

1 July 2011

In the Consistory Court of the Diocese of Chichester

CH040/11

In the matter of Holy Trinity, Cuckfield

Judgment

1. By a petition dated 24 January 2011, a faculty is sought for the internal reordering of the parish church of Holy Trinity, Cuckfield which is a Grade I listed building. The petitioners are the Reverend Canon Guy Wetherall, incumbent, Mr Colin Sewell-Rutter, PCC secretary, and Mr David Spear, churchwarden. The Schedule of Works in the petition lists eight specific components to the reordering:
 - i. Upgrading of the north porch;
 - ii. Re-flooring of nave and tower vestry;
 - iii. Under-floor heating;
 - iv. Reordering of the nave including replacement of pews;
 - v. Reordering of the chancel including the relocation of the screen to the tower vestry and creation of dais;
 - vi. Improved audio visual provision;
 - vii. Repair and redecoration of interior walls;
 - viii. Conservation and restoration of the baptistery.
2. These proposals have proved controversial in varying degrees and have been the subject of discussion with the statutory consultative bodies over a prolonged period. The petition is formally opposed by the Victorian Society. It has been determined on written representations under rule 26 of the Faculty Jurisdiction Rules 2000. The petitioners have placed before me the following:
 - i. Statement of Need and Statement of Significance, both dated January 2011;
 - ii. Written statements from Mr Sewell-Rutter, Canon Wetherall, Mr Nick Lee Evans (project architect), Mr Nicholas Rowe (inspecting architect) and Mr David Curtis-Brignell (organist and choirmaster) together with various supporting documents helpfully referenced by notes in the margin.
3. The Victorian Society, following service of its Form 4, stated its Grounds of Objection in a letter in the name of Mr Edmund Harris dated 14 June 2011, to which previous documentation had been added by way of an appendix.
4. I am grateful both to the petitioners and the Victorian Society for their constructive approach to the disposal of this petition and for the assistance which each has given to the court in the clarity and focussed manner in which their representations have been framed.

Consultation

5. The petitioners have consulted the following bodies:

The Diocesan Advisory Committee

6. Members of the DAC visited the church on two occasions. On 11 March 2011, it issued a 'No Objection' certificate.

The Church Buildings Council

7. By letter dated 4 April 2011, Mr Jonathan Goodchild, on behalf of the CBC, recorded the Council's support for the overall scheme for reordering but, initially at any rate, as appears from an earlier letter dated 15 September 2010, it had not been content with the proposals to remove the screen and choir stalls and recommended that they remain in situ. By the time of the April letter, the CBC had been persuaded of the case for the removal of the screen to a position at the ground floor of the tower. Likewise, the CBC came to support the removal of the choir pews in the chancel, commenting, '... although they contribute to the historic character of the building, their significance as furniture is low in the Council's view'.

English Heritage

8. Mr Tom Foxall, historic buildings inspector, provided English Heritage's response in a letter dated 7 October 2010, which rightly praised both the Statement of Need and the Statement of Significance, not least for making the use of the building more practical and flexible. It made certain suggestions by which the proposals could be amended to minimise their effect on the significance of the building. In particular it indicated that it is a shame that almost every trace of Bodley (see below) is to be lost with the removal or transposition of the 1855 and 1880 restorations. It advocated the adaptation of the choir stalls, enabling their retention, and counselled re-positioning the chancel screen (if it absolutely had to be moved) in the tower arch, rather than recasting it as a reredos.
9. A more recent letter dated 19 May 2011 was written by Mr David Brock, team leader for English Heritage in West Sussex, who had taken the case back from Mr Foxall. Mr Brock acknowledged that formation of a nave platform compromised any prospect of the chancel screen being retained. Likewise he recognised that it could not realistically be fitted into the tower arch. However English Heritage was content to countenance, as a reasonable compromise, the placing of the screen across the middle of the tower. Mr Brock comments on the 1855 and 1880 interventions (again, see below) but – in sharp contradistinction with the CBC – regarded the furniture in the chancel as of good quality and sensitively adapted to their current arrangement.

Cuckfield Parish Council

10. Although I have seen no documentation on the subject, Mr Sewell-Rutter indicates in his witness statement that it is supportive of the proposals.

Mid-Sussex District Council

11. As the proposals did not include an alteration to the external appearance of the church, no planning permission was required, and the ecclesiastical exemption similarly ruled out the need for listed building consent, consultation with the local planning authority was not required. Nonetheless, the petitioners sought input from Mid Sussex District Council. Ms Alma Howell, senior planning officer responsible for historic building conservation, gave a written response by letter dated 26 April 2011 as follows: 'I am of the view that the proposals have been carefully and sensitively considered to enable greater use of the Church by the community without harming its historic character and appearance. The proposals will make the Church more welcoming and comfortable and will help to ensure its long term future.'

Public notice and advertisement

12. Public notice took place in accordance with rule 6 of the Faculty Jurisdiction Rules 2000. On my direction, a notice was published in a local newspaper, the Mid Sussex Times, on 7 April 2011, under rule 13(4). I understand that no correspondence has been received in the registry as a result.

The petitioners' case

13. The proposal arises from a lengthy and comprehensive consultation with and amongst the 'church family' starting in 2009 and the establishment at that time of a Reordering Project Group chaired by Mr Sewell-Rutter. Their submissions are rooted in the mission and worship of that church family. This is unsurprising having regard to the terms of the statutory duty at paragraph 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 which places this concern at the forefront of the minds of every person or body carrying out functions of care and conservation under the Measure. I do not doubt the sincerity and integrity of the petitioners, the Reordering Project Group or the PCC. Nor, I think, does the Victorian Society as is plain from the tone and content of its written representations.
14. I need not quote extensively from the various witness statements. They are on the court record. Central to the realization of the parish's vision for the interior is the creation of a nave altar around which the church family can gather for Eucharistic celebration. Reference is also made to the hosting of bigger concerts in a larger and reconfigured chancel with adaptable choir stalls and a raised dais without the interruption of the chancel screen. That proposal, the reasons for which are cogent and compelling, requires the removal of the chancel screen and the creation of a flexible open space in the chancel area. Anything less than that would compromise the overall scheme.
15. Mr Curtis-Brignell indicates that the church has an unusually large and flourishing adult choir, together with a smaller junior choir of more recent origin. His experience as organist and choirmaster makes plain that the existing screen impedes inclusion of the choir in acts of worship and affects sound transmission. Fixed collegiate choir pews some distance apart does not always get the best out of singers. The front rows, being designed for boy trebles, are extremely uncomfortable for adults. It is said that the continued use of properly integrated choral music is not feasible unless

the works are carried out. The liturgical use of the chancel area, and of the church more generally, will be enhanced by the changes.

The objector's case

16. The Victorian Society's case, as with that of the petitioners', is fully documented in lucid and helpful written submissions and, again, I do not propose quoting extensively from them. The objection relates primarily to the reordering of the chancel and secondarily to the re-flooring and reordering of the nave. In short, the focus is on the work and achievement of G F Bodley and his nineteenth century interventions in the church together with C E Kempe. It is suggested that almost every trace of Bodley's work would be lost if the work were to be permitted. An assessment of Bodley's work by Mr Michael Hall, an acknowledged expert, is exhibited to Mr Edmund Harris' representations. It speaks of the 'unique intactness' of the Bodley restoration, being in his earlier style, prior to the influences of Morris and Ruskin emerging later in his career.

The law

17. The Court of Arches has prescribed an approach which consistory courts are to follow in determining whether or not to grant a faculty when changes are proposed to a listed church. 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?
18. I have commented elsewhere on the scope of this test: *Re St Mary, Newick* (Chichester Consistory Court, 4 July 2008, unreported), where I reviewed a succession of decisions of the ecclesiastical courts concluding,

'... 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.'

Analysis

19. Approaching this petition in accordance with the approach I have outlined, my conclusions are as follows.

Necessity

20. For the reasons given by the petitioners in the witness statements which have been lodged and in the supporting documentation, particularly the Statement of Significance and the Statement of Need, I am satisfied that a proper case of necessity has been made out for all of the proposed works. The introduction of the dais, the improvement of sight lines and acoustic transmission, the comfort and accommodation of the choir, the liturgical use of the sacred space, and the need for flexibility for secular community use all require the changes which have been developed by the Reordering Project Group in a consultative, informed, imaginative and balanced manner.

Adverse effect

21. The proposals will undoubtedly have an adverse affect upon the character of the church as a building of special architectural and historical interest in that some aspects of one part of the building's development will be permanently removed, the most contentious element (so far as permanency of removal is concerned) being the choir pews in the chancel. There is no doubt that these are a good example of Bodley's work, though possibly not the very best, and their loss will undoubtedly diminish to some considerable extent the special architectural and historic interest which they bring to the church. Similarly, though to a lesser extent, the removal of the nave pews and their replacement with chairs will also have such a negative effect.

Balance of discretion

22. Thus we arrive at the nub of the current dispute and the ultimate question for determination by this court. The petitioners (supported by the CBC and the local authority) indicate that the evidence tilts the balance of discretion towards the grant of the faculty; the Victorian Society (with support from English Heritage) state that it militates in favour of refusal. The DAC is neutral.
23. There are instances in the documentation when the petitioners and objector have each somewhat overstated their case, and perhaps unfairly categorised a comment made by the other. But these are few in number. For the most part, respect has been shown for the competing opinions. The Victorian Society suggest that the petitioners underplay the value of Bodley's work as an ensemble and the unique quality of Cuckfield church in consequence, whereas the petitioners consider that the Victorian Society gives insufficient regard to function of a church building as a vibrant place of worship which must adapt to meet contemporary needs of the worshipping congregations and the wider community.
24. This is a finely balanced case, but I have come to the clear and inevitable conclusion that a faculty should be granted. I have regard to the following key features:
- i. that the need articulated by the petitioners is strong and compelling;
 - ii. that Mr Nick Lee Evans, an experienced ecclesiastical architect, only proposed the significant step of removing the chancel furniture in order to facilitate the church fulfilling its needs in respect of worship and mission;

- iii. that whilst certain of Bodley's work has already been adapted, moved or replaced, a significant element will remain even when the proposed works have been completed;
- iv. that church buildings are organic and developmental by their nature, subject to adaptation according to the needs of successive communities of worshippers. Those needs cannot be compromised by freezing the fixtures and furnishings as they were at one particular moment in a building's history;
- v. that certain features of the choir pews can be salvaged and retained by imaginative incorporation within the Lady Chapel and that the chancel screen is to be retained in the church so that this element at least is wholly reversible.

25. I am satisfied that the re-siting of the chancel screen and the removal of the choir pews cannot sensibly be severed from the rest of the reordering scheme and that the proposal must be viewed holistically. Were the Bodley choir pews and screen to remain, the chancel would lose any meaningful sacred and liturgical function and would become nothing more than a museum piece: to borrow from Mr Rowe, 'a disused memorial to Bodley'. The twenty-first century needs of the parish church to live out the Gospel as a thriving and growing spiritual community and a local centre of Anglican worship and mission outweigh the loss to built heritage by the removal of the choir pews. In relation to the chancel arch, the loss is of far less significance, since it is a wholly reversible alteration, albeit the ensemble effect with the rest of the chancel furniture cannot be recreated. The proposals have been fully thought through to meet the sensitively discerned and keenly articulated needs of the parish. This is an 'all or nothing' petition and, in my opinion, the petitioners have amply discharged the exacting burden of proof which lies upon them in relation to the entirety of the works.

26. In the circumstances, this petition succeeds and a faculty will pass the seal subject to the following conditions:
- i. that the replacement furniture for the chancel is not commissioned or fabricated until the design and material have been approved by this court;
 - ii. that choir pews are not removed from the chancel until such time as detailed proposals for the incorporation of significant elements from them have been approved by this court;
 - iii. that the reordering is carried out under the direction of Mr Nick Lee Evans;
 - iv. that the reordering is to be completed within 18 months or such extended period as may be authorized by this court.

27. I have not referred to every document placed before me nor to every detail of the argumentation of the respective parties. I have, however, taken all these matters into account in making my adjudication, hence the time taken in drafting this judgment. My task has however been made considerably easier by the full and helpful manner in which the petitioners presented the paperwork and by the clarity of engagement of the respective submissions of the petitioners and the Victorian Society, and I should wish to record my gratitude to all concerned. I should add

that the plans and photographs were sufficiently plentiful and clear, and submissions drafted with such commendable clarity, that I did not consider that I would have been assisted in reaching my conclusions by paying a visit to the church.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

1 July 2011