

Re Our Lady of Bloxham [2018] ECC Oxf 2

In the Consistory Court of the Diocese of Oxford
Before Mr Christopher Rogers, Deputy Chancellor

In the matter of Our Lady of Bloxham

Judgment

Introduction

1. This matter has an unfortunate history, which has taken the Registry some work in unpicking. The present petition was initially for the disposal of seven pews, which have been in storage for some years, their earlier removal stated to have been undertaken pursuant to an earlier faculty; and for the disposal [and it must be implied removal] of three pew frontals which remained in the church. Our Lady of Bloxham is an important Grade 1 listed medieval church, which underwent a significant restoration by George Street between 1864 and 1866. The relevant pews and frontals were installed as part of that restoration, and given Street's practice of designing all of his own furniture, it must be assumed (according to Richard Peat of Historic England) that both were designed by him.
2. On my asking to see the earlier faculty it emerged that there had not in fact been a faculty for the earlier removal of pews, and that this had therefore been done illegally. That was done in 2011, under a previous incumbent and with almost wholly different people involved. That was clearly highly unfortunate, to put it mildly, and has led to this petition necessarily taking longer to deal with than would otherwise be the case. That is partly because the Joint Registrar had to spend some time working out what had happened, for which I am very grateful. It is in large part however because upon realising the correct position it was necessary to amend the petition and to start again with the relevant consultations and to obtain fresh advice from the DAC, which I gave directions for in January of this year. I also gave directions for a statement of significance and a statement of needs.

DAC Advice and Consultations

3. The DAC have duly prepared a fresh Notification of Advice, dated 8 May 2018, recommending the proposed work for approval, as not affecting the character of the church as a building of special architectural or historic interest, but subject to the frontals referred to being retained while plans for a more general re-ordering are worked up in case they can be retained or reused. I have also seen a visit report from a visit made to the church on 1 August 2017, which includes the following statements:
 - a) It is now impossible to identify the position of the removed pews, which were selected for removal as a result of their poor condition;

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- b) Good and effective use is being made of the areas which have been cleared of pews, including a display and welcome area, and a children's area (which is stated to be discreet enough to provide enough separation for children's ministry, but close enough to the main altar to be visible by parents and others in the nave);
 - c) The PCC would be put in a very difficult position practically were they to be ordered to restore the pews which were removed illegally;
 - d) PCC members had stated that parts of the removed pews which were in the best condition would be retained for possible use in new furniture for storage and other purposes;
 - e) It was recommended that the four pew frontals which were removed illegally be returned to the church to be stored securely on the nave side of the Milcombe Chapel screen (on the proviso that they can be secured to the floor so as not to be a health and safety risk, vis-à-vis children pulling them over); and
 - f) Reference was also made to an altar frontal being inadvertently being placed in storage, which does not form part of the petition, with the recommendation being made (with the seeming assent of the PCC members present) that it be returned to the church and take the place of the frontal currently being used in the War Memorial Chapel.
4. Richard Peat of Historic England responded to the directions by stating (in an e-mail dated 23 March 2018) that he is content for his earlier advice dated 17 November 2017 to stand. That advice had stated that he did not think it was reasonable to compel the parish to store the pews indefinitely, given that it seemed unlikely that the pews would ever be replaced in the church. Mr Peat states in his more recent e-mail that while this is a highly significant interior, a degree of change and the removal of some pews is likely to be necessary in order for the church to be able to serve the wider community. He goes on to state that Historic England wish to work with the parish to ensure that it continues to have a sustainable future as a place of worship, while minimising the impact on the significance of this outstanding building. He concludes that in the circumstances Historic England would have been unlikely to have objected to the removal of the pews had they been asked at the time.
5. By e-mail dated 15 May 2018, David Knight of the Church Buildings Council stated that, having seen the DAC site visit report, they would defer to the DAC on the petition.
6. The Victorian Society also responded, by e-mail from James Hughes dated 18 April 2018. He stated the following:
 - a) Street's furnishings and wider works at Bloxham are of the highest quality, and are a major contribution to the building's wider exceptional significance;

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- b) It is regrettable that the pews appear to have been stored in such a way as has led to their further deterioration;
 - c) It is impossible for the Victorian Society to comment on the removal of the pews without information on where they were taken from, why they were removed, and what replaced them, as well as lacking statements of significance and needs;
 - d) The Victorian Society would be likely to object to the removal of the frontals; and
 - e) If a general reordering is still being considered it would make sense for the pews to be stored until their removal and disposal can be considered as part of that plan.
7. This response was a few days late, but I have not in this case let that affect the weight I give it.
8. The parish has also provided a statement of significance and a statement of needs. The statement of significance is helpful insofar as it details the contents of the church, but it is difficult to rely on the level of significance which it attaches to the different elements of the church. It refers to Richard Peat's assessment, as detailed above, for example, and concludes that the Street scheme in the nave is of some significance (to be distinguished from considerable or exceptional significance). In the section extracted Mr Peat is however referring specifically to the removal of only some of the pews, rather than the entire scheme. I acknowledge that the statement does say that its assessment is a tentative one, but given that it is by its nature a non-expert and secondary assessment I do not give it any weight over and above the e-mail from Mr Peat which it relies on.
9. I also attach little weight to the parish's statement of needs, given that it concerns the general re-ordering which the parish hopes for at some stage, devoting one paragraph to the removal of the seven pews currently being considered. I do however take into account the relevant section, which states as follows:

3. Cluttered internal space

The closely-packed furniture in the church prevents the full appreciation of the space. Space itself is the primary quality in historic buildings, especially churches, and St Mary's is an excellent example of this. The long diagonal views allow appreciation of the space, but these have been blocked off by the pews and other furniture.

Churches are given character by their furnishings, but it is not these that define the beauty of the internal views. Once decluttered the basic architectural beauty of a church can be appreciated in the way it forms and sculpts the space and light.

The Law

10. Given that Our Lady of Bloxham is listed, I have to follow the guidance given by the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158 at paragraph 87:
- (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 easily, depending on the particular nature of the proposals...
 - (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 wellbeing, 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 are permitted. This will particularly be the case if the harm is to a building which is listed grade I or II*, where serious harm should only exceptionally be allowed.

Findings

11. Grade I listing is reserved for the most important buildings, those being of exceptional interest and making up only 2.5% of listed buildings. In this case, Sir Niklaus Pevsner described the church as '*one of grandest churches in the country.*'
12. The DAC states in its Notification of Advice that the removal and disposal of the seven pews will not affect the character of the church as a building of special architectural or historical interest. Given that they are presumed to be designed by Street himself however, and the ensemble nature of all of the pews taken together as filling the nave of the church, I have reached the conclusion that the removal of a substantial number of the pews will have affected the character of the church as a building of special interest. It is obviously difficult to make such an assessment without having seen the church before their removal, but it seems to me that in a church which was fully pewed, by an architect as important as Street, the clearance of any area must affect the character of the church insofar as that scheme is concerned. Even if that does not necessarily follow, it is my view that in this case, as a result of both Historic England and the Victorian Society's statements regarding the significance of the church's interior, the clearance of the areas concerned here does affect the character of the church as a building of special architectural or historical interest.

13. It is therefore necessary to move on to the question of how serious the harm would be. Looking at the photographs on the DAC's 2017 site report, I can see that the areas which have been cleared are at the sides of the church, and in distinct places which each have their own separate sense of coherence, such as the children's area in the south aisle, and the Milcombe Chapel. As a result those spaces make sense on their own terms as separate from the remaining pewed areas in the centre of the nave, and do not detract from that remaining body of pews. Most importantly, there is a substantial number of remaining pews, and they give a clear sense of what the church was like under Street's fully pewed scheme. In the circumstances I find that the level of harm, while not negligible, is minor.
14. The next question to be considered under the *Duffield* guidelines is how clear and convincing the justification for carrying out the proposals is. This is again relatively difficult to judge in retrospect, but in doing so I should make clear that I am not at this stage taking into account the practical difficulties of putting right the changes that have already happened without faculty.
15. Considering firstly the petitioners' statement of needs, I do not consider this to be clear and convincing as a justification for removing the pews. It does not refer to any practical justification, but simply the de-cluttering of the church as the petitioners see it, and an opening up of views of the space which are considered as having been blocked by the pews. Such arguments are purely subjective, and I might say based on what risks being an anachronistic view of churches as ideally being empty, somehow 'pure' spaces. I particularly discount this justification given that chairs have been used in the cleared areas which also clutter the space on the petitioners' terms. In any event, a purely aesthetic justification for changing part of a grade 1 listed building (the whole of which is listed, including the Street additions) would have a particularly high hurdle to have to meet, which this does not.
16. The DAC site visit report, in referring to the uses to which the cleared areas have been put, does however give a clear and convincing justification for removing the pews. While it does not give much detail, the report refers to them as '*the young children's area, a display and welcome area, and the extension of the Dias [sic]*', and includes photographs which support their being used for these purposes.
17. That feeds neatly into question (5) of *Duffield*. Bearing in mind the strong presumption against proposals which will adversely affect the special character of a listed building, will that harm be outweighed by any resulting public benefit?

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18. As already concluded above, I consider the harm caused by the removal of the relevant pews to be minor. I can further see the evident benefit of having cleared areas so as to be able to do all of the things a modern church has to be able to do. I therefore agree with Mr. Peat of Historic England that a degree of change and the removal of some pews was necessary in order to serve the wider community and to remain a sustainable place of worship, and that in this case the harm caused to the church's architectural and historical significance is outweighed by the resulting public benefit. I should however make clear that this is not to express any view on the removal of any further pews or any of the rest of the re-ordering scheme referred to in the parish's statement of needs.

Conclusion

19. In the circumstances I find that the removal of the seven pews and their disposal is justified, and therefore grant a confirmatory faculty for their removal, and now for their disposal.
20. As stated above, in reaching this conclusion I have not taken into account the practical difficulties which the parish would evidently encounter were a restoration order to be made. As a result of its not being clear where the pews were originally placed, and their current condition (which it is not clear from what I have seen is due to their being stored inadequately, despite that assertion being made in the Victorian Society's e-mail), it may not have been possible for reinstatement to be made, not to mention the necessary reduction of the size of the dais which would have gone with that. Even were the changes not justified, I might therefore have had no choice but to grant a confirmatory faculty. That would have been a particularly sorry state of affairs, which I am glad has been avoided.
21. I should say that while unfortunate, I realise that none of this is the fault of the current petitioners, with whom I have the greatest sympathy in having to deal with the mess left by their predecessors.

The order

22. I understand that the petition has already been amended so that the petitioners are no longer seeking to remove or dispose of the pew frontals from the church. The petition originally referred to three pew frontals, whereas the site visit report referred to there being four, but that now seems relatively academic given that all of those in storage are to be returned to the church. I also understand that the altar frontal which was referred to as wrongly being in storage is to be replaced in the church (if it has not already been), at the altar in the War Memorial Chapel. The petitioners have also indicated to the DAC

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(according to the site visit report) that they intend to retain the timbers from the removed pews which are in better condition for possible future use.

23. In relation to the restoration of the pew frontals which were removed from the church, I make that a condition of the faculty, in the terms spelt out below.
24. I cannot however make any condition regarding the altar frontal, which has never formed part of this petition. Clearly that should however be restored to the church as a matter of urgency (as agreed), failing which that will be a matter for the Archdeacon.
25. I do not intend to make the retention of the better timbers from the removed pews a condition of the faculty, given the lack of precision which such a condition would entail, but I am glad the petitioners and the DAC have reached that conclusion.
26. I will therefore order that a faculty be granted as follows:
 - (a) Confirming the removal of the seven pews indicated by the petition from the church; and
 - (b) For the disposal of those pews.
27. As a matter of courtesy I also order that a copy of this judgment be sent to all those who were consulted, and that in addition a copy of the DAC's 2017 site visit report be sent to the Victorian Society for their information.
28. This faculty is granted on the condition that the petitioners restore the pew frontals which were wrongly removed from the church to as close to their original position as possible. Should that not be possible due to the removal of related pews, those frontals are to be placed somewhere else suitable within the church, to be agreed with the church architect (such as against the nave side of the Milcombe Chapel screen, as referred to by the DAC), so that they are sufficiently secured not to amount to a health and safety risk. In the event of any doubt or difficulty in finding such suitable positions the matter is to be referred back to me.
29. I further make an order under the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2016 for the petitioners to pay the costs of the petition.

22nd May 2018