

IN THE CONSISTORY COURT
OF THE DIOCESE OF MANCHESTER

RE THE CHURCH OF THE HOLY TRINITY RIVINGTON

JUDGMENT
delivered on 22 May 2020

Introduction

1. The Church of the Holy Trinity Rivington is a Grade II listed church.
2. The church was first listed on 17 April 1967 and the listing states:

‘Parish Church. Probably 1666 rebuild of early C16 chapel, altered and restored in late C19. Irregularly coursed sandstone with large quoins, slate roof. Nave with south porch and north vestry, chancel. Small plain building with 3 square-headed, 3-light windows on each side, the lights on the south side rounded-headed and those on the north side square-headed, C19 gabled porch between the centre and western windows on the south side, modern vestry in equivalent position on north side. West gable wall has a wide elliptical-headed doorway, and an octagonal bell turret with square base partly corbelled out and a conical roof with tall weathervane. Chancel has a window of 3 rounded-headed lights in each side and a segmental-headed east window of 5 lights with a transom. Interior: roof of 4 collar trusses with bracing to tie-beams and collars; oak screen with some parts late medieval; late C16 oak octagonal pulpit on a stem, with 2 linen-fold panels in each side; on north wall a genealogical painting copied in 1835 from a copy of 1821 of a C16 original relating to the Pilkington family (which was damaged by fire in 1834); C18 brass chandelier with fluted body and 2 tiers of arms. History: chapel of ease built in late C15 rebuilt or restored by Richard Pilkington c.1540 (Pilkington family held Rivington as tenants-in-chief of Duchy of Lancaster, built Rivington Hall, q.v.)’

3. The Statement of Significance repeats much of the above listing, gives some of the history relating to the church and states in relation to the pews, which, as appears below, are the subject of this Petition:

‘Pews: The pews are the bench type and were installed in 1862. At the same time the centre aisle was introduced – previously there had been a north and a south aisle.’

4. By their Petition dated 8 March 2019 Peter Holden and Dawn Cunningham, both Churchwardens, [‘the Petitioners’] sought a faculty for the ‘rearrangement of pews to create a versatile space’. The plans make it clear that this involved the proposed rearrangement of three pews at the western end on the south side of the nave and, apart from one pew, their re-location against the south wall to form an enclosed space which has pews on three sides.

5. Such petition had the unanimous support of the Parochial Church Council [‘PCC’] on 18 March 2019. The minutes of that meeting record that the following reasons for the proposed works should be recorded in the Statement of Need, namely:

5.1. ‘To promote a community spirit among the congregation by providing more space where people can meet over coffee after the church service as our present facilities are congested and matters of health and safety are a concern.’

5.2. ‘To provide a safe place for children and families during services.’

5.3. ‘To make more room for display of notices and aids to bible study, prayer and worship. Also, to provide a place for smaller meetings when the church hall is unavailable during weekdays which would cut down on the heating costs.’

6. The estimated cost of the proposed works is £ 3000 but no proposed contractors are identified.

7. The Statement of Needs filed in support of the Petition states that:

‘General information

Rivington is a very rural parish with an electoral roll of almost 100 very few of whom live in the parish. There is 1 service per week on a Sunday morning and monthly matins service on Saturday mornings. There is an average Sunday attendance of 65. We have coffee in church after every service. ...

What is needed

We need an area in church that can be used after the service where the congregation can meet and chat over coffee and relieve congestion. Also, a

family friendly area that can be used by parents and young children. We need an informal area in church for small meetings, group bible study and prayer.

The proposal

To rearrange a small number of pews that are vacant during many services to create an area where people can sit in a safe informal situation with children, an area that will facilitate conversation after the service and provide a friendly area within sight of the font to be used by some of the people who attend baptisms.

Why?

Currently we do not have an area within church that has any space for the activities mentioned previously and as part of our attempts to promote church as part of our Map we need to create a friendly space.`

8. The reference to `our Map` was a reference to an initiative in the Manchester Diocese whereby every parish was asked by the Diocesan Bishop to develop a Mission Action Plan to help churches develop a clear strategy for progressing God`s plan.

9. At its meeting on 1 July 2019 the Diocesan Advisory Committee [`DAC`] recommended such works for approval by this court. It also confirmed the DAC`s opinion that the proposed works were not likely to affect the character of the church as a building of special architectural or historic interest and did not recommend consultation with any other body.

10. The Public Notice which was duly displayed gave rise to a large number of `objections` from the following persons, and I will list them in alphabetical order:

10.1. Mrs E J Berry

10.2. Mrs Sylvia Bridge

10.3. Mr W A Burgess

10.4. Misses P and A Dodd

10.5. Ms Margorie Entwistle

10.6. Mr and Mrs Hope

10.7. Ms Marian Jamieson

10.8. Mr Roger Lowe

10.9. Mrs Margaret and Mr Lesley Povey

10.10. Mrs Anne and Mr Douglas Shaw.

11. Each of these persons were either resident in the parish or on the electoral roll of the parish or were deemed by me, after appropriate enquiry, to be an interested person who had a right to have their objections taken into account.

12. By letters from the Diocesan Registry dated 27 August 2019 each of those objecting to the proposals was asked whether they wished to become parties to the proceedings by serving written particulars of objection or whether they wished me to take their views into account without becoming parties. They were informed that in default of them filing written particulars of objection, they would be treated as having elected not to become parties to the proceedings and that they wished me to take their views into account in determining this Petition. In fact, only Mrs Bridge responded to such letter and she asked me to take her views into account when reaching my decision.

13. I expressly confirm that, in deciding whether to grant a faculty, I have taken into account all the views of those referred to in paragraph 10 above.

14. I am satisfied that it is expedient that I should determine this petition on the basis of such written representations and without any hearing.

15. As appears below, the Petitioners have now responded to the observations of each of the Noticed parties.

16. Before considering all the matters raised by the objectors and the Petitioners, it is important that I set out the legal principles on which I should determine this application.

The legal principles to be applied

17. In determining whether I should grant a faculty, the burden of proof lies on the Petitioners who propose a change to the status quo and they must satisfy me on the balance of probabilities that it is appropriate for me to grant a faculty.

18. In the case of a listed church, as this, a balancing exercise has to be carried out and an application for a faculty falls to be addressed by reference to the series of questions identified by the Court of Arches in *In Re St Alkmund, Duffield* [2012] Fam 158, at para 87, as affirmed and clarified by that Court's later decision in the cases of

Re St John the Baptist, Penshurst (2015) 17 Ecc LJ 393 at para 22 and *Re St Peter, Shipton Bellinger* [2016] Fam 193, at para 39.

19. These questions are:

19.1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

19.2. If not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted?

19.3. If there would be harm to the significance of the church as a building of special architectural or historic interest, how serious would that harm be?

19.4. How clear and convincing is the justification for carrying out the proposals?

19.5. In the light of the strong presumption against proposals which will adversely affect the special character of a listed building, 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?

20. In *Penshurst* the Court made four observations about these questions:

20.1. Question [1] cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church.

20.2. In answering Questions [1] and [3], the particular grading of the church is highly relevant, whether or not serious harm will be occasioned.

20.3. In answering Question [4], what matters are the elements which comprise the justification, including justification falling short of need or necessity: see *Duffield* paras 85-86.

20.4. Questions [1], [3] and [5] are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article.

21. I agree with and adopt the recent dicta of Hodge Ch in *St Mary the Virgin, North Aston* [2020] ECC Oxf 3 in which, at para 19, he stated:

‘The first of the *Duffield* questions cannot be answered without first considering the special architectural and historic interest of the listed church as a whole and whether this would be adversely affected overall by the proposed works. The court needs to consider whether the proposed works will adversely affect the appearance, the character, and the setting of this Grade II* listed church, not in the abstract, but rather as a ‘building of special architectural or historic interest’. When considering the last of the *Duffield* questions, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be required before the proposed works can be permitted; and that serious harm to a church listed as Grade I or Grade II* should only be permitted in exceptional cases. As this court recently observed in the case of *Re St Peter & St Paul, Aston Rowant* [2019] Oxf 3 (at paragraph 7), when applying the *Duffield* guidelines, the court has to consider whether the same, or substantially the same, benefit could be obtained from other works which would cause less harm to the character and special significance of the church building. If, because the intended benefit could be obtained from other, less harmful, works, the degree of harm to the special significance of the church building which would flow from the proposed works is not necessary to achieve the desired benefit, then that is highly relevant. In such circumstances, it may be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, on this hypothesis, cause more harm than is necessary to achieve the desired benefit. At all stages when applying the *Duffield* guidelines, the court should bear in mind that the desirability of preserving the listed church building, its setting, and all the features of special architectural or historic interest which it possesses, is a consideration of considerable importance and weight. The court has directed itself by reference to these expanded guidelines, which it has borne very much in mind. Naturally, the court has also paid due regard, as it is enjoined to do by s.35 of the *Ecclesiastical Jurisdiction & Care of Churches Measure 2018*, to the role of the church as a local centre of worship and mission.’

22. In determining this petition I will apply the above principles.

The objections

23. I will endeavour to summarise the objections.

24. Mrs E J Berry stated that ‘we have enough room with a declining attendance to service everyone’, ‘we have an adequate church hall for the church refreshments which is under utilised on a Sunday’ and she felt it was ‘change for changes sake and will be spending money unnecessarily’.

25. Mrs Sylvia Bridge stated that in her view what was proposed was ‘a desecration and totally unnecessary’ and that an extension was added in 2001 which is used as a main entrance to the church and provided enough space for meetings of up to say 20 people and was used to provide refreshments after services. She pointed out that there was a Church Hall ‘cross the road’ which was occasionally used for

coffee after the Sunday service`. She felt strongly that the proposal should have been put to the congregation first before an application was made for a faculty.

26. Mr W A Burgess stated that to use the expression `rearrangement of pews` was misleading in that it failed to expressly state that pews would be removed. He observed that there was currently adequate space to consume refreshments but that it `could be better managed.` He believed that the proposal `would unbalance the layout` of the church. The pews sought to be removed were the only ones facing the font and that there would be nowhere where those bringing a child for baptism could sit.

27. Misses P and A Dodd stated that the proposal to remove pews `to make way for tables and chairs` for those having refreshments after services because they used to be provided in the Church Hall and currently are provided in the extension at the west end of the church and that such was a waste of money.

28. Although Miss P Dodd added:

`New seating was fitted in the pews last year in memory of the late Canon Colin Craston. Will these and the pews be destroyed?`

29. I do not believe that this is likely because the majority of the pews will be re-used. In any event I note that Mrs Brenda Craston, Canon Craston`s widow, is the PCC Secretary who attended the meeting on 18 March 2019 and I note that she too agreed to the proposals. I am confident therefore that nothing will be done to adversely affect the memory of Canon Colin Craston who had a long and distinguished ministry within the Diocese of Manchester, the Church of England and the Anglican Communion.

30. Ms Margorie Entwistle felt `very strongly about changing the back of the church when it isn`t necessary`. She recognised that `numbers had fallen`.

31. Mr and Mrs Hope stated that there was already ample space at the west end of the church to enjoy coffee after services and there was also the Church Hall. They felt that `such alterations will spoil our beautiful Church as well as causing congestion with people coming and going. There would also be the risk of accidents with cups of hot coffee being carried from one area to another.`

32. Ms Marian Jameson stated that `replacing original pews with modern table and chairs will change the atmosphere`.

33. Mr Roger Lowe wanted to know what reasons really lay behind the desire to remove pews and re-arrange them. He asked rhetorically how anyone could support

the project without full details about future use and the likely effect on weddings, baptisms and funerals and observed that there was no indication on the drawings about the future use of the space.

34. Mrs Margaret and Mr Lesley Povey stated that there was insufficient notice given to the congregation of these proposals and that they should have been discussed with the congregation first. There was no need for the creation of a `versatile space` as the extended main entrance which was used for coffee was rarely, if ever, overcrowded after a service and, if overcrowded, the rest of the church could be used without the removal of any pews, or alternatively the Church Hall could be used. The church was a place for quiet meditation and prayer and `chatting over a cup of coffee at the back of church is hardly conducive to such an activity.` They believed that what was proposed represented `change for changes sake`.

35. Mrs Anne and Mr Douglas Shaw stated what was proposed will `spoil the character, attractiveness and symmetry of the church`, that seating will be lost when there are larger congregations, that `we have a perfectly good Church Hall that can be used for coffee mornings, meetings and social activities and that such constituted a `large versatile space`, that the pews which are proposed to be removed face the font and are used by the baptism party, that they were concerned that that the area could become cluttered with leaflets, notices and toys when they already had 4 notice boards and the queried the reasoning of the PCC in supporting the proposal. They were concerned about the cost given that there were other projects which needed to be undertaken such as the levelling of the floor, improvements to the heating and the provision of a new access road to the extended graveyard

36. Although, as appears below, I have concluded that these objections are not sufficient to persuade me not to grant the faculty sought, it is important that I should expressly record that each of the objectors made their objections in a clear and concise way and that I have no doubt as to the sincerity of the views that they have each expressed.

The response of the Petitioners

37. The church`s response to these objections is contained in a letter by the Rector, Rev Stephen Fletcher, dated 29 October 2019, sent with the approval of the PCC. Such letter made the following observations.

37.1. There are 29 pews in the church arranged on either side of a central aisle. The proposal is to remove one of these pews with another two pews being relocated in the same area to make a square configuration for an open meeting area at the rear of the church on the south side. Parts of the one removed pew will be used to repair a damaged pew near the front of the church.

- 37.2. In respect of the belief that what is proposed will constitute a significant change in the essential character of the church, it is agreed that the symmetry of the church layout will be changed but not drastically and the PCC had concluded that the positives of doing this outweighed the negatives. It is not proposed that the space created will be filled with modern tables and chairs but that the space can be used for people to meet in a friendly, welcoming atmosphere and/or as a space to gather after church services and/or for committee meetings.
- 37.3. As to seating capacity within the church, there is currently seating for 175 people and only 12 seating spaces will be lost by the proposals. The usual Sunday attendance is between 40 and 80 with attendance at special services rising to a maximum of 120. Therefore, the PCC did not perceive the very modest loss of seating to be a problem. Although post service baptisms *would* be affected because families are normally seated in front of the font, it is not believed that this would seriously impact on such services since very small children might well prefer to be accommodated in the space created by the rearrangement of the pews.
- 37.4. Although previously refreshments after church services were served in the Church Hall across a busy road, since the construction of the west end porch such refreshments are now provided in the small reception area at the main entrance to the church. However, this area now gets very crowded and congested with obvious associated health and safety risks. If refreshments were to be provided in the Church Hall, people would tend to go home when they get to the road which they have to cross to get to the Church Hall, rather than going for refreshments there.
- 37.5. Although concerns are expressed about costs, much of the works will be done `in house` and, as indicated above, the costs are estimated at £3000 although this is said to be an over-estimate.
- 37.6. Publication of the proposals was properly undertaken for the requisite period and plans were provided for viewing in church on several Sundays. The proposals were also set out in the PCC minutes which were displayed in the church porch.
- 37.7. The west end porch is simply not large enough to for monthly matins services, prayer meetings, bible study and small committee meetings.
- 37.8. It is recognised that communication of the proposals to some members of the congregation had been a problem and some fault for lack of communication is

accepted but the PCC had not anticipated that there would be objections to what was proposed. There was certainly no intention to mislead given that the PCC had supported the proposals, the PCC minutes were readily available and plans had been shown to members of the congregation.

- 37.9. It was believed that what was proposed would provide additional facilities for the church without in any way detracting from its essential character. The proposed space would be an ideal setting for those small numbers who attend the monthly matins prayer service or for other reflective and prayerful meetings and would provide a friendly and welcoming space for parishioners to enjoy refreshments whereas at present many do not choose to stay. In conclusion the Rector stated:

`We are trying to make our building better equipped to fulfil the Diocesan vision of being a `Church for a Different World` in the context of our traditional church setting.`

Determination of the Petition

38. I am aware of Rivington Church, having once visited it, I think, to attend a funeral. In such circumstances I am well aware of the position of the location of the church and of the location of the Church Hall, across what can be quite a busy road.

39. Applying the *Duffield* questions, I am satisfied that the removal of the pews will *not* result in harm to the significance of this Grade II listed building as a building of special architectural or historic interest. Having so found, I am required to ask myself whether the Petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted?

40. Having carefully considered all the objections set out above, I am satisfied that the Petitioners have shown a sufficiently good reason for change to overcome such presumption for the following reasons:

- 40.1. I am satisfied that the Public Notice in relation to the faculty was displayed for the requisite period and that plans were displayed on at least one of the services in July 2019 when the effect of the proposals was explained by both the clergy and PCC members. It may well be that it might have been preferable, in the light of the objections which were subsequently made, for there to have been a congregational meeting at which the proposals could have been explained, but such a meeting is not required by the Faculty Jurisdiction Rules and I accept that the PCC believed, it transpires incorrectly,

that they had the support of the whole congregation. They are not to be criticised in any way for so believing.

- 40.2. The proposals are very modest. They involve the permanent removal of only one pew, the parts of which will be used to repair a damaged pew. The two remaining pews will be positioned along the south wall to form an enclosed space which has pews on three sides. It is not part of the proposal to install modern tables and chairs. Had there been any such proposal it would have had to form part of the faculty sought.
- 40.3. The proposals will involve a very small reduction in the seating capacity of the church and I am satisfied that, even so reduced, the church will be large enough to accommodate all those who wish to attend.
- 40.4. I can well understand that there is a sensible desire to provide refreshments to members of the congregation after services and that such encourages fellowship among the congregation which is a very desirable objective. I am satisfied that it is unrealistic to expect people to walk across the road to the Church Hall for refreshments there or to remain in the church in what I accept is a congested and, I suspect, uncongenial crowded environment at the west end of the church which is also used as the main entrance to the church. I do not think that what is proposed can fairly be described as `change for changes sake`.
- 40.5. But that is not the *only* purpose of the `new` space created by the rearrangement of the pews. Although a major reason for the changes is to provide a relaxed environment where people to chat to each other and enjoy their company, such a space can also be a family friendly area for use by parents and children can also be used for very small gatherings or meetings of various kinds. Moreover, the proposals are in part prompted by the diocesan initiative to be a welcoming and attractive place to those who may have limited, or no, experience of church. This has to be a substantial benefit to the church.
- 40.6. Some objectors are obviously under the impression that new modern furniture will be introduced into the church in the form of tables and chairs created by the rearrangement of the pews. Had they looked at the plans or asked the Rector or any member of the PCC, they would have been realised that such was a misunderstanding of what was proposed.
- 40.7. Some objectors believe that the proposed rearrangement of the pews will have a detrimental effect on the character of the church and in particular the use of the church for quiet and prayer. Whilst recognising the sincerity with which

such a view is expressed, I regret to say that I do not share their belief. I am satisfied that the use of the `new` space for coffee at the back of the church is unlikely to detract from any other person seeking to use the front of the church for quiet contemplation and/or prayer.

40.8. Some objectors refer to the effect on baptisms. It seems that baptisms take place after services and that usually those attending are accommodated in the pews immediately facing the font, of which three pews are to be `rearranged`. I accept that, if the pews are rearranged, those attending baptisms will have to sit elsewhere but I am satisfied that there is sufficient available space near to the font and I believe that the `new` space might well be useful to accommodate young children and/or pushchairs which might be an added benefit.

40.9. Although the cost of proposals is always relevant and some have objected on the basis that there are better uses of any available funds and/or that this expenditure is unnecessary, I do not regard the very modest cost as a relevant factor here.

41. Although I have found that the Petitioners have shown a sufficiently good reason for change to overcome such presumption and that is sufficient to enable me to grant the faculty sought, it is probably helpful to record that, had I found that the removal of the pews would have resulted in harm to the significance of the building as a building of special architectural or historic interest, I would also have found that:

41.1. the degree of harm would be small because it is such a modest proposal;

41.2. the justification for the rearrangement of the pews to provide a much-needed larger area for refreshments after a service and for use by parents and children, informal gatherings and meetings in a church which seeks to promote mission and outreach would be self-evident; and

41.3. the resulting public benefit undoubtedly outweighed such a small degree of harm.

Conclusions

42. Accordingly, and for the reasons set out above, I grant the faculty sought.

43. In accordance with the practice of the court the Petitioners must pay the costs of this application.

44. I can but express the fervent hope that, now the voices of all those who do not agree with what has been proposed have been heard, the whole congregation can unite together to work to further the role of this church as a local centre for worship and mission.

GEOFFREY TATTERSALL QC

Chancellor of the Diocese of Manchester