

RE ST THOMAS WERNETH

JUDGMENT

delivered on 21 November 2017

Introduction

1. By their Petition the Petitioners seek a faculty to re-order St Thomas Werneth [‘the Church’]. Such re-ordering includes the replacement of the current heating system which is too expensive to run or maintain, the removal of the pews, the installation of new flooring, the installation of a new kitchen and disabled toilet facilities, the improvement of access for those in wheelchairs and the converting of the warden’s pews at the back of the nave into cupboards. Although the repointing and repair to external stonework is also proposed, such works are not included in this application.

2. It is proposed that the pews will be replaced with 75 Theo wooden chairs and 50 Maestro chairs with a chrome frame, all without upholstery and which are stackable to allow their easy removal from the nave and 8 St Peter’s pews ‘to give a bit of solidity to the arrangements of seating and to use for partitioning off space’. The Theo chairs and the St Peter’s pews will be stained to match the screens around the Baptistry and Memorial side-chapel. The removal of all of the existing pews will allow flexible use of the nave.

3. The Church has a Grade II listing. It was built between 1853 and 1855 with additions in 1868 and 1880-1882. It is at the top of a hill and, as the tallest building in the area, is visible for many miles around, from the centre of Oldham. From the M60 motorway and from the A62 road in Failsworth. It has a north west tower and spire with angle buttresses. It is in the early English style and a west porch was added in 1905 in the perpendicular style.

4. Notwithstanding its size, the Church feels surprisingly intimate, being described as ‘a memorable ensemble’ by Pevsner.

5. Although many parts of the building are listed as worthy of note, the pews form no part of the listing of the Church. They are not the original pews because in 1970 the existing pews were replaced by those purchased from St Paul, Chorlton, leaving spaces to the rear of the nave and in the south

transept. Moreover there does not seem to have been a faculty for their installation in the Church.

6. The Church is in the middle of the most ethnically diverse parish in the Diocese of Manchester in that 88% of its population are not White British and it is the only church in the parish. It is ranked just outside the most deprived 2% of parishes in England. The Church is valued within a broadly Muslim area, not least because of the effectiveness of the enlarged St Thomas Primary School, which is the Church's most natural partner for mission and ministry in the parish. Its continuing presence is important in enabling social cohesion and contact between local Muslims and Christians.

7. The purpose of the re-ordering of the Church is to open up the Church for community use, as part of its service and mission to the mainly Muslim community in the parish and to enable the wider community to share its heritage. The Church wishes to be a place of welcome, growth and engagement for the local communities. Although the Church nave constitutes the largest community space in the locality, it is entirely filled with pews which substantially limit its usefulness.

8. I have seen many letters supporting the proposed re-ordering of the Church from, inter alia, the Werneth and Freehold Community Development Project, the Oldham Interfaith Forum and St Thomas C.E. Primary School. Of particular note is a letter from the Venerable Cherry Vann, the Archdeacon of Rochdale, which admirably encapsulates the reasoning behind the proposed re-ordering. It states:

'In any grant application I would want to stress the importance of the church building continuing to speak of the church's living presence and Christian witness in the community. There is significant interfaith work going on in Oldham and a genuine desire among some of the Muslim leaders to build bridges and work in partnership with the Church. Moreover there is clearly some goodwill towards the church in the (at present) largely Muslim community in Werneth and it is important that the church has the flexibility and capacity to exercise a ministry of hospitality to those living in the parish through a variety of community-based activities. The proposal for removing the pews and replacing with stackable chairs, together with new heating and fit for purpose kitchen and toilet facilities will go a long way to making it a welcoming space.

The congregation has already shown itself open to receive asylum seekers and refugees and to support them in practical ways as well as drawing them in to the family of the church. Re-ordering St Thomas' in line with the PCC's

vision would enable the congregation to do more to reach out in friendship to other groups living in the area.

It was also good to hear that the Church of England school is keen to use the building more and that there are a range of possibilities in terms of crèche and parent/toddler groups that would add value to the important community cohesion work that the school is already doing. The church building is an important resource for education and nurture and, with the pews taken out and decent facilities put in, has the potential to be used much more widely for the benefit of many.

I fully support the proposals you outlined to me. Without something fairly radical being done at this stage, there is a real danger that the building will become unsustainable for church members within 5-10 years. But, more importantly than that, the vision to use the building as a resource for the school and community is good stewardship of what God has entrusted to you and will enable the people of St Thomas' to better serve the local community, which is one of our diocesan priorities.'

9. Although the average Sunday congregation is growing and is often 40 on a Sunday morning, the congregation is small compared with the number of pews available. After the proposed re-ordering such congregation will be able to use the Theo chairs.

10. I have been supplied with innumerable photographs of the interior of the Church.

Consultation

11. Before seeking advice from Diocesan Advisory Committee ['DAC'] the Petitioners consulted Historic England and the Victorian Society and gave them full details of the proposed re-ordering of the Church.

12. By their letter dated 19 December 2016 Historic England stated:

'While the above [works] constitutes a considerable intervention to this nationally significant building, the remit of Historic England in this instance principally lies in the proposed removal of pews. On the basis of the information provided, we understand that the current pews were introduced to the church in 1970. As a result, while they do make some contribution to the overall form and layout of the building, they pose a limited contribution to the church's significance as a whole. In the light of this and our remit, we do not wish to provide detailed comment on the proposals.'

13. By their letter dated 29 June 2015 the Victorian Society stated:

'Individually the pews are not of major importance as objects in their own right. However, en masse, they make an important contribution to the character of the interior of the church. The rhythm of repeating pews, the dark wood and the shape of the aisle drawing the eye to the east is an important element of what makes this a Victorian church interior. Removal of the pews would be damaging to this character, and we would certainly regret it. Have you considered retaining a critical mass of pews in the east end of the nave to maintain this character? This would still leave a lot of cleared space for flexible use.

What will the new floor be? We would certainly advise against the use of carpet, which is not generally acceptable in historic religious buildings. It is not clear why part of the floor is being raised by 70mm. It is generally important that the new floor retains a differentiated central aisle to draw the eye to the east end of the church.

We welcome the retention of the important chancel and choir fittings, which are of high significance.'

14. The proposed re-ordering of the Church is supported by the Parochial Church Council ['PCC'] and the DAC which recommended the proposed re-ordering for approval by the court.
15. In its Notification of Advice dated 8 February 2017 the DAC concluded that in its opinion the proposed works would not affect the character of the church as a building of special architectural or historic interest.

Special Notice

16. At my direction by letter dated 7 June 2017 the Diocesan Registrar gave Heritage England and the Victorian Society Special Notice of the proposed re-ordering of the Church and each was informed that all objections to such re-ordering should be received within 21 days.
17. Historic England merely repeated what had been stated in its letter dated 19 December 2016.
18. There was no response by the Victorian Society to the Special Notice.
19. In the event neither Historic England nor the Victorian Society became parties opponent in the proceedings.

20. The Petitioners' response to the comments of Historic England and the Victorian Society may be summarised thus:

20.1. There appears to be a distinction between the views of the Victorian Society which contended for the retention of 'a critical mass of pews in the east end of the nave' which 'would still leave a lot of cleared space for flexible use' and those of Historic England which asserted that the pews 'pose a limited contribution to the church's significance as a whole.'

20.2. The purpose of the re-ordering was to provide a more flexible community and worship space in the nave and that the retention of 'a critical mass' of fixed pews at the east end of the nave would substantially and negatively impact this flexibility. Moreover there would be little space for an altar in the nave below the chancel steps and the retention of fixed pews at the east end would mean that worship could only take place in rows positioned at right angles across the nave, rather than, for example, sitting in three sides of a square open to the east end, losing liturgical flexibility.

20.3. To move the 'critical mass' of pews further west, down the nave, sufficiently far to create a space for a nave altar, would negatively and significantly reduce the available community space, effectively dividing such space into two.

Law

21. In *In re St Alkmund, Duffield* [2013] Fam 158, at paragraph 87, the Arches Court of Canterbury agreed that diocesan chancellors should be freed from the constraints set out in the *Bishopsgate* questions, approved by that court in *In re St Luke the Evangelist, Maidstone* [1995] Fam 1 because there was a danger of imposing an unduly prescriptive framework on what was essentially a balancing process and stated that chancellors might be assisted by the following approach of asking:

1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
2. If the answer to question (1) is "no", the ordinary presumption in faculty proceedings "in favour of things as they stand" is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see *Peek v Trower* (1881) 7 PD 21, 26-8, and the

review of the case-law by Chancellor Bursell QC in *In re St Mary's, White Waltham (No 2)* [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.

3. If the answer to question (1) is “yes”, how serious would the harm be?
4. How clear and convincing is the justification for carrying out the proposals?
5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *St Luke, Maidstone* at p.8), 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.

Conclusions

22. I thus ask myself the questions posed in *In re St Alkmund, Duffield*.
23. Notwithstanding the view expressed by the DAC that in its opinion the proposed works would not affect the character of the church as a building of special architectural or historic interest, I have concluded that the proposed re-ordering of the Church would cause *some* harm to the significance of the church as a building of special historic interest but I am satisfied that the degree of harm is low.
24. Having so concluded I have asked myself whether the Petitioners have provided a clear and convincing justification for the works.
25. I have concluded that they have and, having regard to the proposed uses which it is proposed will be made of the re-ordered Church, I am satisfied that the Petitioners have discharged the obligation on them to put forward a clear and convincing case. In relation to the pews I am satisfied that they are not of any significant historic merit, particularly since they were only recently installed in 1970 and that the harm caused by their removal is very substantially outweighed by the substantial public benefit that will be achieved by the re-ordering contained in the scheme which will be of

considerable benefit to the Church and the wider local community, where other possibilities for activities and meetings are almost non-existent.

26. I am also satisfied that the reordering is part of an overall scheme for a thriving church community, which will be a major public benefit outweighing any harm resulting from the loss of the pews. Moreover, as the Archdeacon frankly concedes, the Church is not likely to survive in the long term future without such a re-ordering.

27. In these circumstances, I have no hesitation in granting the faculty sought.

28. In accordance with the practice of this court the Petitioners must pay the costs of the determination of this Petition.

GEOFFREY TATTERSALL QC

Chancellor of the Diocese of Manchester