

In the matter of St Peter, Brighton

Judgment

1. By an unopposed petition which is undated but date stamped 27 May 2015 noting receipt at the Registry, the vicar and churchwardens of St Peter's, Brighton seek a faculty for 'the reuse of the choir stalls within the Lady Chapel'. The public notice expresses what is proposed as 'reintroduce the choir stall pews into the Lady Chapel' which is in many ways more apposite, but nothing turns on these differing descriptions and I am content to waive any irregularity.

Background

2. Although the petition is unopposed, there is something of a history to the current proceedings which, in the past at least, have attracted a degree of controversy. St Peter's, Brighton is a Grade II* listed building of considerable architectural merit. It occupies a prominent position within the city. The church was designed by the distinguished architect Charles Barry and was constructed between 1824 and 1828 as part of the Regency development of the fashionable part of Brighton.
3. A substantial reordering of the church took place in 1876 for which George Somers Clarke was retained. This saw the installation of nave pews in substitution for the box pews of Barry's design. Between 1889 and 1906 the church was reordered and substantially extended by the demolition of Barry's polygonal apse and the construction in its place of a very large chancel for which choir stalls were fabricated and installed in collegiate formation. Although the join between the two sections may not be entirely successful, and the overall design of Clarke with JT Micklethwaite not realised in its totality, the resultant sacred space is by any measure vast and reflects the achievement of the Tractarian movement.
4. However, some years ago it was recognised that Brighton and Hove had an over-abundance of churches, many with dwindling attendance. At St Peter's, attendance rarely exceeded twenty and the cost of keeping this jewel of a building in serviceable repair had become beyond the PCC's reach. In 2009 the church was closed. Shortly thereafter, an innovative venture took shape. Holy Trinity Brompton took over St Peter's by way of a church plant. The Reverend Richard (Archie) Coates was instituted as vicar. A lease of the building was taken for a period of 125 years and thirty people moved from HTB to make St Peter's the regular place of worship for them and their families. Numbers grew steadily.
5. Years of neglect had left the church in a poor state of structural repair and many of its internal furnishings are inimical to the mode of worship adopted by the new and growing congregation. The archdeacons granted licences for temporary re-orderings and when they became time-expired a petition was lodged for a faculty for various works including the permanent removal of the pews from the nave. I considered it proper to hold a hearing so that the differing views could be ventilated and this took place on 20 June 2012. The Victorian Society, which had been joined as a party opponent, was represented

by Mr Matthew Roper of counsel and the petitioners by Mr Andrew Johnson, who will be remembered as one of the most congenial and experienced practitioners of ecclesiastical law and who has been missed and mourned by his many friends and colleagues since his untimely death last year.

6. Back in June 2012, the petition then presented was properly described by counsel for the Victorian Society as premature. The parish's longer term plans for the internal reordering of the church remained inchoate. However there was a narrowing of the issues at the earlier hearing and agreement in principle to extend the operation of the archdeacon's reordering. The two live matters for my determination were the permanent removal and disposal of two items of church furnishings: the nave pews and the choir stalls. As will be apparent from my earlier judgment dated 22 June 2012, the then petitioners satisfied me that the nave pews should be permanently removed and disposed of, save for half a dozen of the best quality which I ordered be retained as representative samples.
7. Different considerations applied in relation to chancel choir stalls, in relation to which I expressed my findings as follows:

The chancel choir stalls

14. These are unquestionably of a higher quality than the congregational pews in the nave, as evidenced by the views also expressed by English Heritage, the Church Buildings Council and Brighton and Hove City Council. I note that a robed choir last made use of them in 2002 and that the likelihood of their being used in the immediate future is remote. However they were designed as an ensemble specifically for the chancel and contribute to its architectural achievement. It would be premature for this court to authorise their disposal, and the court would take considerable persuading that they were not to be retained. [...]
15. I am satisfied, however, that it would not be right to order their immediate return to the chancel. The parish is entitled to experiment with the use of the building, particularly with the likely increase in the number of people attending for worship and for the other myriad uses to which the church is put. Mr Roper, on instructions, did not press for the immediate return of the choir stalls to the chancel but made submissions on putting a time limit on the period for which they might be displaced from their original position.
16. It seems to me that it is eminently sensible that this court gives approval to the consensus which emerged during the hearing, and accords with the views of other interested parties who did not participate in the hearing, namely to insist upon the retention of the choir stalls (and related chancel furniture) pending the submission of a further petition dealing with the long-term reordering of the interior of the church.
17. In adopting this course I make plain that I am not in any way pre-judging the determination of that petition. The heavy presumption against change still applies, particularly having regard to the quality of the choir stalls and their contribution to the chancel. The petitioners will have an uphill task to discharge the legal burden which lies upon them in accordance with the well-known case law painstakingly collated by Mr Roper. The default position is that the stalls, at the end of the period which I shall determine, will be returned to their original position in the chancel. It should not be assumed that an extended period of storage will create a new *status quo*. It will not. Indeed, the fact that neither the vicar, Mr Coates, nor the architects, Mr Dyson and Mr Fryer, could postulate an alternative location for the choir stalls within the footprint of the church could be said to militate in favour of their return to the place which they were designed to occupy. [...]
20. [...] I can see considerable force in restoring the chancel in its original form and utilising it as a Lady Chapel with collegiate seating in the restored choir stalls whilst providing unhindered and flexible use of the entire nave. I commend the parish and its professional advisers to give serious thought to this as a long term solution as it seems to me to have considerable advantages and few disadvantages in striking the balance between the liturgical use of sacred space and safeguarding the architectural and aesthetic value of the grade II* building. However, these suggestions should not be taken as a pre-judgment of any of the issues to be determined when the forthcoming petition is lodged. It will be determined on the merits based on the evidence led by the parties at that time.

8. In accordance with these findings, I authorised the issue of a faculty which permitted the permanent removal of the nave pews but which otherwise preserved the *status quo* until today, 1 July 2015. I prescribed a timetable for periodic progress reports being lodged at the registry and for the submission of a further petition which is the matter which now falls for my determination.
9. I should interpose that in the interim there have been further faculty proceedings, some of an emergency nature, in respect of urgent and unexpected repairs to the stone work of the tower. I have had occasion to be critical of the inspecting architect and others for less than scrupulous regard to the faculty jurisdiction but I have received gracious apologies for these oversights and I regard the matter as closed. I am confident that proper process has been adopted in the past and will be in the future. And I should also add a word of congratulation for the manner in which the community at St Peter's has marshalled its resources, including generous grants (such as £117,000 from English Heritage), to ensure that the tower and other parts of the external structure of St Peter's have been made safe and put in a proper state of repair. I am conscious that had HTB known of the haemorrhaging sums of money that would need to be spent on the fabric of the building it might well not have embarked upon this ambitious church plant. Its stoic loyalty and determination in the face of seemingly unending difficulties is to be commended. It demonstrates their commitment to and faith in the venture.
10. Which brings me to the present petition seeking the return of the choir stalls to the church but not to the chancel, for where they were designed, but instead to the Lady Chapel. This represents something of a compromise solution which has emerged over time and in relation to which there is a near consensus. The views of the various interested parties is as follows:

English Heritage

11. I have read correspondence passing between English Heritage and the PCC from mid-June 2014 until March 2015. The most recent email dated 18 March 2015 indicates that English Heritage has no objection to what is proposed in the current petition. I note in particular the following:

We do not disagree with the Victorian Society's observation that the significance of the [choir] stalls would be diminished by removing some, altering others, and relocating [them] from their original location. However, we think that the proposal would go some way to interpreting the Somers-Clarke/Micklethwaite phase of St Peter's history in a meaningful way, and would also provide a calmer and more contemplative space within the body of this large church.

12. Reference is also made to the proposed insertion of a mezzanine floor which is no longer in contemplation as clarified below.

Church Buildings Council

13. By email dated 25 June 2015, the CBC summarised its views as follows, which broadly replicates what it had said in an earlier letter dated 10 April 2014:

The Council has consistently advised that the choir stalls are of significance and should be retained in the church. We are therefore very pleased that the parish now proposes to do so and [...] we are content to defer to the advice of the DAC as to what the most appropriate location might be.

Diocesan Advisory Committee

14. In an email dated 12 February 2015, the DAC signified its broad agreement to the emerging compromise for the choir stalls to be retained within church whilst allowing the chancel to be put to full use for worship and other activities. On 14 April 2015, the DAC issued a formal Notification of Advice recommending the works. The DAC took the unusual step of writing a separate letter of the same date setting out its reasoning more fully. I have found this additional input extremely helpful. The considered view of the DAC was that

... any attempt to replace the stalls in the chancel area will significantly hamper the important mission work currently undertaken by HTB in the local area, which has helped to revitalise the life of the church.

15. The DAC favoured the compromise solution of placing the choir stalls in the Lady Chapel which would allow the choir stalls to be retained and used within the church thereby acknowledging their historical significance.

The Victorian Society

16. There was considerable correspondence within the papers indicating the opposition of the Victorian Society to any proposal other than returning the choir stalls to their original position in the chancel. Accordingly I directed that the Victorian Society be specially cited in accordance with rules 8.3 and 8.5 of the Faculty Jurisdiction Rules 2013.
17. By email dated 26 June 2015, Mr Thomas Ashley responded on behalf of the Victorian Society as follows:

The Society does not wish to be made a party opponent in this case. We feel that there is little to be gained from doing so, with the resultant exposure of all parties to costs and the expenditure of time and trouble, when the issues at stake were fully explored in the Consistory Court hearing in 2012. We do, however, maintain our strong objections to the granting of a faculty in this case because, whilst we are pleased that it is no longer proposed to remove the chancel furnishings from the church altogether, we consider that their relocation to the Lady Chapel from their proper place in the chancel would be both harmful and unnecessary. We have set out the reasoning behind our position fully in our correspondence with the parish and we hope that the Chancellor will take our views into account when considering whether to grant a faculty.

We would like two further points to be taken into account by the Chancellor and by the applicants. The first is on the question of compromise: it must be remembered that the Victorian Society's concession to the removal of the nave pews at the time of the Consistory Court in 2012 was a major compromise of the heritage significance of the church to the needs of the parish and we wholly reject the notion that we have been intransigent in our discussions with them. Second, we are aware that the parish has been considering the horizontal subdivision of the Lady Chapel to provide office space: if the relocation of the chancel furnishings to the Lady Chapel is permitted, this should be seen as definitive in also making any horizontal subdivision of the Lady Chapel out of the question.

18. I should correct Mr Ashley in one small respect. Electing to become a party opponent does not necessarily expose all parties to costs, particularly when a matter is determined on written representations. The decision of an amenity society to become a party opponent should be rooted in the merits or otherwise of the proposals and to the strength or otherwise of its opposition. In the interests of fairness and balance, and mindful that there has already been one hearing in the consistory court to which the Society was a party, I am prepared to take into account the various observations of the Victorian Society in correspondence spanning several years notwithstanding that it has not chosen to file particulars of objection thereby becoming a party to the proceedings.

Response to public notice

19. No letters of objection have been received at the registry following public notice.

The law

20. Notwithstanding that this petition is unopposed, it relates to a Grade II* listed building and it is incumbent upon the petitioners to prove their case.
21. Adopting the framework and guidelines commended by the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158, a series of questions needs to be addressed whenever changes are proposed to a listed building. The starting point is a strong presumption against change and a significant burden lies on petitioners to rebut it.

Would the proposals result in harm to the significance of the church as a building of special architectural or historic interest?

22. The permanent removal of the choir stalls from the church would undoubtedly result in considerable harm to the significance of the church as a building of special architectural or historic interest. But that is not what is now proposed. The petition seeks not their permanent removal but their relocation to the Lady Chapel where, with some alteration, they will be incorporated into the fabric of the building for which they were designed. Of course, they will be in a different part and not that for which they were designed but they will remain in liturgical use elsewhere in the sacred space of building.
23. In my assessment of the evidence led at the 2012 hearing, I concluded that the choir stalls were 'unquestionably of a higher quality than the congregational pews' and so they are. Their removal from their historic home in the chancel will result in some harm to the significance of this listed church.

How serious would the harm be?

24. The level of harm should not be overstated, particularly as the proposal is to refit the choir stalls in the Lady Chapel. It will be distinct and observable harm but not quite as severe as the Victorian Society postulates.

How clear and convincing is the justification for carrying out the proposals?

25. I have been impressed by the way in which this HTB church plant has succeeded and reversed the fortunes of what was an ailing church: a decaying building housing a tiny congregation. The style of worship may not be to everyone's taste, but the sense of vitality and active engagement with worship and mission is undeniable. The community use of the church and its ministry to the homeless is worthy of particular praise. The Statement of Needs is cogent and convincing. I see no hyperbole in reference to re-evangelizing and transforming this part of Brighton, reaching the unchurched, youth and children. I am more than satisfied that St Peter's needs the space within the building – including the chancel – for its worship and values the flexibility it provides for a variety of other worthy uses. I accept what was said by Mr James Footitt in a recent email which I take to be representative of those at St Peter's: 'if we are to unable to maintain the chancel as an open and flexible space, it will significantly limit our current mission'.
26. I note that the parish had, at some stage at least, proposed removing the choir stalls completely. They have abandoned that proposal. It may have been in response to the opposition of the Victorian Society. It may have been that they read my 2012 judgment as indicating the unlikelihood of such a proposal succeeding. It matters not. I am not asked to determine a petition for removal but for relocation. The Statement of Needs

demonstrates how the petitioners have adjusted their proposal in the light of pragmatic considerations and read holistically it is a highly convincing justification for the re-siting within the church of the choir stalls. I am fortified in this conclusion by the support given for the proposal from professional opinion evidenced in the support of the DAC, the CBC and English Heritage. It is also worth noting that even the Victorian Society recognises that the re-siting of the choir stalls into the Lady Chapel is less objectionable than their complete removal, even though they cannot go as far as the other bodies in actually lending support.

Will the public benefit outweigh any harm?

27. I am in absolutely no doubt that the benefit to the worshipping community and to the wider civic community would outweigh any harm which would result from the re-siting of the choir stalls. Striking the balance between heritage and mission is not easy. The court must give proper weight to the effect of this church plant on St Peter's as a local centre of worship and mission. It is undoubtedly a good news story for Brighton, the Diocese of Chichester and the Church of England. It is no exaggeration to observe that a dead church has been brought back to life. And what has particularly struck me is that, contrary to certain insinuations in the papers, the vicar, churchwardens and PCC seem to care just as much for the historic fabric of the building as they do for the gathered communities of worshippers and others who make use of the fabric. The way that they have channelled their time, energy and resources to works on the tower is evidence of this.
28. In addition, I should add that the detailed proposals of Michael Fryer Architects which show how the choir stalls will look in the Lady Chapel demonstrate a dignified and appropriate incorporation of worthy ecclesiastical furnishings into their new setting. It is important that the choir stalls and their adornments such as lights and lamp shades should be lovingly installed and any damage which has occurred whilst they have been unused and in storage made good.
29. Finally, and to pick up on the observations of both English Heritage and the Victorian Society, I note that at some stage the petitioners considered subdividing the Lady Chapel in order to create a lower and upper room. This proposal was part of a master plan (drawn up in 2013) in response to a brief to create a more flexible space to accommodate the different activities at St Peter's. This proposal, which would have provided invaluable additional space, was premised on the permanent disposal of the choir stalls. Now that proposal has been abandoned, and replaced by one for their relocation, I am told that the Lady Chapel will be used as a chapel for prayer and small services. The petitioners, through Mr Footitt in his recent email, accept that any lateral sub-division of the Lady Chapel to create an upper room would undermine the aesthetic. If a faculty is granted to relocate the choir stalls to the Lady Chapel, the petitioners abandon any prospect of successfully applying for a faculty for horizontal subdivision.

Conclusion

30. This has been an unduly lengthy judgment for an unopposed petition, but due to this its unusual history and background and in deference to the strength of feeling evinced by the Victorian Society in correspondence albeit not pursued by way of formal objection, I have been more expansive in articulating my reasons.
31. A faculty will therefore pass the seal, but before it is formally issued I invite representations from the petitioners regarding any conditions to be attached particularly

as to (a) time for completion of the works and (b) further directions concerning aspects of the re-ordering previously sanctioned by archdeacon's licences.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

1 July 2015