

In the matter of St Thomas, Sutton-in-Craven

Judgment

1. By a petition dated 14 September 2014, but not sent to me until 17 August 2015, the vicar and churchwardens of St Thomas, Sutton-in-Craven seek a faculty for the following works:
 - i. to install draught protection to the vestry door;
 - ii. to remove certain pews;
 - iii. to introduce upholstered chairs to replace those pews.

Archdeacon's licence

2. The proposal states: 'This confirms a temporary reordering certificate [*sic*] granted for the change of several pews between the south side aisle and south wall on 15 July 2013'.
3. I have seen a copy of the Archdeacon's licence (Form 7). The works or proposals are described as follows:

Temporary reconfigure [*sic*] the back three pews on the south side of the church to see how best a 'children's corner' might both look and be used.
4. The date for the expiry of the licence was stated as 15 October 2014 being precisely fifteen months from the giving of the licence, the maximum period permitted under r 9 of the Faculty Jurisdictions Rules 2000 which were current at the time.¹ Rule 9 provides:

Temporary Re-ordering

9.—(1) On the application of a minister and the majority of the parochial church council an archdeacon may give a licence in writing in accordance with Form No. 7 in Appendix C for a temporary period not exceeding 15 months for a scheme of minor re-ordering provided the archdeacon is satisfied that—

- (a) the scheme does not involve any interference with the fabric of the church and
- (b) it does not involve the fixing of any item to the fabric of the church nor the disposal of any fixture and
- (c) if the scheme involves the moving of any item, the same is to be done by suitably competent or qualified persons and such item will be safeguarded and stored in the church or in such other place as is approved by the archdeacon, and can easily be reinstated.

¹ The Faculty Jurisdiction Rules 2013 did not come into force until 1 January 2014 and were not retroactive.

(2) The archdeacon may add such other conditions to the licence as may be considered necessary.

(3) A copy of any such licence shall be submitted to the registrar and the secretary to the advisory committee.

(4) The period specified in the licence shall not be extended by the archdeacon provided that where a petition for a chancellor's faculty in respect of the scheme is submitted to the registry **not later than two months before the expiry of the period** the scheme shall be deemed to be authorised until the determination of the petition by the chancellor.

(5) An archdeacon may for any reason decline to grant such a licence in which event the archdeacon shall advise the minister to apply to the chancellor for an interim faculty authorising the scheme. [emphasis added]

5. These legal provisions are amplified as part of the rubric on the face of the Archdeacon's licence in the following terms:

NOTES

(a) If you desire to extend the above period, with or without changes, you should **NOT LATER than two months before the expiry of the above period** consult the Diocesan Advisory Committee and **submit to the Diocesan Registrar a petition** for a faculty describing fully the works or proposals including any changes, AND ALSO PROCEED TO DISPLAY A PUBLIC NOTICE in accordance with rule 6 of the Faculty Jurisdiction Rules 2000.

(b) If such a petition is submitted then the period of authorisation given by this licence set out above will continue in force until determination of your petition.

(c) **If no such petition is submitted, you must immediately after expiry of the period set out above, cause the position as it existed before the grant of the licence to be restored.** [Again, emphasis added]

6. Since the Archdeacon's licence expired on 15 October 2014, it follows that any petition for the continuation of the reordering should have been submitted to the registry by 15 August 2014 at the latest. It is unclear when the petition was submitted to the registry. A cover sheet dated 29 December 2014 and signed by one of the churchwardens reads: 'I enclose the documentation regarding our faculty application' and this is consistent with the proceedings being allocated a 2015 reference number. It may, of course, be that the petition itself was submitted prior to this date, but it cannot have been submitted any earlier than 14 September 2014 being the date on which it was signed. This was one month after the deadline provided by r 9.
7. It seems to me implicit from the fact that the petition speaks in terms of confirmation and continuation that, contrary to the express note on the licence, the *status quo ante* was not restored on 15 October 2014 and the interior of the church was not put back to the position which existed before the grant of the licence.
8. Whether motivated by ignorance, poor advice or a combination of both, I take a dim view of the disregard for ecclesiastical law and the flouting of the faculty jurisdiction.

The law is plain and the text of the archdeacon's licence is written in readily comprehensible English.

9. However, experience suggests that non-compliance with this provision may have become widespread in a number of dioceses – it is (or at least was) a rule seemingly honoured only in the breach. The revisions effected by the Faculty Jurisdiction Rules 2013 included by r 7.15 the introduction of a system for policing and enforcement by archdeacons. This requires the archdeacon to send a prescribed form to the minister to be completed, indicating whether a faculty has been applied for and, if not, whether the church has been put back to the way it was. It also places a positive duty on the archdeacon to 'take steps to ensure that the position is restored to that which existed before the scheme was implemented': r 7.15(3). Under the further revisions comprised in the Faculty Jurisdiction Rules 2015 (which will come into force on 1 January 2016) provisions for the temporary minor reordering and their policing are retained at r 8.2 and r 8.3 respectively.
10. Beyond noting the parish's apparent non-compliance, I propose to take no further action in this instance. I do not consider that the failure to have regard to the deadline for submitting a petition (or the requirement promptly to reverse the reordering in default of such submission) to have been deliberate and calculated. But I do hope that it will be understood within the diocese that in future strict compliance will be expected from parishes, and rigorous enforcement will be similarly be expected from archdeacons.

The petitioners' case

11. Turning, then, to the merits of what is proposed in the petition, I have had the advantage of reading a Statement of Significance and a Statement of Needs. The church of St Thomas was built in 1869 through the generosity of a local mill owner. About half a century after its construction, a clock was added to the tower. The majority of the internal furnishings were introduced in memory of the Bairstow family. A small extension housing kitchen facilities and a disabled toilet were added in 2003.
12. Sutton-in-Craven has a population of 5,000 and two junior schools. It is a growing community with three pubs, a village hall, a post office, pharmacy and several general stores. The electoral roll exceeds 60 and regular church attendance on Sundays is about 65. A Sunday school meets in the church school, joining with the congregation part way through services.
13. The proposals are carefully discussed in the Statement of Needs. Although section 4 entitled 'Justification' has been left blank, there is a very helpful Appendix amongst the papers. The Statement makes clear that there is no provision for wheel chair users and thus the only place they can be accommodated within the church isolates them from family members promoting a feeling of exclusion. Activities such as workshops, drama, concerts etc are compromised by the lack of flexibility and the concentration of people in a relatively small space is a cause for health and safety concerns where hot refreshments are being served.

14. Also with the papers is a report dated 20 February 2013 commenting on a visit by the DAC to the church. This helpful and fulsome report includes some illustrative photographs.

The views of amenity societies

15. The vicar wrote to the Victorian Society on 2 September 2014 indicating that the parish had resolved to petition for a faculty, stating the intention as being the removal of two rows of pews from the front in the main body of the church, all the pews in the south aisle, and two pews from the centre aisle at the back. It would appear that there was no reply to this letter from the Society, despite a chasing email sent by one of the churchwardens. Searching through the papers as best I can, it would appear that the DAC secretary offered to chase up the Society on the parish's behalf and an email was sent to Mr Thomas Ashley of the Society on 18 November 2014. It does not appear that there was any response to this. It looks as though things went quiet until the DAC secretary sought a response from Sophia Laird, who I understand assumed Mr Ashley's role on his departure from the Society. On 17 August 2015, Ms Laird emailed the DAC secretary stating:

I found the case in our database and it was marked no comment so we will not be commenting further on this case.

I am not aware of any observations at all emanating from the Victorian Society concerning the subject matter of this petition.

16. Within the papers is an email dated 3 October 2014 sent to the vicar from Dr Diane Green of English Heritage (now Historic England) in response to consultation by the parish. Dr Green confirmed that English Heritage was content with proposal but asked that the pew frontals be retained and effectively moved back following the removal of the pews at the front of the nave. One of the churchwardens promptly replied indicating that this was indeed the intention.

Diocesan Advisory Committee

17. The DAC considered the matter at a meeting held on 6 November 2014 and issued a Notification of Advice on 17 November 2014 recommending the works for approval. It is clear from the DAC's report of 20 February 2013 that it has given considerable thought to the current proposal in the wider context of the use of the building for worship and mission. I gain the impression that the parish has benefited from its engagement with the DAC the advice and suggestions which have been forthcoming.

Local objection

18. Public notice elicited letters from two parishioners: Mr Colin Wiggan, dated 7 December 2014, and Mrs B Taylor, dated 15 December 2014. Neither elected to become a formal objector for the purposes of r 9.3 and, accordingly I take the content of their respective letters into consideration in reaching my determination, together with a letter response from the two churchwardens dated 27 May 2015.
19. Mr Wiggan invites my attention to a public meeting which was held in June 2013. He records there being a lot of opposition to the removal of any pews, although a

recognition that space and flexibility were needed. He indicates that a 'compromise' was struck under which two central pews at the back of the church and two complete rows at the front were to be removed. His objection was that the emergent plan included (in addition to these 'agreed' features) the removal of all the pews from the 'right hand side' of the church which he says 'was most certainly not agreed to at the public meeting.' On the contrary, he asserts, that was the cause of greatest animosity. He concludes by stating that one pew down the side of the church which had been removed should be replaced to restore the symmetry. The thrust of Mr Wiggan's objection is to the removal of the side aisle pews.

20. Mrs Taylor makes a number of points, one of which is procedural. She states that the letter regarding the faculty has been displayed on the church notice board, but the plans have not. I take this to be a reference to the public notice which, according to the Certificate of Publication (Form 4A) was displayed from 24 November to 22 December 2014. The rubric on Form 4A includes the following:

If changes to a church are proposed, a copy of the petition and of any designs, plans, photographs and other documents that were submitted must be displayed in the church or at another place where they may conveniently be inspected by the parties.

21. This requirement derives from rr 5.2 and 5.3. Of equal importance (although it would seem frequently overlooked) is r 4.8 which provides as follows:

Display of petition and associated documents etc. in church

4.8.—(1) Where changes to a church or other building are proposed a copy of the petition and of any designs, plans, photographs and other documents that were submitted with it must be displayed—

(a) in the church or building to which the works or other proposals relate; or

(b) at another place where they may conveniently be inspected by the public and which is identified in a notice displayed both inside and outside the church or the building.

(2) The petition, designs, plans photographs and other documents **must remain on display until the petition has been determined.**

(3) The chancellor or registrar may direct that paragraphs (1) and (2) are not to apply in a particular case. [Emphasis added]

22. This provision, which is separate from and additional to the requirement for public notice (and which will survive, renumbered, as r 5.7 of the Faculty Jurisdiction Rules 2015), has two key aspects which all intending petitioners would do well to bear in mind. The first concerns the extent of the material which is to be displayed and the second the duration of display. Not only the petition, but also the supporting documentation submitted with it, must be exhibited. Furthermore, these items are not to be taken down when the public notice period comes to an end but are to remain on display until the petition is determined. For the avoidance of doubt, that will generally mean the grant or refusal of a faculty in uncontested proceedings or

the handing down of a judgment (such as this) following a hearing or determination on written representations.

23. Having regard to what is in dispute and the material which is now before the court, I do not consider that it would be expedient or proportionate to explore whether there had been proper compliance with r 4.8 in this instance. It would appear from their letter that the churchwardens may simply not have known of the requirements. I am in no doubt that they consider themselves to be approachable but personal virtue is insufficient to disapply the clear provisions of the Faculty Jurisdiction Rules. I am, however, entirely satisfied that any non-compliance resulted from ignorance and not an intention for concealment or secrecy. I do not for a moment question their *bona fides*.
24. In this instance I do not consider there to be any prejudice as the court is now aware of the nature (although perhaps not the extent) of local feeling and, should it be necessary, I would direct that non-compliance be waived. I do however wish it to be fully understood throughout the diocese that procedural requirements under the Faculty Jurisdiction Rules serve a purpose, that the provisions have recently been reviewed and renewed with the approval of the General Synod, and that compliance will be expected throughout the diocese where future petitions are concerned.
25. Beyond this procedural objection, Mrs Taylor makes the same point as Mr Wiggan in relation to what was ventilated at the public meeting and the consensus which apparently emerged. She makes two further points. The first is that those with mobility problems, who are not wheelchair users, are better served in pews than chairs because there is less risk of someone tripping on a misplaced stick or crutch. Secondly, those with Parkinson's, dementia or 'other mental problems' can sit more closely to their carers on a pew than is possible on adjacent chairs. Finally she notes the contribution to the textile mill village of Sutton-in-Craven made by wealthy benefactors in the past in laying out houses, the school and the church for the welfare of workers. She asserts that the ambience of 'this lovely church' will be spoilt if 'the centre aisles are a mixture of modern chairs and original oak pews'.

The law

26. Every consistory court is required to follow the framework and guidelines commended by the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158, by asking itself a series of questions:
 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. [...] 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 ... will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or 2*, where serious harm should only exceptionally be allowed.

Assessment

27. Applying this formula, the first question concerns harm. However, the *Duffield* definition is sharply focussed, referring specifically to 'harm to the significance of the church as a building of special architectural or historic interest'.
28. I note that in the DAC's Notification of Advice, it declared itself to be of the opinion that 'the work proposed is likely to affect the character of the church as a building of special architectural or historic interest'. I must confess, with respect to the considerable individual and collective expertise embodied in the DAC, I am not convinced that I would necessarily have come to the same conclusion. The removal of a number of plain pews from this unremarkable church will have little impact on the church as a building of **special** architectural or historic interest.
29. I note, by way of illustrative example only, that in *Re Holy Trinity, Eccleshall* [2011] Fam 1, the Court of Arches did not consider the introduction of a very large platform into a grade 1 listed church to be likely to affect its character as a building of special architectural or historic interest. Here, of course, the listing category is the significantly lesser status of grade 2. It is instructive, although not of course determinative, that neither Historic England nor the Victorian Society (who were both consulted in consequence of the opinion expressed by the DAC) chose to voice any objection. Amenity societies have heavy case loads and consultation should be reserved for those cases where it is genuinely necessary.
30. I would not have concluded in this instance that the harm test was made out in the clear and limited manner in which the Court of Arches has chosen to articulate it in the *Duffield* test. However, I recognise that there is a large subjective element to the test and in deference, amongst other things, to the views of the DAC for which I have the greatest respect, I proceed on the basis that the harm test is answered affirmatively.

How serious would the harm be?

31. As will be apparent, I do not consider that any harm will be great. We are concerned with the removal of some (though not all) of the simple pine pews in this architecturally unassuming, though much loved, grade 2 church. Mr Wiggan's objection does not speak in terms of harm but the process by which the PCC came to the decision to petition for a proposal. On my assessment of the papers, I regretfully conclude that Mrs Taylor's comments on harm are a little overstated. They reflect an emotional attachment to the past, which I do not in any way disregard or trivialise. In the context of this building and this proposal, based on all that I have seen and read, in my opinion any harm would be minor.

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

32. In my opinion, whatever other oversights may have bedevilled the process, the justification is clear, cogent and convincing. The parish has proceeded slowly, has sought the input and advice of the DAC and has experimented with change by means of an archdeacon's licence for temporary reordering. Whatever may have happened at the public meeting – and I make no findings in this regard – the case for flexibility, for improved circulation space and for the accommodation of youngsters is powerfully made. There is nothing in the comments of the objectors to gainsay the justification put forward by the petitioners.

Will the public benefit outweigh any harm?

33. I am in no doubt it would. The building is in the lower category of grade 2, as opposed to grade 1 or grade 2*, and in my assessment the harm (if any) would be very little. The gain, and potential gain, in terms of the mission of the church in the community (including, but not limited to, the worshipping congregations) is considerable.

Conclusion

34. For these reasons, a faculty will issue for all that is proposed, including the draught protection to the vestry door which is uncontroversial.
35. This judgment is disproportionately lengthy for what is a relatively straightforward petition. It has thrown up several procedural matters, the exploration of which may not have been dispositive, but they have been addressed and explained as way marks in the legal landscape in which the consistory court of the newly formed diocese of West Yorkshire and the Dales must operate, in common with every other diocese in the Church of England.