

IN THE CONSISTORY COURT
OF THE DIOCESE OF MANCHESTER

RE AN APPLICATION FOR A FACULTY BY REVEREND STEPHEN LYNN JAMES,
RICHARD MARK LANDER AND ROBERT JAMES TURLEY

AND

RE HOLY TRINITY RUSHOLME

JUDGMENT
delivered on 28 March 2012

Introduction

1. By their Petition dated 3 June 2011 Reverend Stephen Lynn James, Richard Mark Lander and Robert James Turley [together described as 'the Applicants'] apply for a faculty to undertake the following re-ordering of the interior of Holy Trinity Rusholme ['the church'] namely :

- [a] to remove the pews from the nave with the relocation of three pews behind the organ and three pews by the font; followed by the introduction of new seating;
- [b] to level the nave floor and side aisle floors and carpet; and
- [c] to install under-floor heating.

2. The full extent of the proposals are set out in a number of drawings which I have seen. The proposals are prompted by an immediate need to renew the current defective heating system, which uses large diameter cast iron pipes to distribute heating which has failed at pipework joints in many locations and is beyond repair, by the installation of under-floor heating, thereby avoiding the need for any wall mounted heat emitters, which will necessitate the removal of all the fixed pew seating. This in turn will give the opportunity to create a flexible space that can be used for a wide range of activities, will allow flexibility for alternative patterns of worship and will improve access to all parts of the church to achieve compliance with the Disability Discrimination legislation.

3. The church's architects, Byrom Clarke Roberts ['BCR'], have estimated the costs of the works at £ 380,000. It is a testament of the commitment of the congregation to the proposed re-ordering that following a fund-raising appeal instituted in March 2011, by the end of March 2011 the amount raised or promised was £ 221,358 and that, after allowing for tax reclaimed under gift aid, the total sum now raised or promised is £ 438,280.

4. At a hearing at the church on 17 March 2012 which was attended by a substantial number of members of the congregation, Mr Richard Oughton of Counsel represented the Applicants and called a number of witnesses namely :

- [a] Mr Ian Lucas, an associate and senior conservation architect at BCR;
- [b] Mr Andrew Hawksworth, a director of BCR;
- [c] Reverend Stephen Lynn James, the Rector of the church [‘the Rector’];
- [d] Robert James Turley, a churchwarden of the church;
- [e] Richard Burton Fearnley, Parochial Church Council [‘PCC’] treasurer of the church;
- [f] John Richard Eaton, PCC secretary of the church.

5. The Rector and Messrs Turley, Fearnley and Eaton had already made witness statements and Messrs Lucas and Hawksworth were the authors of documents produced by BCR. At the hearing each witness adopted and elaborated on the contents of such statements or documents and answered any questions which I posed. I unreservedly accept the accuracy of all such evidence and I am very grateful to all the witnesses for the clarity in which they gave such evidence.

6. Although both English Heritage and the Victorian Society opposed the proposals, neither elected to become formal objectors to the Petition and neither attended nor were represented at such hearing.

7. At the conclusion of the hearing I reserved my judgment.

Holy Trinity Rusholme

8. Holy Trinity Rusholme is a grade II* listed building constructed on open land to the north of Platt Fields in Rusholme, Manchester. The listing description makes particular reference to the yellow, buff and terracotta in imitation of stone. The church rises as a prominent landmark within the parkland of Platt Fields and the honey coloured terracotta to the surfaces of the tower and spire are particularly attractive and distinctive.

9. The church, which has a narrow centre aisle and two further, even narrower, side aisles, was commissioned by Thomas Worsley of Platt Hall who lived nearby. It was originally designed to seat 650 people and cost about £ 4,000 when constructed in 1846.

10. The church’s architect was Edmund Sharpe and this building was the second of his three ‘terracotta’ churches, the first of which was St Stephen Lever Bridge in Bolton in the Diocese of Manchester. All the external masonry works are formed in terracotta including the dressings, cills, mullions and tracery to the windows. Terracotta is also used internally to the arcading of the north and south side aisles but otherwise the interior is largely of painted plaster. However, when seated in the church it is not easy to forget the use of terracotta, particularly since each of the eight substantial pillars of the church are all constructed of terracotta.

11. As to the pews it is helpful to contrast the use of terracotta in the pews in the church as compared with St Stephen Lever Bridge. The pews at St Stephen Lever Bridge have complete terracotta ends, including a finial, which appear more robust and substantial. Although I was shown a photograph of a sample pew end at St Stephen Lever Bridge during the hearing, I confirmed that I have visited that church on a number of occasions. By contrast,

the pews in the church are radically different in that they are of a basic timber construction with small decorative, and probably mass produced, inserts of terracotta which are affixed to the pews by means of a single screw. The terracotta details are of one design which has been mirrored and there are variations of finish to the castings. The terracotta has been stained and grained to give the appearance of timber.

12. Having heard the evidence of Mr Lucas, which I accept, I now understand why the pews of this church were constructed differently to those at St Stephen Lever Bridge. Mr Lucas told me that terracotta was used at St Stephen Lever Bridge because John Fletcher, the patron, was a colliery owner and manufacturer of terracotta : hence its pervading influence throughout the entirety of the church. By contrast in this church the use of terracotta seems to have been an economy to the assist the speed of construction in that carved pew ends would have been more expensive and would have taken longer to make and it seems that Thomas Worsley [described to me as a 'low church evangelical'] intended that the church be a counterpoise to the Unitarians who were building what is now known as Birch Chapel and there was some competition as to which building would be completed first. Although the church was consecrated a few days before Birch Chapel, it is noteworthy that at the date of consecration it had an incomplete interior and no pews.

13. In a historical context Edmund Sharpe's use of terracotta at both St Stephen Lever Bridge and this church must have been one of the first major uses of this innovative material on major civic buildings which did not gain general acceptance in Victorian architecture until its use in the construction of the Royal Albert Hall in 1867-71.

14. The timber pews in the church are constructed of pitch pine and in my judgment are themselves unremarkable : indeed several are splintered or otherwise damaged. Mr Lucas says that they are 'of a very simple and modest design' and are 'of little significance in their own right'. I entirely agree with such descriptions. Having sat in them I can also confirm that they are uncomfortable, not only because of their relative upright nature but also because, unlike those at St Stephen Lever Bridge, they are positioned very close together, making entering them and standing in them for long periods somewhat difficult. Some of the timberwork has been stained in a light shade whereas other timberwork has been stained in a dark shade which results in an overall inconsistent appearance.

15. The pews are laid out on raised timber platforms above the central and side aisles. Large diameter central heating pipes run along the outward edges of all the raised timber platforms and create a potential tripping hazard for those using the pews. Even if such pipework were to be removed only the centre aisle could be used by a wheelchair. In that sense the church is not disability friendly and at present those in a wheelchair are required to sit at the far west end of the church so as not to block the central aisle. The removal of the raised platforms and the existing fixed pews and their replacement by chairs would permit wheelchair access to any part of the nave. The side aisles are solid floor aisles with a tiled margin and inserts of woodblock parquet but in many areas the tiled margin is damaged or missing and the woodblocks are becoming worn and loose.

16. Having myself inspected the side aisles I can confirm that much of the tiled margin is either damaged or missing and in my judgment it would be not be realistically possible to install an under-floor heating system in such a way as to avoid much further damage or to allow any such tiled margin to be reinstated in the side aisles, were they to remain.

17. Over the past five years the PCC has maintained the existing building by investing in excess of £ 250,000 in terracotta replacement works to the exterior, including re-roofing the north and south aisles and the installation of cast iron rainwater goods. Future plans envisage the repair of and restoration work to the tower and spire at an estimated cost of £ 120,000.

18. The church is a large, vibrant and thriving evangelical church with a high student residential population in its immediate vicinity. It has an average attendance of 600 over its three Sunday services with an average congregational age of 29 years. The church recognises the strategic potential of a large 20-30 age group in its congregation and its responsibility to provide leaders and potential ordinands.

19. The church has an urgent need for a replacement heating system and to make changes to the interior of the building to improve access arrangements so as to achieve compliance with the disability discrimination legislation. After examining the various options the PCC has concluded that an under-floor heating system would best meet the needs of the church. This approach is uncontroversial and will necessarily involve the removal of the existing fixed pew seating and the levelling of the floor.

20. The existing fixed seating pews restricts the use of the nave for worship and any other activities. Removal of the pews and the raised timber platforms and the introduction of loose chairs would provide flexibility for different styles of liturgy and the opportunity to use the space for different activities. The Church Hall is already well used. The re-ordering of the nave would allow it to be used for much larger group meetings such as Student Bible study [about 120 attendees], midweek monthly prayer meeting [about 150 attendees], and other outreach events, activities and concerts. In this context it is important that I should expressly record that I accept all that the Rector told me about proposed future activities. I was also told that an elected member of Manchester City Council had recently pointed out the lack of local large spaces and had urged the church to make its buildings and activities more accessible to the local community.

21. It is proposed that the new seating should consist of 380 Howe 40/4 chairs with oak veneered seats and backs and polished chrome frames and interlinked with Howe hymn book holders between each chair. Such a chair is widely used in churches and cathedrals. I am satisfied that it is a high quality chair of elegant design which has a high stacking capability and an integral linking system.

22. I have seen drawings representing how the replacement of the existing pews with individual chairs would appear. I am satisfied that what is proposed would open up the nave and encourage the flexible use of it.

23. For the sake of completeness I record that there are significant contents within the chancel of the church, namely an altar table, which is dated 1640 with the initials 'HH', and a flanking pair of carved chairs which are believed to be mid 17th century in date which sit on the altar platform which is formed in a fine composition of decorative encaustic tiles. Such significant and valuable pieces of furniture pre-date the building of the church by over 200 years and are believed to have been donated by the Worsley family of Platt Hall who in 1625 purchased the Hall and Park from the Platt family, who had themselves owned it since 1225. None of the proposed works affect the chancel.

24. The real issues which I have to decide are twofold : firstly should the existing fixed pew seating be re-instated in the nave of the church after the installation of the under-floor heating or should it be replaced by chairs which can be arranged in different ways to suit the way in which the nave is being used; and secondly, if the pews are to be replaced with chairs, should the floor be carpeted as it currently is or should there be a good quality hardwood floor.

The views of the Parish

25. The Parish is wholly committed to the proposed re-ordering. As I have already been indicated it has raised sufficient monies to undertake the proposed works. I record that such is very unusual but very commendable.

26. At its meeting on 9 November 2010 the PCC resolved unanimously to proceed with an application for a faculty.

27. Mr Turley told me that there had been extensive consultation with the congregation. In early 2011 the whole adult congregation was asked to individually complete and return a questionnaire about the re-ordering proposals and that the result of such consultation [there were over 350 replies] was that the congregation was overwhelmingly in favour of what was proposed. 277 people were in full support of all that what proposed, some 75 people were in support but raised qualifications and/or reservations, which Mr Turley believed had been answered and some 3 people were opposed to what was proposed. It is significant that the Public Notice of the application for a faculty led to not a single objection by any member of the congregation or any other person.

The Diocesan Advisory Committee

28. In her letter dated 4 December 2009, following a site visit to the church on 30 November 2009 by members of the Diocesan Advisory Committee ['DAC'], the Secretary of the DAC stated in relation to the proposed removal of the pews :

'This was a more problematic issue. There were mixed views on this aspect of the proposals. It was known that there were plain pine pews, pews with plaster pew ends and pews with terracotta ends. It was the removal of the latter which were not wholly endorsed. While many of the terracotta pew ends were in a poor state, it was felt a pity not to retain them. It was noted that the whole of the original chancel furnishings had been removed and it was felt that the pews with the terracotta pew ends were the last remaining original fittings and it would be a great pity to lose them. However, the consensus was that a compromise might be reached to keep some of the pews re-fixing them to the new floor following removal of the plinth.'

29. Notwithstanding such earlier observations, on 7 April 2011 the DAC decided to recommend the proposed works on condition that the DAC approved the carpet.

30. However, I think it is important that I should note that the DAC were at one stage in favour of a 'compromise' to retain some of the pews and that the subsequently the Applicants' application to the DAC for advice incorporated the retention of some of the pews, as indicated above. I am satisfied that the DAC was satisfied that such 'compromise' addressed their concerns.

31. The Archdeacon of Manchester is a member of the DAC and the church is within his archdeaconry.

32. Prior to the hearing I received a letter of support for the proposals from the Archdeacon of Manchester. He stated, inter alia, that :

‘My own opinion is that the case for the reordering is overwhelming, the proposals are sound and the compromise reached over retention of some samples of the pew ends is satisfactory. The benefit of these proposals is that we would have a significant building in the Diocese well looked after and maintained.

My view is that there is a necessity (using Bishopsgate questions terminology) for these proposals to go ahead and not to do so would compromise the mission and worship of one of our most effective churches in the Diocese.’

33. Save that I doubt that either English Heritage or the Victorian Society would agree that there was any true compromise, such words offer very strong support to the Applicants.

English Heritage

34. Prior to the application for a faculty the Applicants consulted English Heritage. At that time it was proposed to retain a display of retained bench ends at the west end wall.

35. English Heritage were opposed to the complete removal of the pews. They suggested that the replacement heating system would offer ‘a potential opportunity to explore re-ordering of the church seating while accommodating the retention of at least some of the original pews’. Subsequently they contended for ‘the retention of a meaningful and representative sample of the church seating’ ‘to minimise the conflict with the historic fabric while facilitating the continued active use of the worship space’.

36. I ordered that English Heritage be given special notice of the proposals.

37. In response thereto, in its letter dated 15 July 2011 English Heritage stated :

‘As you will be aware English Heritage has considered the removal of the pews on two occasions prior to this current application for a faculty. While we understand the particular aspirations of the parish, our view essentially remains unaltered. ...

We note that the proposal involves the removal of the vast majority of the pews, except for a small section adjacent to the modern organ. The retained pews simply comprise three benches in their original position at the east-end of the nave, and three benches located to enclose the revised font area.

You will be aware of the historic and architectural interest of the church building and its existing pew arrangements. The pews are both original to the building and a relatively unusual feature, retaining terracotta components within their design. The building’s architect, Edmund Sharpe, is also of considerable significance within the gothic revival movement.

We note that there is general agreement that, ‘*the pew ends are significant*’ We consider that the surviving pews contribute to the coherence of Sharpe’s unusual church design

concept. Consequently, the removal of the pews will have a profound impact on the interior spaces and thereby the special interest and significance of the building's architecture. As you will be aware PPS5, HE9.1 requires that such harm to the grade II* listed buildings should be wholly exceptional. ...

It would appear that [the] proposed scheme offers the potential for access improvements as a consequence of adjustments made during the installation of the new heating system. However, we remain unconvinced that the permanent removal of the full extent of the pews is a fundamental necessity, which might justify the wholly exceptional loss of significance. Consequently, we, with regard to PPS5 - HE9.1, we are not persuaded that there are any exceptional circumstances or essential benefits which might justify the *entire* removal of the pews. ...

You will be aware of our previous recommendations that a compromise is sought to minimise the loss of historic layout and seating. It would appear that this objective is generally accepted and attempts have been made to retain some of the pews. Unfortunately, we are not persuaded that the current proposal constitutes a substantial or meaningful retention of the pews. We are, therefore, unable to support the revised option.'

38. Whilst English Heritage was unable to support the proposals, it did not wish to object to the proposals.

39. The Policy Planning Statement 5 ['PPS 5'] referred to by English Heritage is a clear reminder of the value of the historic environment and the contribution it makes to our cultural, social and economic life. It not only provides a tangible link with our past but also contributes to our sense of national, local and community identity and enhances the quality of our daily lives. Accordingly it is important to recognise that people care about and want to conserve those elements of our historic environment that hold heritage value for them because once they are lost they cannot be replaced.

40. Accordingly in his Addendum to the church's Statement of Significance dated March 2011 Mr Lucas expressly addressed the material parts of PPS5 and Policy HE7 in the context of the proposed permanent removal of the existing fixed pew ends and therein accepted the expert opinion of both English Heritage and the Victorian Society that the pew ends were significant because of the terracotta inserts.

41. Mr Lucas made a number of contentions which may be summarised thus. Firstly, whilst he accepted that it is an accepted conservation principle that buildings should be retained, wherever possible, in their original use and relating to the purpose for which they were constructed, he contended that the need to create a level floor in the nave which could be flexibly used was required to maintain the church as an active and vibrant place of worship. Secondly, recognising that the detailing of the terracotta tracery was unusual, he contended, notwithstanding, that the pew ends were not intended to be appreciated as innovative examples of terracotta but were painted and not intended to be appreciated as anything other than timber. Thirdly, he contended that the use of terracotta at the church has a largely external impact and that the removal of the existing fixed pew seating would not affect the building externally. Fourthly, he contended that the replacement of the existing pews by new seating of the highest quality would make a positive contribution to the character and local distinctiveness of the historic environment. Fifthly, he observed that, given that the church's recent financial investment in repairs to the fabric of the church

building, it could not be fairly be said that there had been `deliberate neglect` of the church building.

42. As hereinafter appears I find myself in complete agreement with all of Mr Lucas's contentions.

Victorian Society

43. Having been notified of the proposed works the Victorian Society visited the church and in its letter dated 10 December 2010 stated :

`The Victorian Society is opposed to the proposal to remove the pews from the nave. That they are not included in the list description does not mean that they are bereft of historical significance. The pews at Holy Trinity are important as fittings designed by Sharpe that are original to the building and are notable for the decorative cusped terracotta inserts that adorn the ends. While there has been a certain amount of mechanical damage and the nave pews have been stripped of their original finish, these changes could easily be reversed and made good.

Removing the pews would not only remove a large amount of historic fabric with intrinsic value, it would remove fittings that make an important contribution to the character of the interior and destroy the `landscape` of the floor. At the site visit we discussed the retention of a small sample of the bench ends and incorporating them into some sort of decorative panelling at the west end of the nave. We do not believe that this would be adequate compensation for a major and irreversible alteration. The ends were designed as adornments to functioning pieces of furniture, not as art objects to be viewed in isolation. They were meant to be seen en masse. While we accept that some reordering may be necessary, as many pews as possible should be kept. We would only concede removal of a small number and then only on the basis of the strongest possible justification, which is not provided by the current Statement of Need.

The Victorian Society objects to the proposal to carpet the interior. This would domesticate a noble and monumental space and could well have an adverse effect on the acoustics. The flooring in much of the church consists of wood blocks and may well coeval with the original fabric. The material harmonises with the historic interior and its overall layout has architectural qualities which respond to the building. Moreover, such flooring is durable and has good acoustic qualities. We would like you to retain it, remove the badly worn carpeting that covers it at present and restore it. We have no objection to the replacement of the heating system, but do not believe that the installation of underfloor heating need be incompatible with the retention of wooden flooring. Should removal of any of the pews be necessary, the pew platforms could easily be lowered to bring them flush with the aisles and most of the original material retained.'

44. I have already referred to the tiled margins in the side aisles.

45. I ordered that the Victorian Society be given special notice of the proposals.

46. In response thereto, in its letter dated 12 July 2011 the Victorian Society stated :

`The Victorian Society does not wish to become a formal objector to this petition for faculty, but we have substantial concerns over the impact of the alterations on the building which were set out in our letter to the architects of 10 December 2010 To our considerable

disappointment, the architects did not reply to our letter and seek to address our concerns or engage in discussion of the scheme. ...

However, the outline of the proposals suggests that the most contentious proposals - the removal of the pews, the works to the floor and the carpeting of the interior - remain unchanged and we therefore maintain our objection. We trust that the Chancellor will give due consideration of our concerns when deciding this case.'

47. Again whilst the Victorian Society was unable to support the proposals, it did not wish to object to the proposals.

The Local Planning Authority

48. I ordered that the Manchester City Council ['the Council'], the local planning authority, be given special notice of proposals.

49. The Council acknowledged the need for the replacement of the current heating system with a more suitable installation in the form of under-floor heating and that such works would not cause any harm to the 'heritage asset'. In respect of the pews ['perhaps one of the most significant remaining fixtures and fittings that remain within the church'] which have been altered and 'are not particularly comfortable' it stated :

'The pews are clearly a significant element of the church and their removal would cause some harm [to] the special character of what remains of the original interior. However we note the justification put forward in the statement of need that the pews themselves have been altered, that they are no longer fit for purpose, and that there is a need for the church to be able to achieve more flexibility in this space and provide a more flexible seating arrangements in order to satisfy the needs of the church and its substantial congregation. In addition it is noted that these changes seem to have a substantial level of support from the community itself. It is regretful that the pews have to be removed, but it is encouraging to see that a few very good examples of the pews will be repaired and restored and incorporated into the new layout, and feel that a well considered case may have been made for their removal. In this respect we defer the decision to remove the pews to the Diocesan Advisory Committee for their consideration.'

50. The Council thus supported the proposals, although it probably did so on the basis that 'a few very good examples of the pews will be repaired and restored and incorporated into the new layout'.

The Church Buildings Council

51. I ordered that advice be sought from the Church Buildings Council ['CBC'].

52. In its letter dated 15 September 2011 the CBC stated :

'The Council noted that the pews have particular significance because of the use of terracotta mouldings set within the ends which were designed to appear as timber. It is this innovative use of material that is significant rather than the pews themselves. ...

The Council was entirely convinced of the need to remove the pews. It did not think that sample pews should be retained; rather it would prefer to see an educational display

somewhere within the church showing the mouldings and a pew end which demonstrates the history and use of terracotta.

The proposals as presented are for a carpeted finish to the nave with underfloor heating and a Howe 40-4 chair. The Council has no objection to these proposals and welcomed the choice of chair but considered that there was an opportunity really to enhance the interior of the church by laying a hard floor surface of quality.'

53. It was such latter remarks which prompted me to ask the Applicants to consider whether 'a hard floor surface of quality' might be more appropriate than carpet.

54. The church's views on floor surfaces were set out in a document written by Mr Hawksworth. Although the church did consider both a timber floor finish and a stone or tile finish, it concluded that both surfaces were unsuitable for both children and adults to sit on and that removable mats might be needed for such purpose which would require to be stored when not in use. Perhaps more importantly, the church concluded that both a timber or a stone or tiled floor would be vulnerable to accidental damage, might create a more formal or austere appearance, which would be contrary to what the church intended, and would increase sound reflection within the nave. By contrast, to carpet the nave would offer more benefits and in particular greater comfort, control of sound, lower cost and lower maintenance costs.

55. In its email dated 5 December 2011 the CBC indicated that if the Applicants wished to pursue their proposal for a carpet, the CBC would wish to raise no objection.

The legal context

56. Before addressing the issues raised in the Applicants' application it is important that I should set out the legal context in which I am required to make a decision.

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

58. The desires of parishioners are of considerable weight, particularly when there is unanimity but there is no presumption that they will invariably prevail because such would usurp my function as Chancellor and the discretion which I am required to exercise.

59. In the case of a listed church, such as this, the appropriate test for determining the petition is to adopt what are generally styled as the *Bishopsgate Questions*. Such questions were first posed by Cameron Ch, as she then was, in *Re St Helen Bishopsgate* [26 November 1993] and their applicability was approved by the Court of Arches in *Re St Luke the Evangelist Maidstone* [1995] Fam 1. Such questions are :

'(1) Have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of the parish or for some other compelling reason ? (2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest ? (3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works ?'

60. This approach has been consistently applied by consistory courts and was reaffirmed by the Court of Arches in *Re St Mary the Virgin Sherborne* [1996] 3 WLR 434 where it stated, at 447 :

‘... by the questions and their order we wish to stress the fact that with listed buildings the presumption is so strongly in favour of no alteration that the first question which must be asked is : are the alterations necessary ? The present order of questions emphasises that for listed buildings the presumption is heavily against change. To change the order of the questions would, we believe, cause confusion and might seem to some to indicate a relaxation of the requirements before change will be authorised. No such relaxation is intended or desired by this court.’

61. Although in subsequent cases the order of the first two questions have been reversed [see for example *Re St Gregory Offchurch* [2000] 1 WLR 2471, which Gage Ch applied to all Millennium window cases, and *In Re St Peter’s Walworth* [2002] 7 Ecc LJ 103, which George Ch applied to all cases involving alterations to listed churches] - an approach which had been rejected by the Court of Arches in *Re St Mary the Virgin Sherborne* - even in such cases there has remained a presumption against change.

62. However it is important to determine what constitutes a ‘necessity’.

63. In *Re St Mary the Virgin Sherborne* Sir John Owen, Dean of the Arches, stated, at 446

‘The word ‘necessity’ has caused some trouble mainly because it has an objective and compulsive element. It is possible to argue that if a change is necessary it is a change which must be allowed no matter what objections there may be. However, we believe that in using this word in the context of there being three relevant questions we are not indicating an absolute : we are indicating the approach which a responsible Church must have to listed buildings. The presumption is that there shall be no change.’

64. George Ch, as he then was, expressed the matter in a slightly different way in *Re St John the Evangelist Blackheath* [1998] 5 Ecc LJ 217 when he suggested that in the context of the *Bishopsgate Questions* ‘necessity’ means ‘something less than essential, but more than merely desirable or convenient : in other words something that is requisite or reasonably necessary’. Such test, although not binding on other chancellors, has been applied in other cases - for example *Re Holy Cross Pershore* [2001] 6 Ecc LJ 86 and *Re St Mary the Virgin Essendon* [2001] 6 Ecc LJ 415

65. In *Re St Mary Newick* [2009] Ecc LJ 127 Hill Ch stated that ‘necessity’ should not be taken in isolation as an abstract concept : it should be read in its clear context which carries the wider concept of pastoral wellbeing or some other compelling reason. Thus, in his view the *Bishopsgate* approach continues to impose a high standard of proof on those who seek to discharge the presumption against change applicable in the case of all listed buildings, yet admits of factors concerning the role of the church as a local centre of worship and mission which is central to the operation of the faculty jurisdiction.

66. In determining this petition I am required to, and will, apply the *Bishopsgate* questions as approved by *Re St Luke the Evangelist Maidstone* and the presumption against change because the Church is a listed building, but will interpret ‘necessity’ as something

which is reasonably necessary, as opposed to being merely desirable or convenient, in the context of the Church being a focus for worship and mission in the parish.

Determination

67. It is uncontroversial that the current heating system for the church has failed and requires to be replaced and that an under-floor heating system covering the whole of the nave which avoids the need for any wall mounted heat emitters is an appropriate method of heating the church. Such an under-floor heating system will allow for the removal of the substantial cast iron heating pipework at the end of the pews, eliminate a potential tripping hazard when accessing the pews and will make the usable width of the aisles slightly greater. All of these are clear advantages which will result from such a new heating system.

68. It is also uncontroversial that to install such an under-floor heating system it will be necessary, at the very least temporarily, to remove all the pews from the nave of the church and the raised timber platforms on which they sit. No one suggests that after the installation of such under-floor heating system, such raised timber platforms, which will serve no useful purpose after the removal of the cast iron heating pipework, should be reinstated. I agree that no purpose will be served by the reinstatement of the raised timber platforms.

69. The substantial issue which I have to determine is whether, after the installation of the under-floor heating system, the existing fixed pews should be reinstated in the nave of the church, as both English Heritage and the Victorian Society suggest, or whether such existing fixed pews should be removed, leaving the very best examples of such pews behind the organ or adjacent to the font, and replaced by chairs, as is desired by the congregation and supported by the DAC, the CBC and the Council.

70. I have already observed that the existing fixed pew seating is, by itself 'unremarkable', have accepted Mr Lucas's assessment that they are 'of little significance in their own right' and observed that they are uncomfortable.

71. Although the pews are also difficult to gain access to and stand in for long periods, I accept that if they were reinstated in the nave of the church the distance between the pews could be slightly increased to remedy any such difficulty. The same would apply to the difference in the stained colour of the pews : they could all be stained in the same colour.

72. In my judgment the only thing which is remarkable about the pews is the use of terracotta at the upper part of the pew ends. In reaching my decision I have had regard to the value of the historic environment which these pew ends present and I accept that there is some intrinsic heritage value in their retention. They represent an early use of an innovative material, terracotta, which some years later was to gain general acceptance in Victorian architecture. However, I am compelled to say that, in the context of the pew ends, I do not regard them as a very good example of the use of terracotta and one only has to travel some 15 miles to St Stephen Lever Bridge to see a much finer example of the use of terracotta in pew ends.

73. That said, I am well aware that if these terracotta pew ends are not retained, they will be lost forever and cannot be replaced.

74. I thus ask myself the *Bishopsgate* questions, as set out above.

75. In so doing, I remind myself that there is a presumption that there shall be no change to a listed building and that the burden of proof lies on the Applicants who propose a change to the status quo to establish, on a balance of probabilities, that it is appropriate for me to grant a faculty.

76. I have already indicated that in determining this petition I will, apply the *Bishopsgate* questions as approved by *Re St Luke the Evangelist Maidstone* and the presumption against change because the Church is a listed building, but will interpret 'necessity' as something which is reasonably necessary, as opposed to being merely desirable or convenient, in the context of the Church being a focus for worship and mission in the parish. That was the approach which I also adopted in *Re Holy Trinity Horwich* [10 May 2011].

77. On the facts of this case the church wishes to replace the existing pews with high quality chairs to provide flexibility for different styles of liturgy and to be able to use the re-ordered nave flexibly for the other activities to which I have already referred. Such is particularly crucial since the Church Hall and much smaller Church Lounge are already very well used. I note that an elected member of the Manchester City Council has recently urged the church to make its buildings and activities more accessible to the local community, which I too would encourage.

78. I am satisfied that the permanent removal of the pews will allow a much greater flexible use of the nave and that it will be used for the activities so described. It will also allow the nave to be used for large meetings or conferences which the existing pew seating will not realistically permit. I am thus satisfied on the evidence adduced before me that there is a necessity, as defined above, for the proposed works for the proper development of the needs of the parish and the community which it seeks to serve.

79. Equally I have no doubt that the removal of the pew ends will adversely affect the character of the church as a building of special architectural and historical interest. I note that the DAC certificate shares such conclusion.

80. I thus turn to consider whether the 'necessity' proved by the Applicants is such that, in the exercise of my discretion, I should grant a faculty for the proposed works.

81. On the facts of this case I am persuaded that, in the exercise of my discretion, I should grant the faculty sought. I do so for a number of reasons which conveniently may be summarised thus. Firstly, whilst I regret the loss of the terracotta pew ends I do not regard them as very fine examples worthy of wholesale retention in the church, believe that there are far better examples elsewhere and believe that the retention of some existing pews, as contemplated by the Applicants behind the organ and around the font, will offer a sufficient mitigation for what is to be lost. Secondly, I entirely agree with the observations made by Mr Lucas when addressing the material parts of PPS5 and Policy HE7, as set out in paragraph 41 above. Thirdly, I do not believe that it is desirable or reasonable to retain the tiled margin in side aisles : some of it is missing and other parts are already damaged and it is likely be further damaged during the proposed works. Fourthly, I accept that the more flexible use of the re-ordered nave with high quality chairs which can be re-arranged in various

configurations and easily stacked will offer so many more opportunities for different styles of liturgy and activities which are essential for this vibrant church.

82. I am thus satisfied that the Applicants have discharged the burden on them to demonstrate that it is appropriate that I should grant a faculty.

83. During the hearing I canvassed with Mr Oughton whether I would be justified in concluding that it was not appropriate to retain *any* pews. Although he very properly reminded me that the Council had assumed from the current proposals that 'a very good examples of the pews will be repaired and restored and incorporated in the new layout', on reflection I have concluded that the retention of such pews [three pews behind the organ and three pews by the font] is appropriate not just because the Council might have otherwise adopted a different view, but because more significantly it is important that, as a matter of principle, there is an acknowledgment in the re-ordered nave of the historic early use of terracotta in the pew ends.

84. During the hearing I observed that some of the pew ends are numbered. Although I am content to leave it to the good judgment of BCR as to which of the pews are to be repaired, restored and positioned behind the organ or by the font, it might well be appropriate for numbered pew ends with good examples of undamaged terracotta inserts to be displayed.

85. The only remaining issue is whether the new floor surface of the re-ordered nave should be covered by a wooden floor, as the Victorian Society and the CBC suggest or carpet, as is preferred by the church. However, unlike the Victorian Society, the CBC is content to leave this issue to the judgment of the church and, as I have already indicated, the church have concluded that a timber floor surface would probably require the use of removeable mats if sat upon, with resulting storage issues, whereas carpet would offer greater comfort and, probably most importantly, a less noisier ambiance.

86. On the facts of this case I am satisfied, for the reasons set out above, that it is appropriate that the re-ordered nave be carpeted but in order that there is some appropriate consideration as to what is an appropriate carpet I will impose a condition on the faculty that prior to the installation of any carpet it must be approved by the DAC.

87. I impose a further condition to the said works. I direct that during the works all undamaged and entire terracotta inserts which can be removed from the pews should be collected and appropriately stored in an appropriate secure place. When the works are completed I direct that the Applicants should consider whether it is appropriate for some or all of them to be displayed in some way and to notify me of their proposals. I emphasise that until I have reached any decision as to such proposals, such terracotta must continue to be appropriately stored.

Conclusion

88. Accordingly, for the reasons which I have set out above, I grant the faculty sought on condition that

[a] prior to the installation of any carpet it must be approved by the DAC and

[b] during the works all undamaged and entire terracotta inserts which can be removed from the pews should be collected and appropriately stored in an appropriate secure

place and that upon completion of the works the Applicants shall consider whether it is appropriate for some or all of them to be displayed in some way and notify me of their proposals.

89. In accordance with the practice of the court the Applicants must pay the court fees incurred in relation to the Petition.

A handwritten signature in black ink, appearing to read 'G. Tattersall', with a horizontal line underneath.

GEOFFREY TATTERSALL QC
Chancellor of the Diocese of Manchester