

Re St Mary the Virgin, Hartfield

Judgment

1. By a petition dated 20 May 2010, the incumbent, churchwarden and PCC secretary of St Mary the Virgin, Hartfield, seek a faculty for:
‘the removal of the pews and dado panelling, lowering of the plinths to level of existing floor; removal of 5 radiators and their replacement by radiators within the existing floor ducts; truncate the south aisle footpace to align with the chancel step’.
St Mary’s is a grade I listed building.
2. In response to the public notice of these proposals (which occurred twice since a question arose as to the duration of the first display) some 19 letters of objection were received in the registry. The writers of these letters were each informed in a pro-forma notice from the registry, sent pursuant to rule 16(3) of the Faculty Jurisdiction Rules 2000, that they may either leave the court to take their letter into account when determining the petition or become a party to the proceedings by serving written particulars of objection in Form 4. Without exception, the authors either elected for me to take their letter into account or did not reply, the consequence of which is the same. I do not propose to identify each individual correspondent within this judgment, but their names are recorded at the registry, as are copies of their letters, the contents of which have been fully considered by me in reaching my conclusions in this judgment.
3. In addition some 32 letters of support were received in the registry and, again, I do not propose to identify the authors or rehearse their specific content in this judgment.
4. Under cover of a letter dated 15 September 2010, Mrs Susan Cooper sent to the registry a batch of papers bearing the names, addresses and signatures who collectively signed up to a proposition which ‘strongly opposed’ the removal of the remaining pews in the church and expressed a wish for the reinstatement of a block of pews which had previously been removed. This document was directed to the diocesan bishop with copies to the archdeacon and to the registrar. I take note of this petition and the number of signatures it bears, although it carries far less weight than individual letters which give reasons for their objection.
5. For present purposes it suffices to say that local opinion is divided. Under cover of a letter from the PCC secretary dated 16 September 2010, the petitioners provided a detailed written response to the matters raised in the various letters of objection. For convenience this response was in two sections: one addressing points made in two letters from a specific objector, and the other taking thematically the broad range of

points made in the other letters. Implicit in this letter was the consent of the petitioners to the matter being determined on written representations if such a course commended itself to the court, which in the circumstances it does.

6. On 14 June 2010, the proposal received a certificate of recommendation from the Diocesan Advisory Committee subject to a proviso as to the level of public liability insurance, which is not relevant to the merits of the petition. The DAC also recommended consultation with English Heritage and the Church Buildings Council. English Heritage responded by letter dated 9 August 2010 from Mr Tom Foxall, historic buildings inspector. It noted that the nave pews were of 'a simple, common and unremarkable late nineteenth-century type ... of limited historical and aesthetic significance'. The letter continued:

'We consider that the removal of nave pews is justified because of the resulting benefits of allowing the church to be used more frequently and in a variety of different ways.'

English Heritage expressed itself content with the introduction of stackable Howe chairs and commended a discreet means of storing them when not in use so as to avoid unsightly clutter.

7. The CBC, in its written response from Mr Jonathan Goodchild dated 5 August 2010, commented as follows:

'The pews date from the mid-nineteenth century, are of pine and do not make a significant positive contribution to the character of the interior.'

The CBC went further:

'In view of the low quality of the existing pews, the [CBC] thought that the parish's needs justified the reseating of the building, provided the scheme was a thorough and high-quality reordering of the building.'

The CBC urged the parish to think more boldly, to dispense with the wooden pew platforms and pave the floor throughout, and to make significant improvements to certain of the glazing. The CBC deferred to the determination of this court as to whether a faculty should be granted for the less ambitious work under consideration, noting that in any event the substitution of all existing seating in the nave by the Howe 40/4 chair should be made a condition of any faculty.

8. In the light of the professional assessment of the likely impact of the removal of these pews upon the interior, I concluded that this was not a case which triggered the provisions of rule 13(4) of the Faculty Jurisdiction Rules 2000 requiring advertisement of these proposals in a local newspaper. Such advertisement is only required if the works proposed 'involve alteration to ... a listed church to such an extent as is likely to affect its character as a building of special architectural or historic interest' (rule 13(3)(a)). I rely upon Part 2 of the DAC certificate dated 14 June 2010 and in particular the certification at paragraph (1)(b)(i). Nothing in the documents suggests that the DAC assessment is mistaken and, in the circumstances, this is not a case which requires advertisement of the petition in a local newspaper.

The petitioners' case

9. The petitioners rely upon a brief but clear Statement of Significance and Statement of Need. The Statement of Need speaks of broadening the church's membership and

addressing the lack of younger age groups in the congregation. It lists the various activities, both present and proposed, which would benefit from the creation of a more flexible space. This is amplified in the petitioners' written response. I need not rehearse all the activities undertaken in the church, but specific mention should be made of the Diocesan Strategic Review which encourages PCCs to form partnerships with local people, including sharing buildings and facilities. This resonates with the thrust of the *Faith in the Countryside*, the Report of the Archbishops' Commission on Rural Areas (1990) and, more recently, *Building Faith in Our Future*, a statement on behalf of the Church of England by the Church Heritage Forum in 2004 about making church buildings available for multiple community uses, and for extending such uses throughout the week and not merely on Sundays.

10. Reference is also made by the petitioners to dwindling numbers for 'traditional' forms of worship counterbalanced with steady growth for the innovative *Easy Space* and *Kidz Praise* worship which is particularly attractive for young families.

The views of the objectors

11. I hope that I might fairly categorise the views of the objectors under the following themes:

- The village hall is a better venue for some of the activities proposed for the flexible church space;
- The beauty of the church has been lost by piecemeal change and it should be returned to its former status;
- It would be better to adapt the neighbouring church of Holy Trinity, Coleman's Hatch;
- The proposed works are an extravagant waste of money, especially in a time of austerity;
- The rector is a divisive figure, and is perpetrating an act of sacrilege;
- That individuals will withdraw their financial support for the ongoing work and mission of the church if the proposals are allowed;
- That there has been insufficient consultation and debate within the community;
- Pews are superior to chairs in terms of their stability and better promote health and safety where young children are concerned;
- The removal of the pews would ruin the aesthetic beauty of the church;
- Many prefer to kneel which cannot be accomplished so readily with chairs as opposed to pews;

I have read and re-read all the correspondence and taken into account all the matters raised.

The law

12. The Court of Arches has prescribed an approach which consistory courts are to follow in determining whether or not a faculty should issue. See its judgment in *Re St Luke the Evangelist, Maidstone*, [1995] Fam 1, which adopted what are now generally styled the '*Bishopsgate Questions*', first posed in the unreported decision of *Re St Helen, Bishopsgate*, 26 November 1993, London Consistory Court, noted in (1993) 3 Ecc LJ 256. Those 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?

13. In *Re St John the Evangelist, Blackbeath*, (1998) 5 Ecc LJ 217, Southwark Consistory Court, Chancellor George QC ventured that 'necessity' and 'necessary' in the context of the *Bishopsgate* questions meant 'something less than essential, but more than merely desirable or convenient; in other words something that is requisite or reasonably necessary'. As I recently made plain in *Re St Mary, Newide* (4 July 2008, unreported)

'the word 'necessity' should not be taken in isolation as an abstract concept. Rather it should be read in its clear context which imports the wider concept of pastoral well-being or some other compelling reason. Seen in this way, the meaning and effect of the *Bishopsgate* approach is readily comprehensible, continuing 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 admitting of factors concerning the role of the church as a local centre of worship and mission. This is central to the operation of the faculty jurisdiction in consequence of the overriding consideration set out in section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.'

14. I am required to apply the law to the particular facts and matters raised in the current petition. I shall take each of the three *Bishopsgate* questions in turn:

Necessity

15. The objectors have made representations as to how some or all of the proposals may not be necessary, in that provision can be made elsewhere in the church building or in other facilities in the vicinity. I accept that alternative provision may be made in certain specific respects, but this is to ignore the expressed need for a versatile building capable of meeting each and all of the perceived needs and, presumably, adaptable to meet future unspecified needs. Fresh expressions of church take various forms and I have been impressed by the measured, reflective and persuasive case made by the petitioners in the documentation which they have provided for the court. Whilst I note the concerns voiced by the objectors, I am persuaded by the petitioners in this instance that the case of necessity is made out.

An adverse effect on character of church

16. I am far from convinced in this instance that the removal of these pews will have an adverse effect on the character of the church as a building of special architectural and historical interest. I have already noted the content of the DAC certificate. In addition, the CBC (perceived by some as a somewhat conservative organisation) stated in its letter of 5 August 2010:

'the pews date from the mid-nineteenth century, are of pine and do not make a significant positive contribution to the character of the interior.'

Elsewhere it styles the existing pews as being of 'low quality'. Similarly English Heritage (about whom the epithet conservative is likewise used) speaks of the pews as being:

'of a simple, common, and unremarkable late nineteenth-century type, and [they] are of limited historical and aesthetic significance. We consider that the removal of nave pews is justified because of the resulting benefits of allowing the church to be used more frequently and in a variety of ways, thereby giving it every chance of a sustainable future.'

Matters such as these are entirely subjective, but the court gives considerable weight to the professional opinions of statutory consultees. Having considered the totality of the evidence, I am drawn inevitably to the conclusion that the proposed works would not have an adverse effect on the character of the church as a building of special architectural and historical interest

Balance of discretion

17. In the light of my finding on adverse effect, it is strictly unnecessary for me address this third effect. I make the following observations, however, on the assumption that my assessment of adverse effect is erroneous. To my mind, this is a case where the proven necessity is such as to outweigh such adverse effect as may be proved. I have already mentioned that the necessity has been clearly and powerfully proved by the petitioners on compelling grounds. That being so, any modest adverse effect as may exist (irrespective of the professional evaluations to which I have already referred) is insufficient to tilt the balance. Despite the number of letters of objectors and signatories to a petition, on a dispassionate evaluation of all the available evidence this is far from a borderline case.

18. As to the cost of implementing the proposals, the issue of funding is one with which the consistory court is loath to interfere. As I put it in *Re St Mary Magdalene, South Bersted* (19 March 2002):

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.'

In this instance, the PCC has properly voted to petition for a faculty to carry out the proposed works. It is a matter which the court determines on its individual merits. It gives no credence to the personal attacks which have been made in correspondence on the incumbent, both in relation to his leadership style and his churchmanship.

19. I cannot, however, complete the determination of this petition without reference to the observations of the CBC regarding the pew platforms. It encourages the petitioners to be more bold in their thinking and to consider replacing the wooden pew platforms with stone flooring. This would achieve a consistent, level and aesthetically superior floor, the better to achieve the parish's objectives. Their written response suggests that the petitioners are agreeable to this course of action in the long term but feel they lack the funding to do so immediately. To my mind – with considerable experience of re-orderings in this and other dioceses – I am of the view that it would be a false economy to pass up the chance of completing the more

ambitious project immediately. The current favourable VAT regime is unlikely to survive much longer and there would be economies of scale if the work were to be undertaken at the same time. It may well be that an Archdeacon's loan could be made available. In the circumstances I will suspend the issue of a faculty for two months so that this can be explored further.

20. Subject to representations from the petitioners regarding the stone floor, I will order that a faculty pass the seal subject to the condition that all existing pews and chairs are removed from the interior of the church such that the entirety of the congregational seating is in the form of the Howe 40/4 chair.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

18 October 2010