

Neutral Citation Number: [2020] ECC Chr 1

Ashton Hayes: St John the Evangelist

In the matter of an application further to vary a faculty granted on the 24th May 2018

Chancellor's Reasons.

Background

1. Not for the first time in the diocese has it become necessary to seek to resolve an apparent impasse which has arisen in connection with the choice of chair proposed for use by a parish following internal reordering of the church.
2. By a letter to me dated 17th June 2020, the petitioners have invited me to approve their suggested choice of the (upholstered) Alpha SB2M chair in substitution for the previously intended Trinity 'Abbey' (un-upholstered) chair, said to be similar in design and style to the Howe 40/4 chair.
3. It appears some 160 chairs in all are likely to be required.
4. At its (virtual) meeting of 25th May 2020, for reasons I shall explain, the DAC felt unable to recommend this variation (first raised with the committee in early March 2020), and a decision has become necessary.
5. The present disagreement is unfortunately yet another in the course of what has become a lengthy and evolving project for the parish, involving their Grade II listed church, and spanning 2013 -2020, in which the DAC has had extensive involvement.
6. The committee did 'not object' to a 2019 variation request, which I later sanctioned, relating to under-floor heating.
7. Extensive consultation, across a number of years, resulted in the principal proceedings not being formally contested by parties opponent, though the Victorian Society had maintained a written objection (broadly supported by the views of the CBC) to aspects of pew removal which lay at the heart of the scheme and the parish's desire for greater flexibility.
8. For the reasons I set out at the time, and having considered carefully the voluminous papers and correspondence the project had generated, I granted both the original faculty and the 2019 variation.

Procedural Considerations

9. The Registrar had, characteristically wisely, invited me to consider at the outset whether, in the light of the apparent degree of controversy, I could or should deal with the chairs issue as a variation or amendment to the existing faculty or whether, in fact, an entirely new petition was demanded.
10. Not without some hesitation, I concluded that the matter could fairly be dealt with by amendment/variation here.
11. The substitution of one type of (modern) freestanding chair for another seemed to me to be capable of fair and proportionate resolution where there had (entirely correctly) been an

insistence by the DAC upon further consultation with previously 'objecting' parties, and where the DAC itself had had an opportunity to offer me further, considered, advice.

12. It must, however, be understood that not all changes can or should be dealt with by amendment/variation in this way.
13. Where something significantly different is proposed, petitioners should generally expect to be faced with the need of a fresh petition, if only to give the public and interested parties a full and sufficient opportunity to make representations and even become formal objectors.
14. I echo, with appreciation, the analysis on this issue ventured by Mynors Ch. in **Suckley: St John the Baptist [2020] ECC Wor 3** at paragraphs 24 and 25 – ironically, a decision about SB2M chairs, to which I shall shortly return.

The Parish's contentions

15. I readily accept the parish's vision is to make the church a vibrant and welcoming venue, a comfortable and flexible space for contemporary all-age worship, midweek fellowship groups and community events.
16. There is no church hall, nor any meeting room.
17. In a written submission to the DAC dated 29th April 2020, the vicar urged the change of chair for reasons including 'value for money, comfort, weight and aesthetics'.
18. He added: 'It is no exaggeration to say that the future vitality and viability of a small village church like St John's relies on getting such decisions [about flexibility] right. Having worked extremely hard over recent years to reach a point where construction can begin, it would be a great shame if our new facilities were undermined by a poor choice of chair'.
19. In the letter to me of 17th June, the views of Robin Wolley, the parish's instructed architect, were set out: 'Thank you for contacting me with regard to the church seating. When I visited the church I was impressed by the spatial qualities of the interior now that the pews and clutter have been removed and the architectural qualities of the interior revealed. I was therefore hoping the parish would not select a chair based on historic dogma and choose one of a contemporary simple style that will not intrude upon this new space. I am therefore firmly supportive of the chair you have chosen, including the colour of the upholstered seat and back to provide comfort. The re-ordered church building must be attractive and comfortable and the possibility of the fabric wearing or becoming stained should, in my opinion, be regarded as a plus, indicating the building is being fully used. Replacement/cleaning should not be a problem with the fabric you have selected. I therefore firmly support your application for a faculty amendment'.
20. That same letter went on to argue forcefully that the highly advanced, modern, eco-friendly fabric involved had an anti-stain, wipe-clean, durable surface, that a colour had been carefully chosen to accent with the dark red tone of the chancel rafters, that the proposed chair had sufficient guarantee, was more comfortable, essentially as durable overall and certainly cheaper than the alternative. A potential saving of £10,000 was envisaged.
21. Departure from the CBC published guidance was urged on the basis that this chair, with the suggested fabric, was now (and had been since 2002) well and successfully established in some 200 other Anglican churches and at least one cathedral nationally.
22. It was said to offer a combination of 'value, quality, low weight, comfort and versatility'.

The CBC view

23. The CBC considered the proposed chair did not conform to its seating guidance and that the purported justification I have just outlined was unconvincing.
24. The Council was unable to support the variation.

The Victorian Society view

25. The Society objected to the proposed variation, wished its views to be taken into account, although did not wish to become a party to the proceedings.
26. It was said: 'The re-seating of this church cannot be considered independently from the great amount of work and scrutiny that went into formulating, and ultimately broadly agreeing, the proposals for the wider re-ordering of the building. The judgments reached on the acceptability of the re-ordering - and the major concessions in certain cases that were made - were informed by an understanding of the nature and quality of seating that would be introduced in place of the removed benches. The re-ordering entailed significant harm to an important and high quality Victorian church interior. That harm was acceptable, and was partly mitigated (rather than being compounded) only if aesthetically appropriate, high quality new seating was to be introduced. We acknowledge the parish's arguments now presented in favour of the proposed amendment. However, we do not consider that together they constitute a convincing case for what is proposed. Suede effect fabric – indeed, upholstery of any kind – is simply not suitable for a nationally important historic church interior such as this, a view reflected in all published guidance on the issue of church re-seating. The proposed colour of the upholstery in this case is also particularly garish and would plainly be jarring in the context of the church. It does not match the red paintwork and rafters in the chancel and would clash and seriously detract from it, undermining and usurping its visual and aesthetic focus'.
27. In fairness, it may be that the Society had been unintentionally misled as to the precise red in mind. Later DAC comment suggested the proposed colour was not, in the committee's judgment, the main issue.
28. The Society went on to argue the chosen chairs may 'worsen the acoustic'.
29. As to comfort, the contention was that 'a well designed timber chair or bench is no less comfortable, and often more comfortable, than an upholstered chair. Comfort derives principally from good design, not upholstery. The Abbey chair proposed, and several others that are commercially available, offer a perfectly comfortable seat well suited to extended use'.
30. The Society's response concluded: '...we would not willingly concede the amendment now sought by the parish. In re-ordering the church it is incumbent on the parish to furnish the interior in a manner that is appropriate and consistent with its national historic and architectural importance. Indeed, it could not have obtained a faculty previously without an understanding that this would occur. The Alpha SB2M chair would seriously detract from the interior's special character and appearance and cannot be considered an acceptable furnishing for St John's.'

The DAC view

31. In its initial response to the parish of the 29th May the DAC made some six points.
32. First, whilst the upholstered chair may be cheaper, it was likely to stain more easily and, thus, be less easy to clean and maintain. Second, an upholstered chair was less eco-friendly and likely to need replacement rather sooner than the alternative. Third, the change to an upholstered chair was the primary basis of the objections of consultees, and those objections were maintained to the present. Fourth, there had been an expectation arising during the primary proceedings that an un-upholstered chair was in mind and consultees had adopted a 'more amenable' stance to opposition in that belief. Fifth, what was proposed represented a departure from national guidance and, finally, the Victorian Society and CBC effectively maintained their respective objections.
33. A further, undated, 'Contribution to DAC Response' was produced in response to my invitation to the committee for further comment. That document helpfully amplified a number of the points already made. A suggestion the parish had apparently made, that the previous choice of wooden chair would potentially clash with the new oak flooring, was met with the suggestion that the parish did not appear sufficiently to have explored whether wooden chairs in another colour would be suitable.
34. For the DAC 'the key issue' was said to be 'upholstery, not its colour'. The document concluded: '....after lengthy discussion the DAC concluded that it could not recommend the variation because the choice of wooden chairs had been material to the Victorian Society not objecting to the original application, which in turn had been material to the DAC recommending the original application'.

Discussion

35. The topicality (and, frequently, difficulty) of chair selection is amply demonstrated in the plethora of reported Consistory Court cases, some of them my own.
36. Aesthetic considerations are notoriously difficult to weigh. For every expert who opines something is fine or worthy, another may be found to venture the opposite view.
37. Chancellors, regrettably, disagree amongst themselves, with their DACs and with the views of the amenity societies and the CBC. The world outside the church frequently looks on in such debates in baffled incomprehension at what is often considered, to borrow the phrase, a 'first world problem'.
38. Two recent judgments of Mynors Ch have recently had to address the very chair in question in this case. I have found my brother Chancellor's thinking helpful, mindful as I am, of course, that each case is entirely fact and situation specific.
39. In **St John the Baptist, Suckley** (supra), a Grade II church, the parish had advanced three reasons for seeking to substitute the previously chosen chair with the SB2M.
40. First, they had tried out the Theo chair originally proposed, two similar to it- one upholstered, and the SB2M. The SB2M was rated the most comfortable and the most popular. And the Aquaclean fabric had been well received. Second, after using the new space for 18 months, and in the light of user experience, the parish 'strongly' believed that a lightweight, high-stacking chair upholstered in washable stain-resistant fabric (such as the SB2M) would be more suitable than an all-wood chair such as the Theo. Third, the parish faced a need to make

savings on costs, which had been greater than anticipated. In that case the sum was likely to be of the order of £14,000.

41. The Worcester DAC, in that case, was 'content' with the proposed change of chair, commenting: '...the SB2M is probably not as good quality a piece of furniture as the original (Trinity Theo) but is a chair that the committee have been content to recommend into other places where flexibility and cost-effectiveness are key components of proposed schemes'.
42. The Victorian Society, by contrast, had advised that 'what is proposed now is neither aesthetically appropriate nor high quality. The proposed chairs are *not suitable for any listed church interior* [my emphasis] and their presence at St John's would mar its appearance and heavily erode its character'.
43. Chancellor Mynors recognised, on the facts of that case, that any new seating needed to 'complement the original pews being retained'. He accepted that the re-ordering of a church needed to be viewed as a whole. He gave relatively little weight to the cost saving, commenting that in the context of a costly project that would not 'justify the selection of a type of chair that was practically or aesthetically unsatisfactory', but, on the other hand, 'it is obviously sensible for a parish to choose a cheaper option where possible'.
44. For his part, he could 'see no particular basis for a general rule against upholstered chairs in listed churches'. He observed that traditional pews were frequently softened by cushions or runners.
45. He considered, in that church, that the proposed 'large block of new chairs' would look exactly like that, 'however well designed each one may be' and 'those who prefer pews will not like either; those who prefer chairs will prefer either by comparison with a pew'.
46. In all the circumstances he was content to amend the faculty to permit the SB2M chair.
47. **Worcester: All Saints [2019] ECC Wor 1** involved a Grade II* church which sought to introduce 300 SB2M chairs. Consultation produced a familiar response, with the Victorian Society 'strongly objecting' and arguing the 'chairs proposed are not appropriate to the highly listed church interior and would seriously erode its aesthetic qualities'.
48. The petition was opposed and dealt with upon written representations. The CBC was also unhappy about the chairs.
49. Again, the Chancellor's discussion of the issues is instructive. He was aware, as I am, that 'in many cases an upholstered chair was used, often in spite of opposition from the amenity societies on just the same basis as in this case, citing the same guidance from the CBC'.
50. He continued, 'I am not convinced that un-upholstered chairs are intrinsically better. They have not been used historically, of course, but that was largely because they were unavailable in large quantities until relatively recently', adding, 'I suspect that it is always possible to criticise a historic church that has been filled with a large number of matching contemporary chairs, of whatever style, as looking slightly like a modern conference centre.'
51. He was unimpressed by the arguments founded upon 'spills, rips, chewing gum and so forth'. He considered the SB2M 'acceptable' for that particular church.
52. I have set out some of Chancellor Mynors' reasoning, which I recognise is fact and location specific, because it resonates with some of my own upon this subject.
53. The 'aesthetics' debate is a particularly difficult one. Here I am confronted with a stark conflict of view between the parish leadership, supported by their architect, who 'firmly support' the suggested chair and the Victorian Society and CBC who, on the grounds of their generally given advice, guidance and views oppose it, in effect, 'on principle'.

54. I am very familiar with the published guidance to which I have had regard. Guidance remains guidance, not legislation.
55. I have found the arguments against the chair (and, to some extent, for it), upon the grounds of cleanliness and durability, weak and unpersuasive, as I have found those relating to a better or worse 'acoustic' and the question of how long any commercial 'guarantee' may last.
56. I am no more concerned about the colour choice than, in fairness, the DAC appears to be.
57. I am perhaps more sensitive, in the current, post-Covid, economic climate to the issues of cost saving than Chancellor Mynors was when he wrote his judgment.
58. I am satisfied that the chair in question has a credible 'track record' and an acceptably high 'satisfaction' rate amongst parishes.
59. Eco-friendly considerations strike me as, in reality, very marginal in respect of this choice.
60. 'Comfort' is a notoriously subjective commodity. My previous experience of decision making in this distinctly grey area is that, in reality, upholstered chairs are congregationally perceived (rightly or wrongly) as 'more comfortable' and, thus, acceptable. The church leadership is always left to shoulder the burden of complaint if a chair is concluded not to be a 'success'. I note the vicar considers the Alpha chair 'unmistakeably more comfortable' than the alternative. I consider it important always to seek to 'listen' to what local leadership suggests may suit or work – though never at the cost of simply 'falling in line' with a parish's will.
61. The issue which has troubled me most is that which, I suspect, may have caused the DAC the greatest concern, namely that the principal proceedings were somehow 'compromised' by the 'objectors' (or, indeed, the DAC in its giving of advice) upon the expectation of a particular chair and that, for that reason alone, the present variation request should, in all justice, be declined.
62. My recollection is that the matter was not quite so clear. There remained throughout opposition to the removal of certain pews at the rear of the nave. That followed initial opposition by the Victorian Society to removal of all of the nave pews. The CBC favoured 'the retention of a small number of the most significant pews in their intended form' as a 'fair compromise for the parish to make'.
63. It is true that the Statement of Needs contemplated an un-upholstered, stackable, Abbey chair and that I adjudicated upon the basis of an expectation that was the intention. I had granted the faculty 'in accordance with the designs, plans or other documents accompanying the petition', but I note that I had not made, nor had I been invited to make, the chair choice any sort of non-negotiable condition in the grant of faculty. I had, of course, not at that time anticipated the parish may change its mind. I was in no sense ruling on a specific chair in granting the faculty.
64. This is not a case where it has been suggested, nor do I conclude, that the parish has sought, by the 'back door' of a variation application, now to slip through an option which they were aware may not have secured support previously. That would be to attempt to abuse the faculty process. I do not believe that is the position here.
65. I well understand, and respect, the principled stance of the DAC on this aspect. But I am faced now with a reasonable and arguable request for variation/amendment and must make a decision.
66. I have decided on all the available evidence, and not without some hesitation, that the proposed chair change should be permitted. It is an acceptable chair in the context of this church in my judgment.

67. I have to a significant degree been reassured by the opinion of the architect directly involved, though, of course, I readily recognise his understandable wish to provide support to his client. The element of inflexibility in the, again perfectly reasonable, stance of the Victorian Society and CBC on the 'upholstered/un-upholstered' debate I find less than wholly convincing.
68. I am content that the faculty should be amended or varied so as to allow the parish to use either the Abbey chair originally proposed or the SB2M chairs now preferred, upholstered in 'Sangria' coloured fabric.
69. I shall give permission to apply further as to implementation should the need arise.
70. The petitioners must pay any Registry costs of or incidental to the variation.

David Turner

Chancellor David Turner QC

6th July 2020