

In the matter of St Mary Magdalene, South Bersted

The Reverend David Thornley, incumbent, for the petitioners
Miss Hilary Tyler, solicitor, of Brutton & Co, Fareham for the objector

Judgment

1. By a petition dated 31 July 2001, a faculty is sought for various items of re-ordering to this grade II* listed church which dates from the thirteenth century. In summary the works comprise:
 - i. The removal of pews from the west end to create a carpeted welcome area;
 - ii. The removal of the front row of choir stalls to create a more open chancel which also is to be carpeted;
 - iii. The erection of an additional communion rail;
 - iv. The setting back of the front pew frontal on either side of the nave;
 - v. The removal of the front pews in the north and south aisles;
 - vi. The introduction of storage cupboards, an altar frontal chest, and moveable book cases and screens;
 - vii. The introduction of stackable and folding chairs;
 - viii. The replacement of a dilapidated external notice board and the erection of a second;
 - ix. The installation of a new floor in the tower and improvements to the choir vestry;
 - x. Minor changes to the vicar's vestry;
 - xi. Renewal of the lead to the valley between the chapel and vestry roofs.The majority of the foregoing, together with other consequential works, are uncontroversial. The scheme of works together with detailed drawings appear from plans prepared by Mr Clive Mercer, the inspecting architect, whom I am pleased to commend on the thoroughness and thoughtfulness of his design and specification.
2. What is, however, controversial are (a) the removal of pews at the west end, and (b) the recrafting of the layout of chancel by the removal of the front choir pews and the erection of the altar rail at the chancel steps. It is said that these works are unnecessary, that they will cause irreversible harm to the appearance of the church, and that there is no pastoral or liturgical need to change the manner in which the Lord's supper is celebrated by placing an additional altar in the centre of the chancel. It is contended that the existing east end altar is entirely satisfactory and that the congregation should continue to receive at the communion rail at the sanctuary step. In addition it is said that the cost of the proposed works cannot be justified when the finances of this parish and of the diocese are in a parlous state.

3. Following public notice, some 98 letters of objection were received at the diocesan registry. The objectors were all invited to participate in the consistory court hearing. Ten individuals or couples put forward letters of objection, namely Mrs P Alderton, Mr CC Arnell, Mr D Bech, Mr and Mrs R Butters, Mrs J Cordwell, Mrs AL Kahler, Mrs B Lawrie, Mr and Mrs A Readman, Mrs J Roberts, Mr PG Sharpe. I have considered these letters and taken their contents into account. I have also read with care all the other letters received following public notice so that I have a flavour of the views expressed. I do not intend to summarise their contents herein.
4. Only one individual, Mrs Patricia Penberthy, chose to complete Particulars of Objection and to appear at the hearing where she was ably represented by Miss Hilary Tyler, a solicitor with considerable experience in ecclesiastical law. I make no criticism of Mrs Penberthy. Quite the reverse, I respect her for maintaining her objection whilst others of similar view declined to do so and I commend both her and her solicitor for the moderate and dignified manner in which she advanced her case based upon strongly held and sincere concerns relating to the particular proposals outlined above.
5. The approach of the consistory court in all cases where changes are proposed to a listed church is set out in the judgment of the Court of Arches in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1. That judgment approved a three-fold test first posed by Chancellor Cameron (as she then was) in *Re St Helen's Bishopsgate* (26 November 1993, unreported), in the form of three distinct questions:
 - i. 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?
 - ii. Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?
 - iii. If the answer to (ii) 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?

I propose to address each of these questions in turn.

Necessity

6. In his evidence, the Reverend David Thornley spoke of his vision for the church which, so it would appear from the churchwardens, is shared by the wider church community. He spoke of the concept of 'gathering' around the altar both for its symbolism and as a return to the practices of the early church. The Reverend Ian Forrester, who spoke on behalf of the Diocesan Advisory Committee, being diocesan liturgical and music adviser, indicated how commonplace such a practice was and how patterns of worship had changed over generations, with the furnishing of church buildings adapting as a consequence. I found his evidence extremely helpful, particularly as he (in company with other members of the DAC) had visited the parish some years ago and had been actively involved in considering plans thereafter. I am pleased to acknowledge in this judgment the work and witness of the DAC in the giving of advice both to parishes and to this court based upon a considerable collective knowledge and experience.

7. I have come to the conclusion in this instance that in relation to the west end and the chancel the case of necessity is made out. I take fully into consideration the evidence of Mrs Penberthy, as supplemented by her witness Mr Sharpe, that - in their opinion - the changes will achieve no purpose. Mrs Penberthy was baptised, confirmed and married in the church. She renewed her marriage vows there on the occasion of her silver wedding anniversary. She has a strong emotional attachment to the church and does not wish the building or its contents to be changed. However, as she fairly accepted in her evidence, her continuing link with the church is as a faithful member of the congregation which worships on Sunday mornings. She is a working mother and not in a position to attend events during the week. I am satisfied having heard from Mr Thornley and from Mr Brian Hough that the mission and outreach of the parish is currently compromised by the constraining presence of the pews at the west end. They indicated their plans for the space which I do not need to recite in this judgment. Of course, there is no guarantee that the proposed re-ordering will necessarily bring these plans to fruition. However, even though the electoral roll is relatively stable, the congregation is becoming increasingly elderly and I am satisfied on the evidence that parents with young families are put off attending by the absence of a place which is friendly towards children and of somewhere for newcomers to mingle and be welcomed following services. There is a church hall in reasonable proximity to the church where coffee is served after services. It is, however, somewhat drab and functional and - in any event - it is no substitute for the exercise of a meaningful ministry of welcome within God's house.

8. Equally, with regard to the chancel, I fully appreciate that Mrs Penberthy - and arguably others as well - would prefer to receive communion from the existing altar rail at the sanctuary step. Nonetheless, having heard from Mr Thornley and Fr Forrester, I am satisfied that as a matter of liturgical necessity, the case for the petitioners is made out. I am fortified in these conclusion by the view expressed in correspondence by the area bishop, the Rt Revd Lindsay Urwin OGS.

Adverse effect

9. In his evidence, Fr Forrester described the petitioners' proposals as rather minor. In relative terms they are. English Heritage made no objection to the petition and the Council for the Care of Churches recommended the granting of a faculty subject to a number of specific considerations. Arun District Council confirmed that it had no comments to make. However, there would be an adverse effect - albeit minor - were the works to be undertaken.

Balancing exercise

10. I have come to the conclusion in this instance that I should exercise my discretion in favour of granting a faculty. The symbolism of the modest liturgical change is important. Equally the scope for growth in the worshipping community through a variety of opportunities afforded by opening up the west end is highly significant. There is a statutory duty under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 to 'have due regard to the role of a church as a local centre of worship and mission'. I also take into account that the changes proposed will improve access for the wheelchair bound and assist the church in its compliance with the Disability

Discrimination Act, which comes fully into effect in 2004. Further, I note that provision will be made in the chancel for each of the pew frontals to be moveable so that they can be brought forward and additional choir seating inserted when the occasion demands. In addition, it is intended that parts of the pews which are removed be utilised where possible in the new works. The parish is fortunate in having as a churchwarden Mr Adrian Grainge who has considerable experience in woodwork and furniture making and he will be actively involved in these works.

Cost

11. It was suggested by Mrs Penberthy and Mr Sharp that the parish could not justify the expense of these works, estimated to be just in excess of £32,000. The income and expenditure account for the year ended 31 December 2000 shows a deficit of £3,610.66. The parish pays its full quota and is exploring ways of increasing its income with assistance from diocesan officers. There is, however, a fund in excess of £160,000 from the sale of a church hall. The parish has been assured by the Diocesan Secretary that these monies may be applied in part for the costs of the proposed reordering. Mr Sharp suggested otherwise. Whilst I consider Mr Sharp's concern to be misplaced, I am content to make it a condition to the grant of a faculty that the availability of these funds is confirmed prior to any works being commenced. The PCC, being an elected body, is entrusted, *inter alia*, with the financial administration of the parish. It must act in accordance with ecclesiastical law and the requirements of the charity commission. In the absence of bad faith, it would be a usurpation of the PCC's function for this court to interfere in its decisions on the use of its resources.

The response of the Council for the Care of Churches

12. The detailed comments of the CCC are to be found in its letter of 21 December 2001. It is an experienced body whose opinions merit serious consideration. I am in agreement with its recommendation for a record to be taken of ledger slabs and will impose a condition to this effect. I am satisfied that the parish has fully considered the suitability of the chairs which it has chosen and do not propose to interfere further in this regard. The case for the additional floor in the tower - which concerned me on the issue of necessity - was made out in oral evidence. However, the fixing of the joists ought to embrace the legitimate point raised by the CCC and I will make a condition accordingly. The technical details regarding the leadwork repair have already been the subject of correspondence with the DAC and the inspecting architect. A condition will ensure that these recommendations are incorporated into the works. As to experimentation in the layout in the chancel, a moveable altar is already available in the church and this will be used in the first instance at least. Clearly time will tell where it is best positioned and I do not consider an archdeacon's licence to be necessary. It goes without saying that nothing is to be introduced into the church without authority of a faculty.

Consultation

13. Miss Tyler made criticism of the lack of consultation. Various of the written objections suggest that Mr Thornley is not a good listener. He was clearly frustrated that an open meeting in 1998 failed to garner sufficient support for the changes then proposed. It may be that certain of the congregation expected a further meeting.

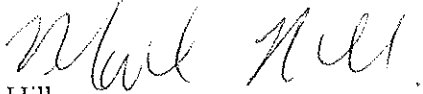
Miss Tyler referred to paragraph 2.1 of the Chancellor's General Directions which commends discussions, where appropriate, with the wider community. It should be noted that these Directions were not promulgated until after the open evening in March 2001 and that, in this instance, the proposals are minor in their nature.

14. With the benefit of hindsight Mr Thornley might have been better served had he been a little more open in his consultation. His disinclination to hold a further meeting was coloured by his feeling of hurt from the events of 1998. It may be that his vision was perceived as the presentation of a *fait accompli*. However, having heard evidence and read all the documentation, I am satisfied that no one has been compromised by any inadequacy in the consultation process. Indeed the spirit of grace which prevailed at the hearing gave me much comfort that the community at South Bersted is sufficiently strong that genuinely felt differences of opinion may be held and expressed with Christian charity. I am in no doubt that my adjudication will be accepted without rancour and that the mission and witness of proclaiming the Good News from one generation to another will continue with fortitude.

Conclusion

15. I therefore order that a faculty pass the seal on condition:
- i. that the works are supervised by Mr Clive Mercer, inspecting architect;
 - ii. that no works are commenced until the Registrar has confirmed in writing that he is satisfied that the proceeds of sale of the hall may be applied for this purpose;
 - iii. that the works be completed within twelve months of the issue of the faculty herein;
 - iv. that the front choir pews from the chancel be dismantled and retained until further order of this court;
 - v. that a full photographic and written record be taken of each and all of the ledger slabs to be covered by carpet;
 - vi. that the leadwork be undertaken in accordance with the terms of the CCC's letter of 21 December 2001 and that of Mr Clive Mercer dated 5 February 2002;
 - vii. that consideration be given to a face-fixed detail for the steel beam support for the fixing of the joists in the tower as suggested in the CCC's letter of 21 December 2001;
 - viii. that the colour of the carpet and of the chairs be agreed in writing by a representative of the DAC or, in default of agreement, be referred to the chancellor;
 - ix. that the petitioners obtain confirmation in writing from their insurers that sufficient cover is in place in respect of work which is to be undertaken by parishioners as opposed to authorised contractors.
16. As is customary the costs of the hearing will be borne by the petitioners. There will be no order for the costs of the parties.

Mark Hill
Chancellor



19 March 2002