

In the matter of SS Peter and Paul, Rustington

Judgment

1. By an undated petition date-stamped 18 March 2015 the vicar and churchwarden of the church of St Peter and St Paul, Rustington seek a faculty for the removal of pews and pew platforms, the installation of underfloor heating, the introduction of chairs to replace the pews and certain ancillary works. A second petition, dated 3 March 2015, concerns a tree in the churchyard.
2. The church is listed Grade II and dates from the twelfth century. Rustington is a seaside village, and the church lies in a conservation area. It is essentially a medieval building with a fine interior.

The proposals

3. What is proposed is a significant reordering which has evolved over time and in response to a consultative exercise which has produced a variety of comment and advice, not always entirely consistent. Although a couple of failures in communication have been candidly admitted by the petitioners, the overall process seems to have been open, informative and transparent.
4. I have had the advantage of reading a Statement of Significance which sets out the history of the church from its medieval origins through further developments over the intervening centuries. It points to a number of significant features. The Statement of Need has been very carefully and thoughtfully prepared. It sets out the identified objectives of making people welcome and comfortable in terms of warmth, seating and refreshment. The need for an accessible toilet is well made out. The document sets out the need for flexibility and versatility, and does so with particular reference to the liturgical uses. The Church Buildings Group is to be commended for putting this document together in 2014.

Consultation

5. The proposals before the court have been subject to the consultation processes of the faculty jurisdiction, the result of which can be fairly summarised as follows.

Arun District Council

6. After an earlier refusal, Arun District Council granted planning permission for the proposed works on 2 June 2014. My understanding, although it is perhaps of peripheral relevance, is that an additional opening in the historic outer wall of the church, about which SPAB makes comment (see below) was introduced in consequence of the earlier refusal and related to securing level access to the new toilet.

English Heritage

7. English Heritage was consulted by the petitioners as early as 2012 and again in 2014. Mr David Brock expressed the view that the building was worthy of a higher listing status.

No concern was voiced about the removal of the pews or choir stalls but constructive advice was offered in relation to the entrance and glass doors.

8. English Heritage remained supportive as the plans developed, particularly as concerns the glass doors and discrete mobile server. It requested further detailed information in relation to other aspects of the proposals and voiced concern at covering memorials in the nave. It made a plea for the retention of the pulpit within the reordered interior. There was then a very full and constructive exchange of correspondence between the parish's inspecting architect, Mr Richard Andrews, and English Heritage, focussing on the technical fixture of the glass doors, the retention of the pulpit and the marking of the bane memorials.
9. I directed special citation of English Heritage who confirmed that they had nothing they wished to add to what was contained in their correspondence with the parish.

The Victorian Society

10. The Victorian Society was consulted by the inspecting architect by letter dated 14 November 2014, including copies of various drawings. In the absence of any reply Mr Andrews sent a chasing email on 11 January 2015 to which Mr Tom Ashley, the senior conservation adviser at the Victorian Society, responded on 28 January 2015 apologising for the delay in responding and explaining it was due to the Christmas disruption and the impact on the Society's caseload of an ongoing consistory court case. He concluded:
 'The Society does have some further comments to offer on your application. I am drafting our response and will sent it to you by Monday'.
The promised reply never materialised.
11. Accordingly I directed special citation of the Victorian Society but no response was received in the registry to the citation dated 8 April 2015 nor has there been any request to extend the time for responding. This non-engagement by the Victorian Society is disappointing, not least because it denies the court the advantage of the expertise and experience which a national amenity society might be able to offer.

Society for the Protection of Ancient Buildings

12. By a letter dated 6 January 2015, SPAB expressed concerns about creating a second opening in the south aisle wall. It expressed further concern with underfloor heating generally and potential damage to historic stone work. SPAB considered that the case had not been made out for the removal of the pews from the nave, and that the design of the remodelled entrance could benefit from further thought and reflection. The inspecting architect responded to these matters in a letter dated 12 January 2015.
13. I directed special citation of SPAB but they did not reply to the citation nor seek an extension of time for so doing. I nonetheless take into account the observations contained in correspondence.

Church Buildings Council

14. The CBC was consulted by the inspecting architect by letter dated 14 November 2014 outlining changes to the original scheme. The CBC did not consider that the plans presented any substantive issues, and was content to defer to the DAC on matters of detail.

Diocesan Advisory Committee

15. The DAC considered the current proposals at a meeting held on 5 February 2015 and issued a Notification of Advice on 24 February 2015 recommending them.

Response to public notice

16. Public notice produced several letters of objection, a number of which arrived after the prescribed deadline. I nonetheless allowed them to stand. None of the correspondents chose to become a formal objector for the purposes of rule 9.3. I have taken the contents of all the letters fully into consideration. For the record the letters are from Pam Brooks, James Spanner, David Poley, Mr C and Mrs E Marogna, Mr G Churcher and Miss J.M. Churcher. I have also considered a letter from the petitioners dated 20 May 2015 commenting on these letters and on correspondence from some of the national amenity societies.

- i. The points raised in the objectors' letters, many of which are broadly supportive of the overall scheme, can be fairly summarised as follows: That the choice of chair was made by the narrowest of margins at a hastily convened special PCC meeting and that the newly constituted PCC may take a different view. However the vicar appears to have indicated that the matter is 'now closed' which would prevent the choice being revisited;
- ii. That the proposed chair, which weighs in at 10.5 kg, is too heavy and cumbersome: reconfiguring the church for different usages will require a team of strong men. This would compromise the desire for flexibility;
- iii. That the chair is poorly designed and difficult to stack for storage;
- iv. That the projected cost of £33,000 is excessive and indicative of poor stewardship. Other heritage projects are more deserving of funding;
- v. That the project is insufficiently adventurous in, for example, not providing additional storage space.

17. One letter makes reference to the church being unchanged since before the Great War, when Parry was an occasional organist, and seeks the retention of the pulpit, organ and pews. Objection is taken to building over the grave of the former village school mistress and her husband who made a considerable contribution to the life of the church during the time of the First World War, and to the lack of any proposal to preserve a medieval copy of the *mensa Christi* beneath the floor. Another letter makes complaint that proposals for the re-siting of a memorial window for Elizabeth of Hungary (dedicated to Elizabeth MacFarlane) were not made public.

18. The response of the petitioners to these various matters is contained in their letter of 20 May 2015. The petitioners indicate that they have adjusted their proposals by choosing a design of chair which does not have a book box. This will make it a little less heavy and less cumbersome. They also give some further information as to how they have responded to the observations of the national amenity societies, which supplements the very full observations of the inspecting architect in his correspondence answering their letters.

Legal analysis

19. 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?

20. Clearly they would.

How serious would the harm be?

21. The original proposals have evolved during the consultation process. In the particular circumstances of this case, and notwithstanding the content of one of the letters of objection, I do not consider that the loss of the pews would be significant. The only matter I can identify in terms of matters which will be of special architectural or historic interest is the creation of an additional opening in the historic wall. Overall, however, I do not consider that the harm could be classified as anything more than moderate. I believe that this assessment is supported by the stance adopted by Arun District Council, English Heritage and the DAC.

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

22. I have already paid tribute to the detailed and compelling Statement of Needs. I consider the justification to be extremely well made out and convincingly articulated. I am reinforced in this assessment by the gracious content of most of the letters of objection which, though critical of particular matters of detail, are supportive of the purpose and ambition of the project overall.

Will the public benefit outweigh any harm?

23. The petitioners have satisfied me on the information placed before the court that the public benefit would outweigh any harm. I have been particularly impressed by the manner in which the petitioners, advised by a very experienced ecclesiastical architect, have responded to the expert advice they have received and adjusted and adapted their proposals accordingly. I consider that the revised proposals have been much improved as a consequence of the consultation process, even though it may at times have appeared burdensome, frustrating and tiresome.

Conclusion

24. In the circumstances, it follows that a faculty should issue. However, there are some matters of detail which I need to address by way of conditions. First it is essential that there be a proper archaeological watching brief and I note that this is already a condition in the planning permission granted by Arun District Council. Following the advice of the DAC, any ledger stones which cover interments are to be left *in situ* under the new floor, save for the three which bear legible inscriptions which are to be repositioned in the chancel. A full photographic record is to be taken prior to the new floor being laid. I do not consider that the *mensa* should be restored; the records of the Field Archaeology Unit at University College, London are an adequate historic record.

25. With regard to the replacement chairs, I note the strength of feeling within the letters of objection. These are not bigoted destructive comments from outsiders, but thoughtful and measured observations from people who share the vision for the reordering of this historic church and who will be instrumental in turning that common vision into a lived reality. Bringing a multi-faceted project to the consistory court is a complex operation, and when there are so many issues in play one can occasionally lose sight of the detail in pursuit of the whole. Faculties are permissive: they allow work to be done, but they do

not compel it. Although a PCC cannot pick and choose which parts of a faculty to implement, it can take a decision not to embark upon a project even though a faculty has been granted.

26. I take the view, in this instance, that there are persuasive pastoral reasons why the PCC should spend a little while reflecting further on its choice of chair, which is why I am placing a condition on the faculty reserving this matter to be determined by me at a later date. I am not ruling out what is currently proposed: the petitioners have made a convincing case. But I am suggesting that the PCC should have the chance to think again. Its decision may be the same or it may be different. The composition of the PCC will have changed somewhat but so will the context within the question falls to be answered. Formally it related to an inchoate project, long in its gestation which was yet to be granted a faculty. Now the parish has the certainty of an extant faculty permitting the reordering to proceed. Thus a more informed choice can now be made with a clearer knowledge of all the relevant circumstances. There is no rush to make the decision. The PCC might prefer to await the removal of the pews and the recovery of the sense of space which that will engender so they can better visualise how the chairs will look in various configurations. I am confident from the tone and content of the letters I have read that this discrete question will be addressed with mutual respect and good faith on all sides. And I look forward to hearing from the petitioners in due course on how they wish to proceed mindful that, irrespective of the choice of chair, this judgment now opens the way for growth and renewal in the mission and witness of the thriving and varied church community in Rustington.
27. As regards the petition concerning trees in the churchyard, which is not contentious, a faculty will also issue.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

8 June 2015