

Neutral Citation: [2021] EC Sodor 2

## IN THE CONSISTORY COURT OF THE DIOCESE OF SODOR AND MAN

IN THE MATTER OF THE PARISH OF THE WEST COAST

AND

IN THE MATTER OF ST GERMAN'S CATHEDRAL, PEEL

### JUDGMENT

#### *Introduction*

1. This is an application by the Dean of Peel, the Very Reverend Nigel Godfrey and two of the Churchwardens of the Parish of the West Coast<sup>1</sup> for a faculty for an ambitious major reordering of the Victorian Cathedral Church of St German, Peel. Originally opposed by the Diocesan Advisory Committee because of some of the detail of the new floor, the application now has the Committee's support. The original plans included proposals for an immersion baptismal pool, but that was not agreed by the secular Planning Committee<sup>2</sup>. There was also a proposal for a garden room (adjacent to the proposed new entrance in the South Transept and a Cloister Garth. Planning approval was given for the Garden Room, but only in conjunction with the development of the Cloister, which does not now form part of the proposals and so the faculty application does not now include the Garden Room. Planning permission for the revised proposals was granted on 12 September 2019. I set out below, at paragraph 4, the detailed proposals which have now been agreed, and then consider them in turn by reference to the tests set out in the decision of the Court of Arches in *Re St Alkmund, Duffield* [2012] (George, Dean and Bursell and Collier Chs).

#### *Historical background*

2. The ancient cathedral on St Patrick's Isle, built by Bishop Simon during the 12<sup>th</sup> century, became unusable during the 18<sup>th</sup> century, and by 1791 the parish church for the Parish of German was St Peter's in the Market Place in Peel. Meanwhile the Chapel at Bishops court, then the Bishop's residence, served as the procathedral until the residence itself was sold in 1976. The new church of St German, now the cathedral, was originally a chapel of ease

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<sup>1</sup> The Vicar of the Parish of the West Coast is *ex officio* the Dean of the Cathedral (see section 4(2) of the Church Act 1895, as amended by SD 624/11. Previously the Bishop had been *ex officio* the Dean.

<sup>2</sup> Ecclesiastical exemption does not exist on the Isle of Man.

of St Peter's<sup>3</sup>. Construction began in 1879<sup>4</sup>, and as early as 1882 a meeting was held to discuss making the new St German's the cathedral<sup>5</sup>, but the Governor would not commit himself and the Bishop was known to have favoured either restoring the ancient cathedral or to have turned one of the Douglas churches into the cathedral. During the Edwardian period the east end of St George's, Douglas was refitted to accommodate a sedilia and stalls for a chapter of Cathedral canons, but until 1980 the procathedral at Bishopscourt remained in use. In that year Tynwald passed the Cathedral Church Act 1980<sup>6</sup>, which constituted the parish church of German as the Cathedral Church of St German<sup>7</sup>. In this judgment I refer to the building throughout as "the Cathedral" even though before the passing of the 1980 Act it was merely a parish church.

3. The Cathedral has suffered setbacks over the years. It was built between 1879 and 1884<sup>8</sup>, with a combined tower and spire. However, the roof blew off in 1903, destroying many of the nave pews and the spire had to be removed in 1907 following subsidence.

#### *The petition*

4. In its final form<sup>9</sup>, the petition for a faculty seeks approval for re-ordering of the cathedral in accordance with the architect's design statement. The re-ordering involves, among other things—
  - (a) internal modifications to provide new toilet and kitchen facilities and multifunctional space within the main body of the cathedral;
  - (b) the removal of the nave pews and their replacement with Howe 40/4 chairs;
  - (c) installation of a new floor incorporating underfloor heating;
  - (d) installation of a mezzanine floor and rooflights to the North Vestry;
  - (e) creation of a *columbarium* in the North Vestry;

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<sup>3</sup> St Peter's was later demolished.

<sup>4</sup> Gelling, J. D., 1998 *A history of the Manx Church* (The Manx Heritage Foundation, Douglas), p. 169 (cited below simply as "Gelling").

<sup>5</sup> Gelling *ibid.*

<sup>6</sup> AT 11 of 1980

<sup>7</sup> The 1980 Act amended the Church Act 1895 (AT 1 of 1895), by inserting section 2A, subsection (1) of which renamed the church as the Cathedral Church of St German.

<sup>8</sup> See the detailed account in the statement of significance lodged as part of the application and Gelling.

<sup>9</sup> The proposals have been the subject of lengthy gestation over around 5 years, and some of the original and perhaps more controversial ideas were abandoned in the light of opposition from the Planning Committee and the Diocesan Advisory Committee.

- (f) provision of external screening for storage areas.
5. The creation of the multifunctional space referred to in (a) involves the loss of the pews in the nave. However, they are not the original pews which would have been in the Victorian building. As mentioned above, the nave roof collapsed in a hurricane in February 1903 and, judging by contemporary photographs, the bulk of the timbers came down in the nave on top of the original pews with some considerable force, and appears to have destroyed most, if not all, of them.

*The multifunctional space*

6. The proposals for the multifunctional space also include, although this is not mentioned specifically, in either the faculty application or in DAC advice, the creation of a new doorway in the outer wall of the South Transept. The Planning Committee have granted permission for the doorway subject to conditions about the fittings.
7. The installation of the new level floor in the nave as originally envisaged involved creating a baptismal immersion pool at the west end of the nave and removing the existing floor. However, planning permission was refused for the baptismal pool and for the removal of the floor, which incorporates Minton mosaic tiling. The revised proposal, which the planning permission authorises, involves laying new material on top of the existing mosaic floor to produce the desired level surface, but without destroying what is there. The proposal to incorporate underfloor heating is to be commended on the grounds of improving accessibility: the existing pew platforms together with the raised heating pipes which surround them can hardly be said to make access easy for anyone suffering from mobility problems, as the pews are almost completely inaccessible for wheelchair users and difficult to access for anyone using a crutch or a walking-stick.
8. The plans originally involved inscriptions on the floor commemorating donors, both living and departed. So far as the living were concerned, this proposal met with severe opposition from the Diocesan Advisory Committee and, although the petitioners sought to justify the proposals by reference to other memorials, both in churches and in secular settings, and other changes to buildings subject to the faculty jurisdiction, the Committee remained opposed and the application to the extent that it incorporated this aspect of the proposal was abandoned by the petitioners. The floor as proposed in the revised drawings involves the creation of a cross design in contrasting colours of stone. Names of people and events will be recorded as part of the floor in three circumstances –
- (a) to commemorate deceased individuals who have contributed to the life of the Diocese or the Cathedral (such as the late Peter Farrant VG);

- (b) to mark particular events in the life of the Diocese or the Island generally (such as the Winter Hill Disaster of 27.2.1958)<sup>10</sup>; and
  - (c) to commemorate the 17 ancient parishes of the Island which will be incorporated around the head of the cross in the vicinity of the Altar.
9. The proposals also involve replacing the pews with chairs of the Howe 40/4 design. These are widely used in churches and cathedrals both in Britain and across Europe. Moreover, being wooden they will not detract from the new stone floor being laid in the Nave.
10. The incorporation of the mezzanine floor and the screening for external storage areas do not merit particular comment. On the other hand, the creation of the columbarium (also known as “the Life Treasury”) in the North Vestry perhaps does, and I deal with this below in paragraph 17.

*The law*

11. Before dealing with the detail of the proposals, I need to remind myself of the relevant case-law. The Court of Arches in 2012 in *In re St Alkmund Duffield* reviewed the tests which had formerly applied following its decision in *Re St Luke the Evangelist Maidstone* [1995] Fam 1 adopting the approach of Cameron Ch.<sup>11</sup> in *In re St Helen’s Bishopsgate*. The *Bishopsgate* questions were superseded by the following—
- 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*),

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<sup>10</sup> The air disaster involved a Silver City aircraft on a Manx Airways charter flight from the Island to Manchester which crashed on Winter Hill near Chorley with 35 deaths and 7 injured survivors.

<sup>11</sup> As she then was: later Dean of the Arches.

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?

- 6) 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 1 or 2\*, where serious harm should only exceptionally be allowed.

12. The reference to particularly categories of listing which apply in England have no relevance in a Manx context. Nevertheless, there are some of the Island's churches which, were they in England, would fall into those categories. I suspect that the Cathedral would be listed at the level of Grade 2: I am indebted to the Dean for drawing my attention, in commenting on a draft of this judgment, that the church of St Michael, Garston in Liverpool is by the same architects (Thomas D Berry and Son) and clearly from the same set of stock designs. St Michael's is Listed Grade 2 and it appears therefore to be sensible to approach the application in relation to St German's in the same way. In considering each of the several adjustments to the fabric, I shall accordingly apply the tests in *St Alkmund Duffield* as set out in the preceding paragraph. As St German's is on the Island's Protected Buildings Register<sup>12</sup>, I have the benefit of a detailed analysis by the Conservation Officer, which is reflected in the conditions imposed by the Department of Environment, Food and Agriculture in its notice of the grant of planning permission sent to the architect and dated 12<sup>th</sup> September 2019.

#### *The Pews*

13. As mentioned above, the pews are not contemporary with the Victorian structure of the Cathedral, having been replaced as part of the remedial works following the hurricane mentioned in paragraph 3, and they could not, in any event, be described as having any particular architectural merit. Balancing their retention with the flexibility which would result from their replacement with the modern 40/4 chairs designed by David Rowland and which are extensively used in churches and other public buildings in the British Isles and elsewhere, I take the view that the case for change is easily made out.

#### *The Pew Platforms and Pipes*

14. As already mentioned, each of the nave pews stands on its own platform and these are surrounded by the pipes of the heating system. The overall effect is to increase significantly the inflexibility from having pews, and the pipework makes entry to the pews difficult for anyone with mobility difficulties. Clearly, creating level access

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<sup>12</sup> Entry 204: entered in the register on 10<sup>th</sup> October 2002.

throughout the body of the building will meet the objectives of reasonable adjustment for the purposes of the Equality Act 2017<sup>13</sup> (see the second requirement in section 21). Whilst the duty under that section would not arise were the petitioners not seeking to carry out reordering, they are and I must therefore have regard to the duty. The removal of the platforms and the pipework will greatly improve the Cathedral's accessibility and the flexibility of use which is at the heart of the proposals. The case for their removal is overwhelming.

#### *The New Floor*

15. Perhaps the most controversial of all of the proposals is an ambitious plan to replace the existing floor with slate with an outline cross throughout the nave. As originally conceived, the floor would have included the names of individual donors in small lettering. The Dean drew my attention to a number of instances where individual donors' names were incorporated in monuments, although the majority of these involved the deceased. However, I share my immediate predecessor's reluctance to memorialise the living (see his judgment in *Re St Maughold, Maughold* [2016] EC Sodor 1, where he declined to permit the installation of a Buddhist stupa in advance of the petitioner's death). Whilst I note the grant by the Deputy Diocesan Chancellor of Blackburn (David Hodge QC) of a faculty for two windows in St John the Evangelist, Read-in-Whalley, reported in the Church Times of 17 February 2017<sup>14</sup>, commemorating Lord Waddington (who had been Home Secretary and subsequently Governor and Commander-in-Chief of Bermuda) and for which Lord Waddington paid, I believe that the decision can be confined to its own very special facts, including the fact that David Waddington saw himself as a "son of the village" and had made a very significant contribution to national life. The same could not be said of all of those donating to the floor at the Cathedral in the present case. In the event, this aspect of the proposal for the floor was withdrawn following a decision by the Diocesan Advisory Committee not to recommend this aspect of the proposals.

#### *The new doorway in the South Transept*

16. The new doorway in the South Transept will improve circulation and light in that part of the Cathedral. I do not consider that it will seriously detract from the appreciation of the window above it. However, in order to satisfy myself that it is not too distracting for worshippers, I shall require a further application to be made when the details of the fittings for the door itself have been settled.

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<sup>13</sup> AT 5 of 2017.

<sup>14</sup> Lord Waddington died 6 days later, on 23 February 2017.

### *The columbarium*

17. The proposal to introduce a columbarium is relatively novel in Anglicanism. That said, the creation of a dedicated area within the walls of a church or cathedral for the interment of cremated remains is not wholly unprecedented: Blackburn Cathedral has one and something similar is planned for St Bartholomew the Great in West Smithfield, in London. The proposal for St German's is to incorporate bookcases in which would be placed individual books containing a tribute to the deceased in the form of a biography and a sealed container with the deceased's ashes. This proposal was clearly illustrated in the plans for the area behind the colonnade in the vicinity of the former North Vestry (space which will be freed up by the creation of the mezzanine). It attracted no comments, and would obviously increase the possibility of dealing reverently with the cremated remains of those connected with the cathedral.

### *External Screening*

18. This is a modest aspect of the proposals, and will improve the setting of the building by concealing a waste storage area from public view. No objection was received in respect of it, and the case for undertaking the works is clearly made out: the current storage area is somewhat unsightly.

### CONCLUSION

19. A faculty will issue to authorise the works listed in paragraph 4 and the creation of the new doorway, but subject, in the case of the doorway, to the provision of paragraph 16. As became apparent from a perusal of the papers, the nature of the application has changed somewhat from the time the Parochial Church Council first considered the matter in 2015. At that time, there were suggestions that the pulpit, choir stalls and other furnishings might be removed as part of the renovation of the Cathedral. For the avoidance of doubt, although the faculty will also authorise the temporary removal from the Cathedral to a place of safe storage for up to 12 months of any fixture, fitting or item of furniture presently in the building, it will not authorise the disposal of any such item other than the pews in the nave. Accordingly, whilst the pulpit, choir stalls, lectern and font (and other items) may be removed temporarily, they must be returned to the building once it is possible to do so and in any event within the period mentioned above. If they are not to be removed in order to facilitate the works, they must be adequately protected during them.

W. Howard Connell  
*Vicar General and Chancellor, Diocese of Sodor and Man*  
Low Sunday 2021 (The Commemoration of Bishop George Selwyn)