

**Neutral Citation Number: [2024] ECC B&W I**

**In the Consistory Court of The Diocese of Bath and Wells**

**Re: The Church of St. Michael, Bath Twerton-on-Avon**

**Petition 2018 – 017864**

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## **Judgment**

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### The Petition

1. By their petition of December 19<sup>th</sup>, 2023 the Petitioners, the Reverend Richard White, Rector of the team ministry within which St. Michael's Church Twerton-on-Avon is situated, and Chris Tatchell, a churchwarden of that church, seek a confirmatory faculty for the removal and disposal of the pews including the transfer to one Owen Thomas, and for the introduction of a carpet and the relocation of some radiators. The petition is unopposed, but is the culmination of a regrettable sequence of events which are detailed later in this judgment and have been the subject of written advice from Historic England (April 4<sup>th</sup>, 2023 and February 29<sup>th</sup>, 2024) the Victorian Society (March 27<sup>th</sup>, 2023 and February 29<sup>th</sup>, 2024) and the Church Buildings Council (May 25<sup>th</sup>, 2023). All this advice has a bearing upon the order to be made on the petition and has been taken into account in reaching a decision.

### The Pews and their Setting

2. St. Michael's Church is a listed Victorian building with a surviving mediaeval tower and doorway. Its listing is Grade II starred, and the pews formed part of an integrated ensemble of fittings and decorations dating from the reconstruction in 1885-6 by the architect E.W. Buckle.
3. The pews themselves are shown in photographs to be of good quality. In the Quinquennial Survey of 2013 they are described in these terms:-
4. "Pews of oak bead jointed vertical board backs somewhat cruder than the choir stalls. Fine carved ends 15<sup>th</sup> century style...Frontals with equally fine carving, unfortunately entirely obscured by the large modern steel column radiators. Some of the pews, mainly the south block are a little loose, however their weight makes them sufficiently safe. Rear pews with finely carved backs, again unfortunately obscured by circa 1900 cast iron column radiators."

5. The comment about some pews being loose, coupled with their appearance in the photographs, establishes that they were attached to the wood block floor by means of joints or brackets. Thus they were before removal to be treated as fixtures.
6. The advisory bodies are unanimous in their assessment of the pews as being of inherent historic and architectural interest.

#### Events Leading to the Loss of the Pews: the Archdeacon's Licence

7. The starting point is a Licence for temporary minor re-ordering under Rule 8.2 of the Faculty Jurisdiction Rules 2015, dated May 30<sup>th</sup>, 2017 and granted by the then Archdeacon of Bath, the Venerable Andy Piggott. The Licence permitted the removal of all the pews, subject to the condition that they were to be stored safely and kept in good condition; the relocation of five radiators and the laying of a temporary carpet were also included in the Licence, which was expressed to expire on August 31<sup>st</sup>, 2018. The number of pews involved was not specified in the Licence, but a total permitted clearance is likely to have amounted to fourteen long benches, six shorter benches and the two frontals, in accordance with the layout appearing on the architect's plan of February 2014.
8. Historic England, the Victorian Society and the Church Buildings Council are all critical of the granting of a Licence under Rule 8.2., described as "not...appropriate" or "a serious abuse". At this distance from 2017 it is not possible to reconstruct the thinking behind the Licence. It was, however limited in time to fifteen months rather than the twenty-four months permitted by Rule 8.2(I). It would, moreover, have been necessary to remove the pews in order to lay the temporary carpet. It may well be that the Archdeacon's Licence was indeed intended as a short-term expedient rather than the prelude to the outright disposal of the Victorian seating. The uncertainty remains.
9. Keri Dearmer, the Church Buildings Officer of the Church Buildings Council, has also suggested that the Licence was in breach of Rule 8.2(4)(a) which requires an archdeacon to be satisfied that,

"the scheme does not involve any material interference with or alteration to the fabric of the church..."

That proviso has to be read in conjunction with Rule 8.2(I) whereby a permitted re-ordering may extend to the "fixtures and fittings" of the church. The relevant pews were fixtures, not part of the fabric. Moreover, their removal was, as at the expiry of the licence, reversible since they could have been safely located on the carpet (and kept in place by their own weight) or, in the absence of the carpet, fixed once more to the floor.

10. In these circumstances I do not conclude that Archdeacon Piggott exceeded his jurisdiction under Rule 8(2) in granting the Licence of May 30<sup>th</sup>, 2017. The terms of that licence, in relation to the number and quality of the pews involved, nevertheless went to

the extreme limit of what might be permitted under the Rule. Guidance has, in the light of this case, been issued to the Archdeacons of this Diocese and its Diocesan Advisory Committee which is designed to prevent the recurrence of such an extensive exercise of the archdeacons' powers under Rule 8(2), and to monitor the licences granted pursuant to that Rule.

#### Events Leading to the Loss of the Pews: Monitoring

11. The Archdeacon's Licence expired on August 31<sup>st</sup>, 2018. By then the pews ought to have been returned to the church or there should have been a petition (or at least an interim faculty or licence under Part 15 of the Rules) for their removal. Instead, nothing was done. Accordingly from that date onwards the absence of the pews from the church was illegal. Such serious illegality was the direct responsibility of those concerned in the administration of the Parish. It came about, however, as a result of poor record keeping rather than a deliberate desire to contravene the law.
12. The parish may have certain mitigating factors in its favour. It lost the leadership of its incumbent, the Reverend Richard Wilson, when the benefice became vacant. Archdeacon Piggott retired. Subsequently the Covid 19 pandemic disrupted the life and work of the parish, with the mandatory closure of St. Michael's church for public worship. While the failure to comply with the important legal requirements cannot be excused, it is understandable how the lack of experienced oversight and the exceptional challenges of recent years contributed to the errors which were made.

#### Events Leading to the Loss of the Pews: Storage

13. The Archdeacon's Licence was subject to the condition already mentioned that "the pews are stored safely and kept in good condition". In compliance with that requirement an arrangement was made with Bath Abbey, which fortuitously was storing numerous pews in connection with its own re-ordering project, for the storage of the pews from St. Michael's church. Initially the pews from both sources were kept in an aircraft hangar; later they were all transferred to a storage facility at Tormarton. No criticism is made of these locations, which presumably were spacious, dry and secure; but at least with the benefit of hindsight it would have been prudent to label the relevant pews as belonging to St. Michael's church. This is one of the lessons to be learned from the present case.

#### Events Leading to the Loss of the Pews: Disposal

14. The errors and irregularities which have so far been detailed might have passed unnoticed but for the final and most serious misfortune to have occurred. It is best described in extracts from a report written by the Venerable Adrian Youings (who had succeeded Archdeacon Piggott) on May 15<sup>th</sup>, 2023.

15. "I contacted St. Michael's to ask to go and see the pews St. Michael's pointed me to the [i.e. Bath] Abbey. The Abbey (Frank Mowat and Nathan Ward) believed that the pews that were being stored along with their Abbey pews were from Holy Trinity Bath which was closed in 2011 and were not from St. Michaels, Twerton.
16. "Indeed on 7<sup>th</sup> January 2022, Nathan Ward (Footprints Project Director at the Abbey) wrote to Peter Evans [Assistant Diocesan Secretary] to say that they had pews from Holy Trinity alongside some pews from the Abbey at the storage facility in Tormarton. They were keen to empty the storage as the Footprint project was coming to an end. They offered to manage the disposal of the pews along with the remaining Abbey pews...On the 15<sup>th</sup> March Peter emailed Nathan to say "I would be grateful if you are able to arrange the disposal of these pews alongside the pews from Bath Abbey. Therefore, it seems those pews were disposed of."
17. Further investigations by Archdeacon Youings confirmed the identity of the missing pews as belonging to St. Michael's Church and revealed that the entire stock in storage had been sold to Mr. Owen Thomas of the Courtyard, Heather Farm, Bath for what was described as a "donation" in the sum of £1,500. Subsequently the elusive Mr. Thomas could no longer be contacted at that address.

#### The Current Legal Position

18. Any remaining pews from Holy Trinity Bath ceased on the closure of that church to be subject to the faculty jurisdiction, and under the relevant pastoral scheme responsibility for them passed to the appropriate diocesan authority. By contrast, the pews from St. Michael's church have never been removed from the jurisdiction of the Consistory Court. Its powers, including those relating to injunctions and restoration orders (see Sections 71 and 72 of the care of Churches and Ecclesiastical Jurisdiction Measure 2018) continue to apply to them. It follows that the disposal of the pews to Mr. Thomas without a faculty was itself a prima facie breach of ecclesiastical law for which the staff of Bath Abbey appear, on Archdeacon Youings' account, to have been responsible. They are not parties to the current proceedings, however, and it is inappropriate to make conclusive findings against them in their absence; but on any view of the matter the unauthorised disposal was a wrongdoing. Similar considerations apply to Mr. Thomas and to any persons to whom he transferred the pews from St. Michael's church. Legal title to the pews in the hands of the ultimate recipients remains defective insofar as the transactions which have taken place were in contravention of ecclesiastical law.

## Conclusions

19. The advice of the three consultees will have provided painful reading for the Petitioners, as it has done for the Court. One of the milder observations comes from Alessandra Perrone of Historic England:-

“In this case we are looking at the failure of the very process that is in place to prevent such harmful and unjustified loss of heritage significance and value for historic churches from taking place.” (Letter, February 29<sup>th</sup>, 2024).

For Mr. James Hughes, writing on February 29<sup>th</sup>, 2024 on behalf of the Victorian Society,

“...we have never seen so appalling a case as this, nor one with such scandalous consequences...”

There is more in the same vein.

20. Part of the advice which has been forthcoming is directed to the current state of the interior, where the carpet remains in place, and upholstered chairs have been introduced. As recent photographs show, the coherent assembly of the features of a late nineteenth century church is no longer to be seen. Against that, Keri Dearmer of the Church Buildings Council observed,

“It is evident that the church is providing much needed and appreciated ministry in a deprived part of Bath and it was made clear that the flexibility and ‘cosiness’ achieved by the alterations has enabled greater use of the building by a wider range of the community.”

21. As part of the background to the present petition account has to be taken of the general condition of disrepair from which the church has been suffering for many years, as demonstrated by the contents of the Quinquennial Survey of 2013. At that stage extensive remedial works to the roofing, windows, floors and other parts of the fabric were recommended, at a substantial cost which has now risen to a figure in excess of £1 million. These works remain outstanding, and cannot be addressed without significant fund-raising. The financial constraints are such that during the winter of 2022-3 the church had to be closed due to the prohibitive cost of heating. Any improvement in the state of the church building is bound to take time and effort.
22. Although the matters touched upon in the preceding two paragraphs are of some relevance to the present issue, this judgment is concerned, not with some re-ordering, or repair scheme as yet unformulated, but strictly with the application for a confirmatory faculty regarding what has already been done unlawfully. For that purpose account has been taken of the unqualified acknowledgement of the wrongdoing in the Rector’s letters of August 5<sup>th</sup>, 2023 and March 12<sup>th</sup>, 2024; the fact that such wrongdoing was the fault of the Petitioners’ predecessors or other parties but not of the Petitioners themselves; and

the important complication that at a critical time leadership was lacking owing to a vacancy in the benefice.

23. As regards the carpet, it is clear from Archdeacon Piggott's Licence that it was introduced only as a temporary expedient. Its purpose is primarily to make the floor safe by covering irregularities in the surface which might otherwise be tripping hazards. A comprehensive re-ordering is likely to involve the laying of a new floor, at which point the carpet will become redundant. A confirmatory faculty will issue in respect of the carpet, the presence of which is currently required; but in the faculty (as in the original Licence) it is to be described as 'temporary' so as to underline the need for its eventual removal. The displacement of the radiators appears to be uncontroversial and the confirmatory faculty will also cover that work.
24. Different considerations apply to the loss of the pews. The likelihood is that the collection has been dispersed following sales by Mr. Thomas, since the Victorian Society identified the presence on a website of what seems to be one specimen. It is generally recognised that the prospects of reclaiming the complete set are effectively non-existent. The Court is obliged, like the D.A.C in the written advice of November 17<sup>th</sup>, 2023 raising no objection, to look to the reality of the case. For this reason, in conjunction with those already given, the confirmatory faculty will authorise the removal, but only the removal, of the pews.
25. The disposal of the pews, by Bath Abbey, Mr. Thomas, and probably others, will not be included in the faculty. There are two reasons for this decision. First, given the advisory bodies' legitimate condemnation of what has occurred it is inappropriate to cover the wrong which has been done with the cloak of subsequent legality. The disposal must in justice remain to be seen as an unlawful act. Secondly, the hope of recovering at least a small number of the pews and bringing them back to the church cannot yet be ruled out. For that purpose they must remain within the jurisdiction of the Consistory Court which will continue, for the purpose (inter alia) of making a Restoration Order, for six years after Archdeacon Youngs' discovery of the relevant facts in May 2022; see Sections 72 and 73(2) of the Care of Churches and Ecclesiastical Jurisdiction Measure 2018.
26. In giving directions in or before these Proceedings I have repeatedly stressed the importance of seeking the recovery of a small proportion of the lost pews so that their workmanship can continue to be enjoyed in their original setting. The Petitioner's statement that this task has been left to the D.A.C is disappointing. Much more can be achieved by local effort in searching websites and by visiting the last known address of Mr. Thomas to see if anyone has his contact details or some useful information about him. Other active steps may commend themselves to the Petitioners. In support of this objective there will be a condition to the faculty that the Petitioners shall use their best endeavours to locate and to recover a sample number of the missing pews and shall upon such recovery apply to the Court under the faculty for directions. There will also be

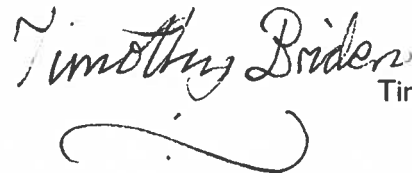
conditions that the photographic record of the pews shall be kept with the church log-book, and that the remaining bench ends shall be carefully preserved within the curtilage of the church for future use or display.

### Costs

27. The petition being for a confirmatory faculty, it is necessary for an order to be made that the Petitioners shall pay the Court fees, because the Diocesan Board of Finance does not provide funding in this class of case. The Court fees are to be agreed if possible between the Petitioners and the Registrar; in the absence of agreement the costs will be assessed by me. Since it is possible that the Petitioners may have a claim for indemnity or contribution in respect of those costs against Bath Abbey as a party potentially responsible for an act or default in connection with the proceedings, I shall give the Petitioners liberty to apply for a Costs Order under Section 69 of the Care of Churches and Ecclesiastical Jurisdiction Measure 2018. This does not in any way pre-judge the success or otherwise of such an application.

### The Future

28. It is to be hoped that this judgment will bring to a conclusion an unhappy episode in the history of St. Michael's church, and that the Petitioners and Parochial Church Council will overcome the challenges which they now face, so as to secure a brighter future for the Victorian masterpiece in their care. They are to be encouraged in the tasks which lie ahead of them.



Timothy Briden  
Chancellor

11<sup>th</sup>. April 2024