

In the matter of St Dunstan, Mayfield

Judgment

1. This is a petition by the vicar and churchwardens of St Dunstan, Mayfield seeking a faculty for the re-ordering of the chancel and north aisle.

Special Notice

2. The inspecting architect, Ms Elaine Wren, has contacted the registry on a number of occasions indicating that a contractor has been lined up to start the works on 15 February 2016.¹ This was foolish. Ms Wren was in receipt of a letter from the Victorian Society dated 1 December 2015 stating in the clearest of terms, 'I am afraid we must maintain our objection to the scheme'. As someone who holds herself out as a specialist in works which are subject to the faculty jurisdiction, she knew - or ought to have known - of the procedures under the Faculty Jurisdiction Rules 2013 which seek to maintain the balance between various individuals and entities with legitimate interests in the care of churches. Any inspecting architect holding themselves out as competent to deal with church buildings would be familiar with r 8.3 of the Rules² which provides as follows;

Special notice to English Heritage, amenity societies and the local planning authority

8.3.—(1) Subject to paragraph (2), the chancellor *must direct* that the following bodies be given special notice if a petition relates to works in respect of which Schedule 1 provides for them to be consulted—

- (a) English Heritage;
- (b) any national amenity society which has an interest in the church or the works;
- (c) the local planning authority.

(2) Special notice is not required to be given to a body referred to in paragraph (1) if it appears to the chancellor that the body has previously been consulted on the works in question and *has indicated that it has no objection* or no comment to make. (emphasis added)

3. In the circumstances, as would have been obvious to anyone familiar with the system, the court had no option other than to direct Special Notice on the Victorian Society. Special Notice was also directed in respect of CBC, Historic England and the Society for the Protection of Ancient Buildings as there was a degree of ambiguity in relation to their responses and the court needs the benefit of a spread of professional opinion. Since the same 21 day time limit for responding applies, widening the scope of special notice had no effect upon the time scale.

¹ There is a letter from the vicar dated Christmas Eve, suggesting that at that stage a conditional start date of 11 January 2016 had been agreed.

² This provision is now to be found in r 9.3 of the Faculty Jurisdiction Rules 2015, but the current petition falls to be determined under the 2013 Rules.

4. I regard Ms Wren's communications with the registry as somewhat unfortunate. Whether or not she had overlooked r 8.3, it was still unwise to engage contractors to start on a fixed date whilst a controversial petition was still to be determined. The wiser course would have been to seek a direction for Special Notice immediately upon receipt of the letter from the Victorian Society dated 1 December 2015 from which it was apparent that the Victorian Society persisted in its objection.
5. As events have transpired, Ms Sophia Laird of the Victorian Society emailed the registry on 7 January 2015 in the following terms: 'we are grateful for the opportunity but we do not wish to become party opponents to the proposals'.
6. Following that procedural excursus, it is for the court to determine whether the petitioners have proved to the requisite standard that a faculty should issue. In doing so, I take fully into account the comments and observations of the Victorian Society, CBC, Historic England and the SPAB, the latter now being out of time to become a party opponent.

The proposals

7. The Schedule of Works refers to the reordering of the chancel and north aisle of this grade I listed building, which stands within the Wealden Conservation Area. In 2007, I authorised a faculty for a reordering of the west end following contentious proceedings determined on written representations. The Statement of Significance is somewhat brief although, as I have discovered, the listing description is not particularly expansive either.

MAYFIELD HIGH STREET 1. 5208 (north side) The Parish Church of St Dunstan TQ 5827 39/508 26.11.53 | GV 2. Chancel, south chapel, nave with aisles, south porch with room over and west tower with broached shingled spire. C13 tower, otherwise C15. Good medieval church, little restored.
8. The Statement of Need is a much fuller document, running to three pages, which seems to have been carefully and thoughtfully prepared by the vicar. It refers to the temporary removal of the chancel pews when rodent infestation was discovered, and the resultant disclosure of interesting historical features.
9. What is proposed is the removal of a carpet laid some forty years ago, the unifying and levelling of floor finishes, fabricated with ceramic tiles and Purbeck stone. It is intended to seek the permanent removal of the choir pews and the introduction of moveable furniture. There is also a proposal to remove solid oak screens to improve sight lines. These will be adjusted and deployed as dado panelling on the walls of the north aisle which will be designated a prayer area. A new handrail is proposed between the upper and lower chancel. The plans also include replacement of radiators, repairs to the plaster work and redecoration.
10. The petitioners rely on a report from David Hawkins who has particular experience of historic church woodwork and sits on the DACs of two dioceses; and upon a report prepared by CG Archaeology.

Public Notice

11. No correspondence was received in the registry following public notice.

DAC

12. There were lengthy dealings with the DAC as these proposals took shape and the petitioners have suggested that the DAC is responsible for a number of delays. For my part I can see nothing to suggest anything other than the meticulous consideration of evolving proposals affecting a Grade I listed building, with appropriate queries and requests for information. It is regrettable that the petitioners see fit to criticise the DAC in this regard.
13. The DAC issued a Notification of Advice on 24 November 2015 which recommended the proposals subject to a number of detailed provisos, in relation to which Ms Wren responded by letter dated 2 December 2015.

SPAB

14. In a letter dated 26 August 2015, the SPAB expressed the hope that the choir pews would be repaired and retained in the north aisle and that whatever replaced them in the chancel was of sufficiently high quality. It was not wholly convinced of the proposal to relocate the chancel screen. It argued in favour of the use of black and red tiling. Ms Wren replied to this letter on 29 October 2015. Since SPAB did not respond to Special Notice, it is a reasonable inference that it was broadly satisfied with the response of Ms Wren which was very full and considered.

Historic England

15. Historic England wrote on 15 July 2015. It allied itself with observations of the Victorian Society (to which I will turn shortly) and stated that the chancel furniture 'should only be removed if the new furniture for the chancel is a fitting replacement'. It encouraged the retention of the choir pews and the screen albeit relocated within the church. As with the SPAB, Ms Wren replied with a detailed letter dated 29 October 2015.
16. By email to the registry dated 18 January 2016, Ms Alma Howell of Historic England responded to Special Notice indicating that Ms Wren's letter addressed her original concerns. She referred to an earlier email of 5 November 2015 which was not with the court papers. She commended an archaeological watching brief, and made some detailed observations as to how the new flooring should be designed.

CBC

17. The CBC visited St Dunstan's and Dr Pedro Gaspar set out its advice in an email of 10 March 2015. It made detailed observations with regard to the proposed flooring, but made the point that 'a strong justification would be required to support [the] relocation [of the screen]'. Following Special Notice, Dr Gaspar emailed the registry indicating that in the light of the additional information provided on behalf of the petitioners, it did not wish to make any further comments on the proposals.

The Victorian Society

18. Mr Christopher Costelloe emailed Ms Wren on 2 July 2015 indicating the Victorian Society's position. He spoke of the importance of looking at the proposals holistically and had particular praise for the poppy-headed choir pews and for the screen notwithstanding it had been subject to several relocations. He refers to the upper chancel being a major and successful part of the 1904 reordering focusing the churchgoer's attention on the high altar. 'Its loss', he says 'would harm the character of this Grade I listed church'. Mr Costelloe's

email is, with some justification, critical of the brevity of the Statement of Significance and, a little unfairly, is somewhat disparaging of Mr Hawkin's report. Quite ambiguously it concludes 'the Victorian Society objects to the proposals in their current form'.

19. Ms Wren replied to Mr Costelloe's email by letter dated 29 October 2015, the repeated deployment of certain paragraphs of which begin to have something of a *pro forma* feel. Enclosed was an amended Statement of Significance which drew attention to successive remodelling of the chancel over the centuries. The Victorian Society's response to this email came in the form of a letter from Ms Sophia Laird. The Society remained unconvinced of the need to remove the chancel furnishings, and could find little justification in what appeared to be a revised Statement of Need. It is unconvinced by arguments that the choir pews are uncomfortable and lack music stands. It does not regard re-styling the screens as dado panelling to be appropriate as the original purpose is lost. The screens serve to denote space and hierarchy. It is unconvinced that half-height screens contribute to the choir feeling isolated and concludes: 'The furnishings are clearly significant and handsome and these qualities have not been appreciated in the proposals'. As I stated at the beginning of this judgment, the Society maintained its objection to the Scheme, albeit it chose not to become a Party Opponent or to add to the content of the email and letter which I have briefly summarised.

The law

20. Proposed changes to a listed church building need to be addressed by reference to a series of questions commended by the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158:
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. [...] 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 ... 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.
21. Dealing first with harm under question (1), there would undoubtedly be some harm although, having regard to the listing description, it is not particularly easy to relate this directly to any particular element of the significance of the church as a building of special architectural or historic interest. Thus, in this instance, the question is conveniently elided with question (3) and an assessment of the seriousness of the likely harm. I note the carefully

articulated observations of the Victorian Society in this regard, albeit not reinforced by becoming a party to the proceedings. Undoubtedly both the screen and the choir pews and handsome pieces which add to the buildings interior, provide unity and focus in the upper chancel, and demarcate the hierarchy and relative sacredness of the church drawing the eye to the high altar. Whilst both screen and pews are of good design and historic interest, they are not outstanding examples of their type and the screen itself has already been subject to various moves and alterations. My conclusion is that the harm, though real, is not likely to be quite as serious as the Victorian Society suggest.

22. Turning to question (4), I am with the petitioners and regard the justification as well made. It is nearly a decade since I last had to determine a controversial petition concerning this parish. I am aware of the important role for St Dunstan's within the community it serves, not least as a well used and much appreciated concert venue. The need for flexible space which does not require temporary scaffolding is essential if the mission of St Dunstan's is to be advanced.
23. Finally, therefore, is the balancing exercise. In my judgment, the public benefit will outweigh the likely harm and it is therefore appropriate that a faculty issue. It will be subject to the following conditions:
- i. that a petition is lodged in respect of new chancel furniture by no later than 4 pm on Friday 29 April 2016. The design should be of extremely high quality having regard to the assurances given by the inspecting architect in respect of the disposal of the choir pews;
 - ii. the choir pews are to be stored in the church (or such other location as may be approved in writing by the chancellor) until a faculty has been granted for new chancel furniture;
 - iii. the relocation of the screens is to be overseen by Mr David Hawkins who shall ensure that any necessary repairs are effected to the historic medieval joinery;
 - iv. an archaeological watching brief is to be undertaken by CG Archaeology;
 - v. the petitioners are to pay the court costs arising out of this petition to include a correspondence fee for the registry and no works are to commence until those fees have been paid in full.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

2 February 2016