

Neutral Citation Number: [2016] ECC Exe 2

**Diocese of Exeter
Chancellor**

Date: 18th August 2016

Parish: St Peter's Church, Bratton Fleming

JUDGMENT

1. In 2009 the then Rector and churchwardens of St Peter's Church, Bratton Fleming applied for a Faculty to authorise a radical reordering of this Grade II listed church in North Devon. The application was controversial and it triggered a very substantial body of opposition both locally and amongst the relevant heritage bodies.
2. In a substantial judgment handed down on 4th October 2010 I analysed each element of the proposed scheme, together with consideration of the proposals as a whole, before concluding that, whilst major aspects of the proposal were to be permitted, the applications relating to the reordering of the pews, relocation and reordering of the font, removal of the organ and the removal of the pulpit were refused.
3. There was no appeal against my determination and a Faculty was issued in those terms. In June 2011 the Faculty was amended to allow for certain consequential works, which included approval for the remodelling of the pulpit. The June 2011 amendment followed detailed discussion between the parish, its architect and the DAC. The proposal regarding the pulpit was simply for the steps leading to it to be

remodelled to fit more easily with the repositioned furniture in that area. The note of my decision on this aspect simply reads:

‘(c) remodel steps to pulpit

This is uncontroversial and is an entirely sensible proposal for which I give my approval.’

4. A detailed chronology that has now been compiled by the new Team Rector indicates that the pulpit was removed from the church on 22nd January 2012 and placed in storage in a dry barn on a local farm. On 4th March 2015 the ECC for the parish decided to apply for an amendment to the Faculty seeking approval for the permanent removal of the pulpit. On 9th March 2015 the pulpit was moved from the dry barn, where it had remained since 2012, and placed into a storage area in the church tower.
5. The parish’s application to amend the Faculty so as to approve the permanent removal of the pulpit now falls for determination and is the sole subject of this judgment.

Procedural History

6. In addition to the short summary offered above, the following additional matters are relevant in describing the background against which this issue falls to be decided.
7. It is plain, and the parish do not suggest to the contrary, that, following the approval for the remodelling of the pulpit steps given in my judgment of June 2011, no attempt was made by anyone in or on behalf of those responsible for these works to inform any person or body with a role or authority under the Faculty jurisdiction of the decision to remove the pulpit from its position in the church and then from the building altogether. It follows that no attempt was made to seek approval for that significant step from the archdeacon, the DAC, the Registry or this court.
8. The rector’s chronology identifies that in August 2011 drawings and a schedule were drawn up by the church architect that included an instruction to ‘set aside pulpit for

- altering and repositioning’ and ‘remove pulpit, set aside, modify (including new steps, base and skirting) and later refix in new location’. This was a straight-forward practical instruction for the body of the pulpit to be put on one side while work was undertaken to the plinth and steps on which it sits. It is of note that the instruction then given was for the builders to ‘refix in new location’.
9. It was also in August 2011 that a further Petition was issued by on behalf of the parish seeking approval for the relocation of the font, the relocation of one row of choir stalls and the removal of three pews. These three elements were all part of a unified proposal to create a baptistery area in the church. The proposals were once again hotly contested by a body of local residents, but were either supported or not opposed by the DAC and heritage bodies. I granted a Faculty approving the baptistery scheme in a judgment dated 12th April 2012.
 10. It is of note that, despite there being a ‘live’ Petition before the court for the baptistery reordering, with the parish in regular contact with the Registry during the period between August 2011 and April 2012, at no stage did those responsible for the on-going works inform the Registry or the court that the pulpit had been removed from the church in January 2012.
 11. In June 2012 Mr Roy Ridd Jones, as secretary of the ‘Building Group’ established by the ECC, wrote to the Registrar, following consultation with the archdeacon and the DAC Secretary, seeking an extension of time to complete the works. A Quinquennial Inspection had revealed an urgent need to redirect finances to pay for work to remedy leaks that had been found in the tower. Mr Ridd Jones’ letter makes no reference to the fact that the pulpit had been removed from the church six months earlier and was, in fact, stored in a barn on his own farm.
 12. In support of that application to extend time for the work, Mr Ridd Jones supplied a schedule showing the progress of the various elements of the reordering as it was in June 2012. So far as the pulpit is concerned the schedule read:

Item 6 – Pulpit – been removed whilst we assess the positioning /

method / extent of refurbishment required. Problem – actual pulpit stood on a platform 3 steps high which were permitted to remove.

Again, this text does not give any indication that the pulpit had been removed out of the church, as opposed to another place within the church as per the architect's instructions, nor does it indicate that the removal was anything other than purely temporary 'whilst we assess' the options to achieve the 'refurbishment required'. No indication is given that the 'removal' had occurred some six months earlier.

13. An extension of time for a further three years for the project as a whole was granted in July 2012.
14. By January 2015, with the extended period due to expire, the ECC apparently took stock of progress on the project and decided not to proceed with a number of significant elements in the original scheme for which permission had been granted, namely a glass screen to the ringing chamber, under-floor heating and the incorporation of glass panels in the main South door. It was at that time that the ECC also resolved to seek approval for the permanent removal of the pulpit from the church.

The progress of the present application

15. The present application was formally communicated to the Registry in a letter from the DAC Secretary dated 28th April 2015. That letter recorded that the DAC had discussed the application and, in line with their original position, which was to have 'no objection' to the removal and disposal of the pulpit, they would again offer 'no objection' to this application. The DAC did however comment that if the pulpit is to remain then its previous location was not suitable and an alternative location should be found. That issue had been determined to the contrary in the 2009 judgment and is not a matter that is raised by any party to the current application.
16. The principal points in favour of the application are set out in an undated document signed by the two churchwardens in which detailed reasons in support of the proposal are set out. In addition to rehearsing matters which were before the court in

2009, reliance is placed on points made in three letters from the church architect, the current rector and the current Methodist minister.

17. The letter from the church architect, dated 25th March 2015, again simply rehearses the arguments that were before the court in 2009 and expresses the opinion that the reintroduction of the pulpit would damage the existing scheme.
18. The application is supported by the Revd Rosie Austin, who is now the Team Rector, in a letter dated 28th March 2015. The Revd Austin prefers not to preach from a pulpit. She considers that the reintroduction of the pulpit would block sightlines to the reading desk/lectern and make leading services from that location more difficult. She reports that the recent reordering, and the absence of the pulpit, has allowed a more flexible use of the worship space.
19. The views of the three principal objectors to the original scheme were sought and each of them, Mr Peter Laurie, Mrs Rosemarie Ridd-Jones and Mr Brian Williams submitted detailed responses, which I will summarise in due course.
20. On consideration of the papers relating to this application in April 2016 I formed the view that it was necessary to have more information relating to the removal of the pulpit from the church and, in particular, what information, if any, had been given about the removal to the archdeacon, DAC or Registry. I therefore gave directions for the preparation of further documentation and for the objecting parties to have the opportunity to comment on it before re-submission of the papers to me.
21. I am grateful to all parties for complying with my directions. As a result the Court now has:
 - a. A detailed account of events provided by Revd Rosie Austin together with a chronology and supporting documents;
 - b. Full responses to this further information from the three objecting parties;

- c. An email from the new Archdeacon of Barnstaple expressing strong support for the application;
- d. Photographs depicting the space as it is currently configured and, in contrast, with the pulpit in its original location.

The original judgment

22. In the main judgment of October 2009 I described the 'Legal Context' within which a decision of this nature falls to be determined. In particular I drew attention to the so called *Bishopgate* questions which a court must consider, the first of which is:

'Have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of the parish or for some other compelling reasons?'

23. The section of the judgment dealing with the pulpit [paragraphs 84 to 91] is as follows:

(6) The Pulpit

84. The Petitioners' case with regard to the pulpit is that, whilst it may well have been part of Hayward's design, it did not remain in the position chosen for it (wherever that was) for long. It was removed to its present location soon after installation. The workmanship fixing it in place was sub-standard and the structure is as a whole now in need for some repair.

85. The principal reason advanced is that its present location blocks the line of sight from those seated along the South wall when looking to the East end and the current position of the altar. The option of re-locating the pulpit elsewhere in the church, even as an out of use 'museum' piece, is not, it is said, viable given the lack of available space. The proposal therefore is for the pulpit to be removed and disposed of.

86. The CBC would not object to the removal of the pulpit, provided that it was replaced by a suitably dignified reading desk. The Victorian Society consider

that the pulpit is an important feature and should be retained in the church. The other heritage bodies have not made any express comment on this element.

87. The argument by those objecting is in very similar terms to that described in relation to the pews. This pulpit is seen as one of the key features at the heart of this church and there is trenchant opposition to its removal.
88. When the Petitioners' case is held up to consideration against the Bishopgate questions that consideration must now take place in the context that permission is to be granted for the reordering of the chancel as proposed. The focus of worship will now no longer be at the far East end, but close to the chancel step. This change of focus will significantly improve the line of sight of those who may sit on the South wall and, as a result, the strength of the Petitioner's case, insofar as it is based upon sight-lines is correspondingly weakened.
89. In short terms, viewed in the context of the reordered chancel and set against my general conclusion as to the failure to establish an overall pastoral need for these changes, I do not consider that, in the case of the pulpit, the Petitioner's evidence can support an affirmative answer to the first Bishopgate question. As a result the application must fail at that point.
90. The pulpit is very much a feature of the Victorian interior (whether or not it is in its original location). Its retention will do much to maintain the now familiar 'look' of this church. It is still used by visiting preachers and may in time to come once more take on a more regular role. Its continued presence, whilst being greatly valued by those who object, will not, in my view, greatly inconvenience worship or other activities based around the front of the chancel.
91. I accept that the pulpit is in need of some refurbishment and that the original Victorian workmanship would benefit from tidying up as part of the other work that is to be undertaken. Any such refurbishment must, however, be undertaken in a manner approved by the DAC and the Archdeacon of

Barnstaple. To that limited extent a Faculty will be granted to permit repair and refurbishment of the pulpit in its present position, subject to those approvals.

24. It follows that the case in favour of removing the pulpit failed in 2009 because of a lack of evidence that it was ‘necessary for the pastoral well-being of the parish’ or for some other compelling reason. In addition, on the positive side, the judgment held to the view that the pulpit was an important element maintaining a link with the Victorian reordering that had taken place in this church.

The case for sanctioning the removal of the pulpit

25. The case that is now put forward for sanctioning the permanent removal of the pulpit can be summarised as follows:

- i. The reordering that has taken place has been a success and the reinstatement of the pulpit would spoil the integrity of the new scheme;
- ii. The church now has an atmosphere that is light, airy and uncluttered; the reintroduction of the pulpit would completely change this;
- iii. The space that has been created allows for a free flow of people and is particularly valuable at the well attended ‘messy church’ services;
- iv. Reintroduction of the pulpit will reduce the number of communicant spaces by three or four;
- v. It is unlikely that the pulpit will be used and it is no longer necessary;
- vi. The ECC is unanimous in its view that the pulpit should not be returned;
- vii. The ‘Keystone’ report of 2009 did not put a high priority on maintaining the pulpit;
- viii. Of the heritage bodies, only the Victorian Society expressed opposition to the removal of the pulpit;
- ix. Having to raise money to restructure the pulpit plinth, which is unwanted by the ECC and unlikely to be used, will only re-ignite the negative divides in the community.

26. Without being critical, it is right to note that, despite the clear description of the 'Legal Context' given in the judgment, no attempt is made by any of those who are in favour of the application to cast their case in terms of the removal of the pulpit being necessary for the pastoral well-being of the parish or some other compelling reason. The argument summarised at (ix) above does, however, relate to the pastoral well-being of the worshipping community and I must take full account of that factor, justified, as it is said to be, by the more detailed practical points that are made at (i) to (v) above.

The case against permanent removal of the pulpit

27. The arguments of the three objecting parties, which are each in distinct and separate terms, may be summarised as follows:

- i. The Court has already determined this issue and that decision should be respected and upheld. To do otherwise would establish a dangerous precedent and impact adversely on the privileged position that the Church of England currently enjoys as a result of the Ecclesiastical Exemption from Listed Building Consent;
- ii. The pulpit should never have been removed. It is unlikely that an amendment to remove the pulpit would have been granted prior to its removal in 2012. The petitioners should not be permitted to benefit from the status quo that has now been established by their unauthorised actions;
- iii. The removal of the pulpit has rendered it more difficult for those leading the worship to be seen and heard at very well attended services;
- iv. The consequential amendments to the communion rail and the pulpit (put forward by the ECC and approved by the Court) were expressly designed to allow full use of the communion rail notwithstanding the location of the pulpit;
- v. The reinstatement of the pulpit will not have a significant impact on the free flow of people or the ability to hold 'messy church';

- vi. Moving the communion rail to a more forward position near the chancel steps, as approved in the original Faculty, has done much to improve the sightlines in the area near the location of the pulpit if it is reinstalled. In any event the numbers that attend regular services can easily be accommodated without people having to sit in a location where the view is restricted;
- vii. Rather than healing wounds in the community, the permanent removal of the pulpit will only widen the gulf that exists.

28. More generally, Mrs Ridd-Jones sums up a theme which is repeated throughout the objectors submissions:

'This whole project has brought much hurt. Many have asked: What's the Point? What's the point of a Faculty system when it can be overruled with ease? What's the point of people objecting when they are completely ignored? What's the point of the Chancellor wasting his time if his findings are ignored? What's the point of a Church Council if they refuse to read rules laid down?'

The Rule of Law

29. I have made a particular point of directly quoting Mrs Ridd-Jones' paragraph on 'What's the point?' because, in her own words, she has identified the issue that is, in my view, at the very centre of this application. That issue centres on what lawyers refer to as 'the rule of law'. This judgment is not the place in which to embark upon an exposition of the rule of law and it is also not my intention to be unduly heavy-handed in making the principal points that I now make, but the need to have regard to the fact that the Faculty jurisdiction must operate in a climate in which the rule of law is respected and applied is, in my view, of central importance.

30. One aspect of the rule of law is that there should be a fair and open system of decision making, applying known principles and achieving a clear result that is known to, and understood by, all those affected. Those involved in a dispute need, in lay terms, to 'know where they stand' both during the process and once it has concluded and the issues have been determined.

31. Another aspect of the rule of law is that no person or body is above the law. The law is to be respected so that, again, all can know where they stand, as a matter of law, and know what they can, or cannot, do or expect in a given situation.
32. The rule of law is of general application. It applies as much to the Faculty jurisdiction of the Church of England as it does to mainstream civil and criminal law. To repeat, no one is above the law, and the outcome following a proper determination of legal disputes is to be recognised and respected.
33. To hold otherwise would be to contemplate a breakdown in a core aspect of the structure of society. Taking an example that is but one step removed from the Faculty jurisdiction, it is only necessary to consider the law relating to planning permission. If an individual wishes to make a significant change to their property, for example building a large extension, which is opposed by a number of the neighbours, that person must apply for planning permission and there is a recognised process, governed by detailed legal provisions, by which a decision is ultimately taken. That decision is, in turn, open to challenge on appeal, but at the end of the day there is a decision. If the individual is refused planning permission but nevertheless goes ahead and simply builds the extension, then the opposing neighbours would, rightly, expect the legal system to uphold its decision and, if necessary, enforce it so as to require the extension to be taken down. The public at large would probably regard the householder's cynical and arrogant actions as wholly shameful; not because the extension was particularly unsightly but because he had not respected and abided by the legally made decision – he had not respected the rule of law.
34. I have made reference to the rule of law at this point in this judgment because I consider that it is important firstly when considering the situation that has now been reached in St Peter's Church whereby, contrary to the express decision of this Court, the pulpit has not been in its location within the building for some 4½ years. Secondly, it is of importance where, as here, a final decision has already been reached on the issue in question, and it is necessary to consider whether the current

application is simply a re-run of the issues that have already been determined, or whether there is new material, fresh evidence, that may justify overturning the decision that has already been made.

The removal of the pulpit from the church in 2012

35. The petitioners explanation for the sequence of events that led to the removal of the pulpit from the church and its retention for 3 years in a private barn is that the consequential works required the pulpit to be removed from its existing plinth, and to be 'set aside' in the church, in order for the plinth and steps to be remodelled. At around the same time a leakage of water into the tower was identified and it was clearly unsafe to store the pulpit in the tower. The decision was therefore made to remove it to a dry barn in the locality.
36. It is plain from the chronology that no attempt was made to inform, let alone gain the approval of, the archdeacon, DAC or the Registry with respect to the decision (a) to remove the pulpit for an extended period from its position in the church and (b) for its removal from the building. The information in the June 2012 schedule does no more than inform the reader that the pulpit has been temporarily removed from its precise location in the church whilst the options for its replacement on refurbished steps are considered.
37. It is an absolutely basic tenet of church law that a Faculty is needed before any alteration, addition, removal or repair takes place to the fabric, ornaments or furniture of a church [Canon F13 para 3]. This Court is entitled to assume that ministers and churchwardens (ie those expressly named in Canon F13) are aware of this basic requirement. In the present case it is not, in fact, necessary to make such an assumption of knowledge because the minister, churchwardens and ECC at St Peter's had, for better or for worse, become steeped in the Faculty process over a period of six years and more and were fully aware that every detail required approval. In particular they knew full well that the issue of the pulpit had been one of the, if not the, most hotly contested elements in the reordering scheme. Yet no application was made to authorise the removal of the pulpit from the church and, moreover, no

- person in authority was even informed about it. This omission is compounded by the fact that, at the very same time, applications had been made and were being progressed with respect to the baptistery Petition and for an extension of time.
38. It is accepted that, in order to achieve the remodelling of the pulpit steps, the pulpit would need to be removed from its immediate location in the church, but such removal, for which approval had by implication been given when authorising the consequential amendments, would be temporary and last only for the modest time needed for the steps and plinth to be re-formed. In any event, the authorisation for temporary removal would in no manner authorise the removal of the pulpit from the church building.
39. The sequence of events described by the petitioners does not include any account of any work being undertaken to re-form the steps and plinth either at the time that the pulpit was removed or at any point since. The opposition to the return of the pulpit that is now given includes reluctance to pay the cost of undertaking the necessary re-formation work and so it must be assumed that this work has never been started. If that is the case, the petitioners' justification for any removal of the pulpit entirely falls away. Either the pulpit was to stay put with its existing footings, or it was to be moved temporarily only while the work to fashion the footings was undertaken. The parish did not have any authority to extract the pulpit and then simply do nothing.
40. A further similar point arises. The chronology and documentation show, as I have noted, that the architect's instructions to the builders drawn up in August 2011 required the pulpit to be set aside while the work to the steps was undertaken and then to 'refix in new location'. At some stage that instruction was plainly countermanded and withdrawn. No account is given of who changed that instruction and when it was changed. No attempt is therefore made to explain under what authority those making that change purported to act.
41. As a result of the ingress of water into the tower, it was plainly unsafe to store the pulpit there, but that situation did not mean, as night follows day, that there was no

other location within the church for its temporary storage. As I understand it, the church was closed during the reordering work. It would therefore have been possible to lodge the pulpit anywhere within the building, rather than remove it to a local farm.

42. In the light of the evidence that has been provided, and on the basis that I have now described, I am driven to make the following unpalatable findings:

- a. The removal of the pulpit from its location within the church, in circumstances where no attempt was made at that time to reconstruct the plinth and steps so that it could be relocated in the same place in accordance with Faculty, was undertaken without any lawful authority;
- b. The removal of the pulpit from the building and its storage in a local barn was also undertaken without any lawful authority;
- c. The petitioners and those responsible under the ECC for these works must have known full well that they did not have authority to remove the pulpit, without undertaking any steps so that it could be replaced in its location, and that they did not have authority to remove it from the building;
- d. The petitioners and those responsible for the work deliberately took these steps in contravention of the terms of the Faculty;
- e. The petitioners and those responsible deliberately chose not to disclose their actions in removing the pulpit from the church from those having authority within the Faculty jurisdiction, despite, at the very same time, engaging in detailed discussions with those very bodies on other matters;
- f. Rather than regularising the situation at any earlier stage, the petitioners and those responsible for the work knowingly allowed a number of years to pass with the pulpit out of the church before eventually deciding to make the

present application, part of which is to rely upon the status quo that had by then become established as a result of the unlawful absence of the pulpit.

43. In short, I find that the petitioners and those responsible for the work deliberately took the law into their own hands in order to achieve the removal of the pulpit, which has always been their goal, notwithstanding this Court's fully reasoned and firm judgment to the contrary. In doing so they acted without any lawful authority, without respect for the authority of this Court and without regard for the rule of law.

The application to sanction the permanent removal of the pulpit

44. The present application to sanction the permanent removal of the pulpit must be determined in the light of the findings that I have now made. To do otherwise would be to give the 'green light' for any parish that may disagree with a Faculty judgment simply to go ahead as it pleases in the expectation that, after time, the court will endorse the result that has come to pass. The petitioners must not, therefore, be afforded any benefit or advantage that has been gained as a result of their unlawful actions.

45. Approached on that basis, the outcome must be plain. Save for the points now made that are simply a repeat of points that were made in support of the original application (for example relating to sight-lines, use of the communion rail, etc) and were fully considered in 2009, each point now raised in support relates to how well those who have always been in favour of the removal of the pulpit consider the new layout looks, feels and works. Nothing else has changed and, if the benefit gained from the unlawful removal of the pulpit is ignored, no good reason is established to justify coming to a decision that differs from that reached in 2009. I have taken full regard to the observations of the new Archdeacon of Barnstaple, who has observed the new layout in action and is impressed by it, but, despite the respect due to the Archdeacon, his observations are merely an endorsement of the case that failed before this Court in 2009.

46. In any event, and for the moment ignoring the unlawful actions as I have found them to be, the reality is that, even taking full account of the positive benefits described by those who use the church as it is currently set up, nothing has changed in the evidential balance as it was found to be in 2009. There is still no evidence sufficient to establish that the pulpit should not be returned because that is necessary for the pastoral well-being of the parish. The benefit of maintaining the pulpit as a link with the Victorian reordering remains as strong as it was. The petitioners' evidence still fails to get past the first Bishopgate question. In those circumstances it would be both perverse and legally impermissible for this court simply to change its decision because it has been asked exactly the same question for a second time. The decision was made in 2009 and there is no jurisdiction for this court now to sit as an appeal court with respect to its own judgment.

47. In coming to my decision in this matter I have given anxious consideration to the impact that it must surely have upon the petitioners, the rector, the minister, the ECC and the worshipping community more generally. They have become used to the church without the pulpit. They do not wish for it to be reintroduced. My decision is likely to be profoundly unwelcome. Whilst being fully aware of that likely consequence, it is not a factor, of itself, which could in any way justify the court making a decision that is, as I find, as a matter of law simply not open to it. It is in order to assist those who read this judgment to understand that the outcome has to be as it is, that I have attempted to explain the importance of the rule of law in these matters.

Outcome

48. It follows that the present application to amend the Faculty is refused with the result that the pulpit must be reinstated in the church in accordance with the terms of the Faculty and the approved consequential amendments.

49. The Court does have power to make a specific order for the restoration of the pulpit. Such an order may be directed at named individuals. It is my hope that the outcome that has now been determined will be implemented without the need for an order,

but, if necessary, making a restoration order will be considered in due course if the pulpit is not otherwise re-installed.

50. The Court also has the power to make orders against named individuals to pay the costs, or part of the costs, of the restoration work and/or the costs of the proceedings personally, rather than those costs being borne by the ECC. No application for costs is currently before the Court (indeed it would be premature) and I therefore make no order at this stage. This is no doubt a matter that requires consideration by the ECC, as trustees of the church funds, in the light of this judgment. The ECC may wish to seek legal advice from the Registry or elsewhere as to how to proceed in relation to the costs and, in particular, upon the need to be alert to any conflict of interest there may be, so that those who might be liable to pay costs do not take part in the ECC deliberations on that issue.

A handwritten signature in blue ink, appearing to read 'A. McFarlane', written over a horizontal line. The signature is stylized and cursive.

The Rt. Hon. Sir Andrew McFarlane
Chancellor