

## In the matter of St John the Baptist, Bishop Monkton

### Judgment

1. This petition seeks a faculty to remove and dispose of the nave pews and replace them with burgundy coloured upholstered chairs.
2. There are no parties opponent, but the Victorian Society has invited the Court to take into account matters raised in correspondence. I gave permission to the petitioners to lodge evidence in support of the petition, and determined (having first afforded the petitioners the opportunity to submit their views in writing) that it was expedient to determine this matter on written representations.

#### **Background**

3. The Church of Saint John the Baptist is a grade II listed building. Its listing statement reads:

c1878. Coursed squared limestone with ashlar dressings, tile roof. 4-bay nave with north-west tower over porch. 2-bay chancel with vestry on north side. Early English style. Double-chamfered archway to porch with board door. Tower of 3 stages plus steeple. Square base, octagonal second and belfry stage, short stone steeple. Lancet windows to nave, east window of 3 lancets under roll moulding. Interior: contemporary fittings.

#### **Proposals**

4. The petitioners rely on their Statement of Need and Statement of Significance, amplified in a letter over the signature of the incumbent, dated 16 June 2021, addressing matters raised by the Victorian Society. They point to the retention of pews and other liturgical furniture in the chancel and sanctuary, and assert that:

the removal of the pews in the nave would not have any further significant effect on the building's historic character given that there is already a mix of half-hard wooden pews and half-upholstered seating.

5. Reference is also made to the successful introduction of a kitchen and toilet facility with associated improved access. The case for community use of the church building is well made, and the documentation asserts that:

Removing the pews will add further functionality and versatility to a church which is trying very hard to be useful in the contemporary world.

The pew benches are cumbersome. They are difficult and time consuming to move in order to accommodate different events. Mention is made of coffee mornings, bring and share lunches, talks, workshops, concerts and school-related activities, as well a proposed Bishop Monkton Arts Festival from 2023 onwards. There is evidence of recent and beneficial use by the Gardening Club of Bishop Monkton.

### **Victorian Society**

6. The Victorian Society puts its objection as follows:

St John's church is a significant Grade II-listed by the prolific Victorian architect *C Hodgson Fowler*. Known for his ecclesiastical work, his restorations of churches have sensitivity that set them apart from similar work by contemporary architects. His new churches, such as St John's, display a scholarly understanding of Gothic precedent. The building's list entry, whilst only short, does make note of the church's 'contemporary fittings', which contribute to the wider significance of the building.

The Society recognises that churches must often adapt to meet present and future needs, and that recent alterations to the interior of St John's have allowed the parish to diversify its offer to the congregation and local community. Firstly in 2008, following work to the west end of the church, and, latterly, by a temporary license which has seen the benches removed from the nave.

However, the current proposals to remove all the benches within the church would have a significant effect on the buildings historic character. If they are to be justified then more detailed information on what the space would be used for must be included within the Statement of Need. An activities audit would be helpful, detailing what would take place within the church, what type of space is required, how often, and for how many people. Similarly, due concern must be given to the fact that there are already two community spaces within the village and that in the survey undertaken a minority of respondents felt that more community space was needed in the village. Whilst the benches may not be unusual in design, they are original to the building and contribute to its special interest. They should not be removed, in the process causing harm, without compelling justification.

Regardless of the question of justification for the removal of the historic benches, the proposed replacement chairs are simply unacceptable. CofE guidance clearly states that chairs in historic churches, and listed ones especially, should for various reasons be timber and unupholstered. Any acceptable replacement chair here would need to comply with that guidance.

### **English Heritage**

7. English Heritage considered, on balance, that a case could be made for the removal of the historic pews, but expressed concerns 'about how the interior would read once cleared and whether the juxtaposition of the new chairs against the simple aesthetics of the church could appear like a loose collection of furniture that gets lost in the space'.

### **Diocesan Advisory Committee**

8. The DAC issued a notification of advice on [date] which included its principal reasons for approval of the works or proposals despite the objections.

The removal of all the pews and introduction of the proposed chairs will enable the PCC to achieve better its mission to the community, building upon its well-established ministry of welcome. The additional explanation of need for flexibility put forward in the petitioners' response to the consultees is compelling and the pews to be removed are not

of high significance. The need therefore outweighs any harm to the character of the building. The Committee acknowledged that the proposed chairs are not in keeping with the usual preference for timber, un-upholstered chairs in listed churches but noted that they match the design of those already in the building.

### **The *Duffield* framework**

9. In cases of this type, Consistory Courts are enjoined to adopt the approach of the well-known *Duffield* framework, the salient parts of which provide:
  - i. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
  - ii. How serious would the harm be?
  - iii. How clear and convincing is the justification for carrying out the proposals?
  - iv. 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?
10. This is derived from *Re St Alkmund, Duffield* [2013] Fam 158, at paragraph 87, and provides a convenient formula for navigating what lies at the core of considering alterations to listed places of worship, namely a heavy presumption against change and a burden of proof which lies on petitioners with its exacting evidential threshold.

### **Analysis**

11. Applying the *Duffield* framework, my assessment is as follows:

#### *Harm*

Undoubtedly these proposals, if implemented, would result in harm to the significance of this church as a building of special architectural or historic interest.

#### *Seriousness of harm*

Although the Victorian Society argues otherwise, in my assessment the likely harm in this instance is properly assessed as moderate.

#### *Justification*

The petitioners' justification for these works is well made, as English Heritage concede. The liturgical and community uses of the building are compromised by the fixed benches, and has been made clear during an experimental removal. I have particular regard to the Reverend Robb Wainwright's letter of 16 June 2021.

### **The suitability of the current chairs**

12. Although the removal of the pews may be justified, and their replacement with chairs, the particular chair proposed – a utilitarian metal-framed chair with burgundy upholstered fabric seat – has caused me considerable concern. Such chairs might be suitable in an office environment, or (at a pinch) in an unlisted church hall, but they are undignified for a sanctified place of worship, even one with multiple ancillary secular uses.
13. Mr Wainwright put the petitioners' case as follows:

Finally, there is one point in the Society's submission with which the PCC must respectfully disagree - the Society's suggestion that replacement chairs, if the pews were removed, should be timbered and upholstered. Half the nave is already populated with

upholstered chairs. In these times of straightened finances, it would, in our view, be financially irresponsible to remove perfectly good chairs with decades of life left in them or to add a different design of chair which would not suit the majority of users.

14. Whilst the financial argument is tenable – and one that is strengthened by the current financial pressures facing churches generally – it is not determinative. I find myself in respectful disagreement with the DAC’s view that the unsuitability of the proposed chair can be disregarded because there are others of the same design already in the church.

15. I caused enquiries to be made in the Registry regarding the circumstances under which the earlier chairs were introduced. From my reading of extracts of the court files relating to previous faculty proceedings in 2008 and 2014, I could find no express record of a faculty being sought, still less granted, for the introduction of the chairs currently in the church.

16. Due process and procedural fairness required me to give the petitioners the opportunity of making representations on this issue, even though it has delayed the determination of the petition. The following direction was issued on 25 October 2021:

The Chancellor is in the process of determining this petition and has concerns regarding the suitability of the proposed replacement chair, in the event that a faculty is granted for the removal of the pews. The petitioners’ case is that the proposed chair should be approved because there are already chairs in the church of the same design and colour.

The petitioners are invited to supply the Court with documentation upon which they rely regarding the permission(s) obtained for the introduction of the existing chairs. The archive papers obtained by the Registry are to be sent to the petitioners for comment. In the event that there is doubt as to the circumstances under which the existing chairs came to be introduced into the church, the petitioners are at liberty to make further or alternative written representations to assist the Chancellor in determining the matter. The Chancellor requests a response within 7 days.

17. The petitioners responded with written submissions on 27 October 2021, referring to the statement of significance for the Petition 41/2008 which states:

New chairs will be stored in the basement to enable the space to be used for seating when large congregations are present.

The resultant faculty was granted on 23 September 2008 and over the next five years there were several amendments and extensions to it, none of which, it appears, made any reference to the introduction of chairs. The submissions continue:

Following on from the beginning of the work, the PCC followed a rigorous process to identify and procure the chairs that would be needed, initially obtaining a sample chair from several church suppliers and taking into account the views of parishioners who tested them. A decision was taken to purchase the chosen chairs [...] In various email conversation between the Registrar’s Office, DAC Secretary (who was also the deputy Diocesan Secretary) and Dr Alan Ebbutt who was chair of the PCC at Bishop Monkton at the time, the purchase of 40 chairs is mentioned as having taken place and that they would be used as more flexible seating in place of the five pews to be removed under what became a second “Petition for Faculty to remove five pews” in April 2014.

The Schedule of works for this second faculty contains the following paragraph:

“The Church already has purchased 40 chairs which takes our seating capacity over 100. The chairs are used flexibly depending on the nature of the service – sometimes at the front of the Church for our Family Service Band and school services and sometimes at the back when extra seating is needed for major festivals, weddings or funerals. The chairs can also be stacked which gives the Church the option to create a large open space for social interaction after services and at concerts, flower festivals and other events. The ability to use the chairs flexibly is currently hampered by the number of pews which need to be moved (a heavy job) or at least pushed together and so the PCC would like to reduce the number of pews by five.”

This Petition for Faculty for the removal of pews was granted in July 2014. At no point does there appear to have been an explicit petition for faculty to purchase the chairs, nor does there appear to have been any indication from outside the parish that this permission should be sought or that there was anything wrong in purchasing the chairs without further consultation with the diocese. Anecdotal evidence from a signatory on the Petition for Faculty 41/2008 is that when the archdeacon at the time was approached about the chairs chosen by the PCC, the choice was verbally approved. We have been apprised by one of the current DAC staff that this was common practice at the time.

Looking back at some of the paperwork and exchange of emails at that time it is difficult to see how the PCC might have thought that there was a need to apply for a separate faculty or for a more detailed extension to Faculty 41/2008. At no point was their intention to buy the chairs or the fact of the subsequent purchase of the chairs referred to or commented on by anyone from the DAC or Registrar’s Office.

Given the awkward situation in which we find ourselves, especially since many of the chairs were purchased in memory of someone by their surviving relatives, might we, as part of this petition, apply retrospectively for permission for the existing chairs?

**Confirmatory faculty for existing chairs?**

18. The Court is now faced, at a late stage, with what amounts to an application for a confirmatory faculty for the existing chairs. In making this application, it seems to be implicit that the petitioners concede that no faculty or other permission was in place at the time of their introduction. The test for the consistory court to apply when an application is made to regularise works which have already taken place is whether one would have been granted had it been sought prospectively.
19. As I understand the arguments advanced by the petitioners, they can be fairly summarised as follows:
  - i. that it was always their intention to introduce a finite number of free-standing chairs to augment the retained pews when additional seating was required;
  - ii. that the parish did not act covertly or seek to introduce those chairs by stealth;
  - iii. that they consulted – albeit largely with manufacturers – as to the style of chair;
  - iv. that they honestly and reasonably believed that permission either was not required or that it had been granted.

20. There are no witness statements attesting to the truth of these matters, but for the purposes of determining the matter, I am content to proceed on the basis that it accurately reflects the parish's understanding at the time. I make no finding on the suggestion that approval was informally signified by the archdeacon, or whether this was a widespread practice at the time. I comfort myself that such disregard of the faculty jurisdiction is no longer the case with the serving archdeacons of this diocese.
21. The petitioners have not dealt expressly with the issue of the likelihood of a faculty being granted had a petition be brought prospectively. On the facts of this case, I do not consider that it would. The metal framed, upholstered chairs are so far removed from what is appropriate in a grade II listed church that no consistory court, properly directing itself, would have authorised the issue of a faculty whether in 2008 or 2014. Had the faculty process not been circumvented, there would have been consultation with the amenity societies, the local planning authority and the Church Buildings Council. It is highly likely that there would have been strongly voiced and legitimate opposition which, in all probability, would have prevailed, compelling the parish to make a more fitting choice of chair. On the evidence before me, a petition for a prospective faculty for this design of chair would have failed.
22. In the circumstances, it is not appropriate for a confirmatory faculty to issue in respect of the existing chairs. That said, I do not intend to direct their removal. I accept that the petitioners may well have believed that the chairs had been authorised, and so much time has passed that a restoration order would be oppressive and disproportionate. The existing chairs may stay, notwithstanding their unauthorised introduction.

#### **Applying the *Duffield* framework**

23. Returning to the *Duffield* framework, whilst the balancing exercise resolves in favour of the petitioners on the question of the removal of the pews, it does not necessarily follow that the design of a replacement chair should replicate that of the existing chairs of questionable legality. Notwithstanding that the proposed chairs are identical to others already *in situ* in the nave, this Court should not be bounced into making a wrong decision because of an error in the past, which effectively deprived the Victorian Society and others of the right of consultation which is essential to the fair operation of the faculty jurisdiction.
24. It is one thing to have a batch of inappropriate chairs to be deployed when larger capacity is needed or when the visual impact of those chairs is ameliorated by the continued presence of bench pews which mitigate the harm, as is currently the case. It is another thing entirely to populate all of the nave of a listed church with freestanding chairs of a utilitarian design. This point was well made by English Heritage in the passage quoted above.
25. I accept that there is still life in the upholstered chairs, that some may have been donated in memory of loved ones, and that parishes are living in straightened financial times. But none of these considerations allow a chancellor to disregard the faculty jurisdiction which exists to do justice not merely to parishes but also to other stakeholders.

#### **Alternative means**

26. Following the practice commended in *Re St Peter & St Paul, Aston Rowant* [2019] ECC Oxf 3, I ask myself whether the proposal could be achieved in a manner less harmful to the heritage value of the church. Self-evidently it can, by the selection of a more appropriate chair.
27. The decision for the petitioners, the PCC and church users more generally is stark. If the remaining pews are truly an impediment to worship and mission, they may be removed but

only if the chairs to be introduced in their place are of an appropriate design. If this course is chosen then I would also expect the existing upholstered chairs to be phased out and only deployed when additional seating is required for larger services or secular gatherings. If the PCC is wedded to their upholstered chairs, they can remain, but so also must the pews.

28. An Archdeacon's Licence for Temporary Minor Reordering was granted in this matter on 12 November 2020, expressed to last for a period of 24 months expiring on 12 November 2022. In this instance the parish petitioned for a faculty on, I am told, 11 January 2021. Rule 8.2(1) of the Faculty Jurisdiction Rules 2015 (as amended) provide:

If a petition for a faculty in respect of the scheme authorised by the licence is submitted to the court not less than 2 months before the expiry of the period specified in the licence, the scheme is deemed to continue to be authorised by the licence until the petition is determined by the court.

29. On a strict reading of that provision, since the petition has been determined by the court today, the scheme ceases to be authorised with immediate effect, notwithstanding that there is time still to run on the current licence. In the event that the parish does not wish to accept the conditional faculty authorised by this judgment, then the pews which are the subject matter of the licence are to be returned to the church and the archdeacon must take steps to ensure that the position is restored to that which existed before the scheme was implemented, as he is required to do under r 8.3(3) of the Rules.

#### **Disposal**

30. It follows that a faculty may pass the seal for the removal of the pews on condition that:
- (i) All the replacement chairs are of a timber construction and upholstered and of a design approved in writing by the Chancellor prior to their introduction;
  - (ii) That the current upholstered chairs are to be removed from regular use in the church within two years.

If such a conditional faculty is unacceptable to the parish, then this petition will stand dismissed. I will allow six weeks for the PCC to make its choice.

31. The costs of these proceedings are to be paid by the petitioners in any event.