become a facility for the entire village. We also note the village already possesses a well-appointed yet under-used village hall. Considering this we doubt that the proposals would bring about public benefits that would justify the harm to this significant building.

Our previous letter clarified our view that this church is not intolerant of change, and indeed we recognised that the life expectancy of the rapidly ageing hall imposes a certain degree of urgency for the parish and its community in deciding how to proceed. However, as we have pointed out previously, it is not the case that what the parish proposes is the only possible solution here. New

facilities are achievable without a sweeping and inevitably highly destructive reordering of the church interior.

Given the rarity of well-preserved buildings within Crossland's ecclesiastical oeuvre, particularly ones of this quality, and the concerning lack of justification for the specific works proposed, the Victorian Society must continue to object to the proposals.

#### **Individual objector**

15. A letter of objection was received from Mr Peter Charlesworth, which I take into account in this determination. He points to the untouched character of this Victorian building, and to the absence of evidence that the proposal will secure the future of the church by making it useable and appealing for the local community and surrounding area. He raises concerns about the costs and points to the facilities available elsewhere in the village, including the village hall and an assembly hall at the local school.
16. The petitioners answered this objection – as they have responded to other representations – by repeating several of the assertions they have made elsewhere in the documentation. They also indicated that the village hall was currently functioning at full capacity, making allowance for the current pandemic.

#### **Diocesan Advisory Committee**

17. The DAC issued a Notification of Advice recommending the works. In giving their reasons for coming to such a conclusion, notwithstanding the views expressed by statutory consultees, the Notification reads:

The Victorian Society did not respond to the final consultation within the statutory period, so the Committee had reference only to an informal email of 25 September 2020 when it discussed the application. The principal reason for the Committee recommending, despite the Victorian Society's reservations at that time, is because it is of the view that the petitioners have demonstrated, through additional evidence provided since the initial consultation with the Victorian Society, that the proposals reflect the needs of current and future users. The petitioners have shown that the proposals present an enhanced missional opportunity through enabling increased community use of the church building, whilst also enabling increased access to the heritage. There will be some harm to the significance of the church building due to the interventions in the aisle and the replacement of pews with upholstered seating, but the impact on the architectural interest has been minimised by well-considered design, and the need for the flexible seating proposed has been demonstrated. The harm will be outweighed by the overall increased viability of the church building and, therefore, greater public benefit. The proposals have the additional benefit of enhancing the setting of the listed building with the removal of the church hall, which detracts from its significance.

The letter of explicit objection from the Victorian Society was submitted 56 days after the statutory deadline and after the Committee's recommendation. The Committee Vice Chair and Secretary have considered the letter and agreed there is nothing contained within it to merit reviewing the Committee's decision to recommend. The Victorian Society provides its own assessment of the building but the Committee's advice is based on several site visits. The Victorian Society challenges the thoroughness of the petitioners' project development, but the Committee is content that the petitioners have a clear and convincing case based on comprehensive deliberations and discussions.

The Church Buildings Council raised some concerns in early consultation but has withdrawn any objections in its final response, deferring to the Committee on several points. These have been considered by the Committee Vice Chair and Secretary and are reflected in the recommendation and provisos.

### **The *Duffield* framework**

18. In cases of this type, Consistory Courts are enjoined to adopt the approach of the well-known *Duffield* framework, the salient parts of which read as follows:

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, 26-8, and the review of the case-law by Chancellor Bursell QC in *In re St Mary’s, White Waltham* (No 2) [2010] PTSR 1689 at para 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 *St Luke, Maidstone* at p.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 2\*, where serious harm should only exceptionally be allowed.<sup>1</sup>

19. To adopt the well-worn phrase, these are guidelines and not tramlines. Nonetheless they are a convenient formula for navigating what lies at the core of considering alterations to listed places of worship, namely a heavy presumption against change and a burden of proof which lies on petitioners with its exacting evidential threshold. It may be this was not fully understood by the petitioners in this instance, or by those seeking faculties more generally.

### **Analysis**

20. Applying the *Duffield* framework, my assessment is as follows:

#### *Harm*

21. Undoubtedly these proposals, if implemented, would result in harm to the significance of this church as a building of special architectural or historic interest.

#### *Seriousness of harm*

22. Whilst the Victorian Society may be seen by some as having a tendency to describe every threatened church as a unique and perfect example of some element of Victorian architecture, in this instance it is clear that St John the Evangelist, Hoylandswaine is a well-preserved example of Crossland’s work, little altered from the time it was built. The proposals are extensive and consequently the harm, in my assessment would be significant.

#### *Justification*

23. The argumentation deployed by the petitioners, particularly Mrs Margaret Grinnell in her numerous written responses, is powerful. The difficulty, as I think Mr Charlesworth was astute to notice, is that it is not well evidenced. The Consistory Court, like any other court, can only act on evidence. Assertions of generality, however oft repeated, are no substitute for evidence. I suspect when the petitioners expressed a preference for this matter being

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<sup>1</sup> *Re St Alkmund, Duffield* [2013] Fam 158, at paragraph 87.

determined on written representations, they may not have fully understood what that meant, notwithstanding the clear content of the Court's directions reproduced at paragraph 3 above. It may be that the petitioners wrongly assumed that it is the practice of the Court to rubber-stamp recommendations of the DAC.

24. The documentation undoubtedly points to the proposals being desirable – perhaps highly desirable – but even the petitioners' statement specifically addressing the *Duffield* guidance is not evidence-based and there is little in the way of primary material upon which the Court can found a conclusion that a reordered church would lead to an influx of young families or a wave of community organisations keen to make use of the church. Hope and aspiration alone is not enough, however worthy the project. There are no witness statements from those currently responsible for those activities, nor is there a business plan for the community use, nor any financial data to suggest this reordering would result in the church becoming viable. Undoubtedly with an aging congregation, the future of this church is uncertain. But what is lacking in the evidence is a robust factual basis for the assertion that these particular works will arrest the decline and suddenly restore the fortunes of the church. There is undoubtedly a missional opportunity for community benefit, but in my assessment, the totality of the evidence is insufficient to persuade me that these works will have the effects that the petitioners' hope for. It remains aspirational. I was unable to find in the evidence, the material upon which the DAC seemed to have relied. It is possible the DAC was persuaded by oral representations made during the course of several site visits. I regret I could derive no such sufficient evidence of justification (as opposed to hope) from the documentation placed before the Court.

#### *Balancing exercise*

25. It follows from the evidential deficit in the justification that the balancing exercise can only result in the dismissal of this petition. The reasons advanced for the works are aspirational only, with no sufficient grounding in evidence, and accordingly on the case presented by the petitioners the suggested public benefit remains illusory and is insufficient to outweigh the undoubted harm.

#### **Alternative means**

26. Following the practice commended in *Re St Peter & St Paul, Aston Rowant* [2019] ECC Oxf 3, I ask myself whether the proposal could be achieved in a manner less harmful to the heritage value of the church. It seems to me that there are a variety of ways in which the proposed reordering could be pursued with greater circumspection and imagination, lessening their harmful impact on the building. I suspect that the understandable enthusiasm for this project exhibited by the parish and its inspecting architect, fired perhaps by the securing of section 106 funding, may have caused them rather too readily to disregard some of the alternative ways of proceeding as suggested across a broad range of consultees.

#### **Disposal**

27. It follows that this petition must be dismissed. The costs of the proceedings must be paid by the petitioners.
28. Whilst the evidence – or lack thereof – has compelled me to come to this conclusion, I have done so with a very heavy heart. I suspect that there may well be a powerful public benefit justification in this case. Unfortunately it did not emerge from the documentation. The petitioners may have been disadvantaged by their unfamiliarity with the faculty jurisdiction and unaware that what they had initiated was a court process with them in the driving seat. This may be an example of the false economy of not engaging ecclesiastical lawyers who could

have advised on the marshalling of evidence and the drafting of written representations. Had the petitioners' case been presented differently, the outcome might well have been different.

29. This judgment will doubtless be a disappointment to the parish, and particularly to Mrs Grinnell and Mr Wills who have devoted so much time to the proceedings. I hope that they will not be disheartened and will return to the Court at a future date, perhaps very soon, with a revised petition and more robust evidence. There is wholesale agreement that a reordering of St John the Evangelist, Hoylandswaine is appropriate in principle. Unfortunately, in this instance, the evidence led by the petitioners was insufficient to discharge the burden of proof necessary for the Court to direct the issuing of a faculty.

The Worshipful Mark Hill QC  
Chancellor of the Diocese of Leeds

13 July 2021