

In the matter of St Michael and All Angels, Berwick

Judgment

1. This is the re-determination of a Petition which was initially determined by Deputy Chancellor Hopkins in a judgment dated 13 September 2021 (Neutral citation number: [2021] ECC Chi 7) dismissing the petition. An appeal against that decision by the petitioners was allowed and on 17 May 2022 the Arches Court of Canterbury directed that the case be remitted to this Court for re-determination.
2. Directions were given by Chancellor Hill and on 23 August 2022 I held a hearing at the church of St Michael and All Angels, Berwick. Given the long history of the petition and the substantial amount of evidence before the Court, that hearing was relatively short and informal in nature. At the conclusion of that hearing I indicated that I was minded to grant the petition, subject to certain conditions, with reasons to be provided as soon as reasonably practicable. This judgment sets out those reasons.
3. The petition seeks permission for the removal for sale from this Grade I listed church of six pews dating from the 1850s and five pews dating from the 1970s, and for the introduction of stackable oak pews made by Treske in their place. These proposals follow the completion of works of conservation and restoration to the remarkable 20th century murals in the church and changes to the flooring upon installation of underfloor heating pursuant to an earlier faculty. The pews which are the subject of this application were removed temporarily from the church in order that those works could be undertaken and they remain stored under the conditions of that faculty pending the outcome of this application.
4. Even without the appeal referred to above, this case has a long and complex procedural history. That history has been set out in careful detail in the judgment of Deputy Chancellor Hopkins and I do not propose to repeat it here. That judgment was handed down after a hearing on 9 August 2021 at which the petitioners and their legal representative, Mr Gau, were present in the church and the Deputy Chancellor conducted the hearing by way of video link (after an earlier inspection visit to the church).
5. The evidence before me now consists of the same written evidence that was before the Deputy Chancellor at that hearing together with limited supplementary and updating written evidence provided by the Petitioners, together with the oral evidence given in response to my questions at the hearing on 23 August by Mrs Monica Stoodley and the incumbent, the Revd Peter Blee. The effect of the decision of the Court of Arches is that I make this decision on the basis of the evidence before me; I am not bound to adopt the findings of the Deputy Chancellor but must consider the petition afresh.
6. The evidence in this case is substantial. Numerous responses were received to the consultation and public notices – both in support of and opposing the proposals, although no person or body has chosen to take the status of party opponent in the proceedings. Again, the Deputy Chancellor has set out the detail of that evidence in significant detail in his judgment and for efficiency I do not repeat it here. All concerned can be assured that I have read, listened to and carefully considered all of the material which is currently before the Court.

7. Before dealing with the substantive application I must address a preliminary issue raised by Mr Gau on behalf of the Petitioners. At the commencement of the hearing, Mr Gau submitted to me that I should have no regard to certain of the letters of objection received at the registry in response to the public notices on the basis that the authors of those letters were not “interested persons” in the proceedings for the purposes of Part 10 of the Faculty Jurisdiction Rules 2015. In particular, he submitted that I should disregard letters: from a retired London-based Anglican priest whose familiarity with this building stems primarily from childhood visits to her grandparents in the 1950s and 1960s; from an academic and a heritage conservator, each with substantial professional links to Charleston Farmhouse, the nearby home of Vanessa Bell and Duncan Grant, the creators of the Berwick church paintings; and from the Chair of the Arts Council of England in so far as it was co-authored by him. In making this submission, Mr Gau relied upon the terms of paragraph 3 of the preamble to the directions given by Chancellor Hill on 1 June 2022 which reads:

“...The matter is unopposed, although the Victorian Society and Historic England raised a number of points of objection during the consultation period which will need to be taken into account in determining the matter, as will written objections from parishioners.”

8. In Mr Gau’s submission, the words “from parishioners” in that paragraph amounted to a finding by Chancellor Hill that I could only take account of those letters of objection received by parishioners on the basis that other letters received were from those without “sufficient interest” under rule 10.1 of the FJR. He submitted that I was bound by that finding and accordingly should disregard all other letters of objection.
9. I reject entirely the suggestion that, in that paragraph, Chancellor Hill was making a finding about whether the authors of the letters of objection received had “sufficient interest” under rule 10.1. Upon being asked, Mr Gau confirmed that the issue of “sufficient interest” was not expressly raised at the directions hearing which confirmed the directions given. I am quite satisfied that Chancellor Hill’s intention was, rather, to highlight the existence (and relevance) of letters of objection to the re-determination of the petition as a context for the directions he was making. Mr Gau was, nevertheless, entitled to make submissions to me about the admissibility and relevance of the letters of objections received for my determination. He did so.
10. Rule 10.2 of the FJR states that “[a]n interested person may object to the grant of a faculty in respect of all or some of the works or other proposals to which a petition relates in accordance with this rule”. In so far as it is relevant in these circumstances, rule 10.1(a) defines an “interested person” in the following terms:

“(a) any person who is resident in the ecclesiastical parish concerned;
(b) any person whose name is entered on the church electoral roll of the ecclesiastical parish concerned but who does not reside there; ...
(h) any other person or body appearing to the chancellor to have a sufficient interest in the subject matter of the petition.”

It is Mr Gau’s case that I cannot be satisfied that the letters referred to in paragraph 7 above come from those with “sufficient interest in the subject matter of the petition”. Whilst accepting that there may well be hundreds of people who have sufficient interest in the paintings in Berwick church (which are agreed to be of national significance), he says that the same cannot be said of the seating. He argues that it is the seating that is the subject matter of this petition and accordingly these individuals do not have “sufficient interest” under Part 10 of the FJR.

11. Although the permission sought in this petition relates only to the removal of the pew-seating in the church, I do not construe the words “the subject matter of the petition” in rule 10.1(1)(h) to be limited only to that seating. Rather, “the subject matter of the petition” must be read more broadly to include at least those parts of the church which will be affected by the proposed works. Here, the importance of the Bell and Grant paintings are such a crucial part of the special significance of this tiny church that they would form part of the “subject matter” of almost any petition seeking to make changes of any substance to the interior of the church. I am quite satisfied that they do in this case.
12. Turning to the letters which Mr Gau says I should disregard, I accept his submission that the letter of objection from the priest whose links to the church stem primarily from her childhood visits in the 1950s and 1960s, although I pause to note that the concerns she raises echo those of others to which I must, and do, have regard. In relation to the authors of the remaining contested letters, without exception, they are experienced professionals who have a legitimate interest in the future and setting of the nationally important paintings which dominate the interior of this Grade I listed church. Their expert views have assisted the Court. The proposed changes will affect the setting of those paintings and I am entirely satisfied that the authors have “sufficient interest” in the subject matter of this petition.
13. And so I turn to the legal framework which must be applied to my determination of this Petition. Chancellors deciding whether to permit changes to a listed church must be guided by what have become known as the *Duffield* Guidelines, – so named because they were first laid down by the Court of Arches in the decision of *Re St Alkmund, Duffield* [2013] Fam 158. Those guidelines take the form of a list of questions:
 - “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 (see *Peek v Trower* (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in *In re St Mary’s, White Waltham (No 2)* [2010] PTSR 1689 at para 11). 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 (see *St Luke, Maidstone* at p.8), 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.”¹
14. Before answering the questions 1-3, careful consideration must be given to the nature of the special significance of the building. I have carefully considered the evidence before the Court which addresses the special significance of the church, including the Statement of Needs of the Petitioners, the listing entry, the Heritage Statement by Artemis Heritage and the assessment of significance by Historic England. Again, the detail of that evidence is set out in the judgment of the Deputy Chancellor and I will not repeat it here. What is clear is that a substantial reason for the Grade I

¹ Para 87 of the *Duffield* judgment.

listing of this building is the presence of the Bell and Grant murals on its walls. That is not to say, as had been argued, that those murals are the only reason for the listed status of this church. The remaining medieval fabric has significance and the 1850s re-ordering under the direction of Woodyer is also a significant part of the church's history and architectural importance.

15. The petitioners argue that the replacement of the 1850s and 1970s pews with Treske oak benches would cause no harm to the special significance of the building. I disagree. Dealing with each set of pews in turn, the 1850s pews are "of a fairly standard design" (to use the language of Historic England). Historic England and others argue that they were likely designed by Woodyer at the time of his re-ordering, although there is no evidence to support this contention and there is no record of or reference to the pews in the detailed records of Woodyer's work. Nevertheless, those pews are a significant part of the Victorian interior of the church that was in place at the time the paintings were introduced. They provide a solidity and order to that interior, the loss of which would cause some harm.
16. The 1970s pews conform to the design of the earlier pews in style, but are notably different in colour – the older pews being stained a dark colour, and the later pews being much lighter in shade and rather 'orange' in colour. The difference between them is marked. It is not said that these pews have any inherent artistic and historic merit, but rather simply that they reflect an element of the narrative of the history of seating in this church as it has developed over the generations. I note that, although it is said that these pews form an appropriately ordered context for the important Bell and Grant paintings, the 20th century pews were (of course) not present in the church at the time the paintings were introduced in the 1940s. Instead, loose rush-seated chairs were used in the south side of the church at that time such that, although it may be argued that the 1970s pews establish an order to the interior of the church, it cannot be said that they maintain an authenticity to the arrangement of the church with reference to the point at which the paintings were commissioned and introduced. I am satisfied that the replacement of these 20th century pews with the Treske oak benches would not cause harm to the special significance of the building.
17. It may be apparent from the above that, in answer to the third *Duffield* question, I find that the harm to the significance of the building which would be occasioned by the replacement of the pews with the Treske benches would be modest. The Treske benches, though moveable and lighter in substance and appearance than the pews, are nonetheless solid wooden benches of good quality. When the church is "at rest" the intention is that they will remain in a layout very similar to the current pews in two blocks set either side of the existing central aisle which is marked clearly by the retained Victorian tiles in the flooring. I do not find compelling the argument that the proposed works will cause more serious harm by radically changing the setting of the highly important paintings from that which existed at the time of their introduction. Almost half of the pews to be removed were not in the church at that time, when the south side of the church was instead filled with moveable rush-seated chairs which were, if anything, less solid and ordered than the proposed Treske benches. Equally, the interior has been subject to other significant changes since then: in particular, having been destroyed by a falling bomb, all of the north and south aisle leaded windows have been replaced with clear glass; much of the flooring has been replaced with buff-coloured tiles; the base of the tower has been opened up and a servery installed.
18. And so I turn to the question of justification. Is that justification clear and convincing? Does the public benefit to be achieved outweigh the harm to the significance of the building? As I commented during the hearing, the circumstances of this case are slightly unusual. When permission is sought for the replacement of fixed pews with moveable seating in order to achieve greater flexibility of use of the building, the justification is almost always aspirational to some degree. If the removal of fixed seating is needed to achieve the flexibility sought then often the events which it is sought to accommodate cannot have been established in the building before that permission has

been granted as the fixed seating has inhibited or prevented them from taking place. In this case, the earlier installation of underfloor heating required the fixed pews to be removed and they have not been returned pending the outcome of this application. The consequence of that and the extra year it has taken to finally determine the petition occasioned by the appeal is that the petitioners have been living with this church without fixed seating for an extended period of time. Not only is the aesthetic impact of the proposals much more immediately apparent than it would otherwise have been, the petitioners have been able to use in the building in the way they have intended once fully flexible seating is in place.

19. At the hearing I heard significant evidence about the impact that moveable seating has had for wheelchair users, both during worship and at other events. I also heard details of the myriad uses to which the building has been put over the last twelve months or so: the liturgical uses, school visits, many and varied outreach and community events. Whereas certain of these events could (and in some cases did) take place whilst the pews were in place, it was noticeable how many of them simply could not have taken place with the retention of the fixed pews. In particular, the hosting of large numbers at lengthy school visits (in one case, 62 visitors plus parish hosts for a period of three to four hours) for contemplative worship, 'making' activities and refreshments; hosting visits by the Survivors of Bereavement by Suicide (noting the particular link between the church and the Bloomsbury Group and Virginia Woolf); Project Art Works events – an artists co-operative established particularly to support artists with special needs and disabilities where accessibility issues were important; and a school's recording event run by Glyndebourne and The Dome, Brighton hosting around 40 children together with teachers, singing coach, accompanists and technicians. I was provided with an impressive diary of bookings for the church in the next month or two which included events of this type. All of these events (and the many others about which I heard evidence) are a concrete working out of the life and mission of this community. Many who have never been inside a church before are being drawn into this place. The public benefit is manifest.
20. Being satisfied that there was clear and convincing justification for the proposed works, I asked myself whether the same outcomes could be achieved by less harmful means. Two possibilities have been suggested – (i) the making moveable of the existing pews and (ii) the retention of sample pews within the church. No evidence has been provided about whether it would be possible to make the existing pews moveable. I note that they are not free standing when in the church, but are fixed to each other or the walls and pillars. If I was satisfied that making the pews moveable would be a less harmful way of achieving the petitioners needs then that lack of evidence would be problematic. However, it is clear to me that, even if the existing pews were capable of being made moveable they would still fill a very substantial proportion of the church when pushed aside to make clear space for the various events mentioned. The church of St Michael and All Angels is very small. The retention of the pews, even pushed to the side for events where necessary, would significantly limit the available space so as to prevent many of the events planned and undertaken from taking place.
21. At the hearing I explored in some detail the possibility of retaining samples of the existing pews within the church as a record of the history of seating in this church, thereby mitigating the harm caused. Various options and locations were considered. In the end it was quite apparent to me that there is no sensible location for the retention of sample pews which would not significantly limit the needs of the petitioners. It had initially appeared to me that the retention of samples in the north and/or south aisles would be possible, but evidence was given of how this had been considered and rejected. Such retained pews would fill the space intended for the proposed stackable benches when needs required them to be stacked to provide a clear space within the church. It must again be emphasized that this is a small church; space is limited.
22. I am satisfied that the public benefit intended cannot be achieved by the less harmful retention of moveable or even sample pews.

23. It will be apparent from the above that I am satisfied that there is a clear and convincing justification for the proposed works and that the public benefit to be achieved outweighs the modest harm which will be caused by the loss of pews of “fairly standard design”. The petitioners have provided ample evidence of the ways in which they intend to fulfil (and are fulfilling) the unique missional opportunities of this church provided substantially by the remarkable Bloomsbury Group murals. I commend them for their vision and engagement with the legacy that those paintings provide.
24. I direct that a faculty for the proposed works shall pass the seal subject to the following conditions:
- a. No works shall be undertaken until the costs of these proceedings have been settled;
 - b. The existing pews shall not be disposed of until a full and careful record of those pews and their arrangement in the church has been made and filed with parish records;
 - c. The memorial plaques on the 20th century pews shall be retained in the church and fixed to the cupboard in the vestry, or in such other place as may be approved by the Court.

For the avoidance of doubt, in light of the earlier appeal from the decision of Deputy Chancellor Hopkins, no permission is given for removal of the 1930s rush-seated chairs, which shall be retained in the church.

As indicated at the hearing, the costs of these proceedings shall be paid by the petitioners, subject any application by them by 4pm on 21 September 2022 that a different costs order should be made.



Deputy Chancellor Ruth Arlow

27 August 2022