

Neutral citation number: [2017] ECC Bla 5

Ref 2016/004344

In the Consistory Court of the Diocese of Blackburn

In re St Michael & All Angels, Croston

His Honour Judge David Hodge QC, Deputy Chancellor

Judgment

1. This is an unopposed petition by the rector and churchwarden of the parish church of St Michael & All Angels, Croston, in the Archdeaconry of Blackburn, for a faculty to carry out works to: (1) repair, replace and treat rotten and infested roof timbers and beams and floor supports and floors; (2) create a ramped disabled access adjacent to the main door; (3) create a disabled toilet and baby change facility and sink within the disused south porch; (4) permanently remove some pews to create additional space for movement around the church and disabled/wheelchair access; and (5) create a larger family-friendly pew area at the rear of the south aisle by the removal of two pews. The application is governed by the *Faculty Jurisdiction Rules 2015* (“*the FJR 2015*”). Since the petition is unopposed I propose to deal with it without a hearing under rule 10.6.
2. According to the statement of needs, St Michael and All Angels is the largest of the three parishes in the united benefice of Croston, Bretherton and Mawdesley with Bispam in the Chorley Deanery of the Diocese of Blackburn. The earliest parts of the church date back to 1230 but the main parts were built in the 15th and 16th centuries with 19th century improvements. The church is located at the centre of the picturesque village of Croston which is said to attract a large number of visitors. The church has been at the centre of village life for centuries and it is said to maintain weekly congregations of over a hundred people as well as larger numbers for monthly family and parade services and annual events, including the Coffee Day Walk of Witness, Remembrance Sunday, and Christmas market and heritage weekends. The church has close links with, and is regularly used by, the two Church of England schools in the village - Trinity & St Michael’s Primary and Bishop Rawstone Academy (ages 11-16). According to the statement of significance the proposed works will have little or no impact on the significance of the church as most of the work will be unseen, covered up, or replaced on a like for like basis. Likewise the statement of needs states that the bulk of the repair work to the roof and under-floor timbers will be out of sight once completed

and the church will not look any different from its present condition. The petitioners say that they need to do the works now because they have access to Heritage Lottery Funding (HLF) which makes it possible to carry out the works without massive and possibly unachievable fundraising. Unless the works are completed it is said that the future structural integrity of the church will be threatened and the building could be completely lost. The changes to the layout are said to be minimal and are designed to improve disabled access and to make better use of the space without losing the character of the existing building. They are also necessary to satisfy the HLF's requirements to improve public access. The provision of improved access and additional space will allow the church to be better utilised for a range of suitable uses in addition to its use as a place of worship. It will also allow the church schools to hold more events and services in the church. The petitioners also aim to have the church open to the public more frequently than at present to enable visitors to enjoy the history and heritage of the church buildings. The petitioners believe that the revised lay out will facilitate different forms of worship that will appeal to different parts of their community and enable them to grow their congregation. It is said that the proposals will not harm or damage the significance of the building but will enhance it.

3. The church is Grade II* listed. This means that it is to be regarded as one of more than special interest. I have consulted the listing particulars, which contain no reference to any of the pews. I have also consulted the relevant volume (Lancashire: North) of Hartwell & Pevsner's *Buildings of England* (published in 2009) which also contains no reference to the pews other than to a re-set inscription dated 1708 asserting Farington family ownership of "three seats" in the north aisle. (The full entry at p 262 begins by describing the church as "a very strange building. It is all late gothic, but nothing seems quite right".)
4. The PCC has unanimously approved the proposal for the works. The DAC recommended the works for approval by this court at a meeting held on 13 January 2017. In the DAC's opinion the work was likely to affect the character of the church as a building of special architectural or historic interest and it therefore considered that rule 9.9 of the FJR 2015 required the publication of a notice on the diocesan website. I assume that this has been done and, not having been informed otherwise, that no objections have been received. The usual notices have been displayed inside and outside the church and, not having been informed otherwise, I again assume that no objections have been received. This faculty is issued subject to no objections having been received. The DAC recommended that the petitioners should consult Historic England, the Church Buildings Council, and the Georgian Group (as the relevant national amenity society) about the proposed works. This has been duly done.
5. In a letter dated 6 February 2017 Historic England (which had previously been consulted by the HLF as part of the grant application process) confirmed that the specification for the proposed works for the eradication of death watch beetle and the subsequent timber repairs to both the ceilings and the floor had been considered by their Heritage at Risk Architect, Peter Barlow, and had been found to be acceptable. Historic England had nothing further to add to

the advice previously provided; and it stated that the proposal could proceed as appropriate. In an email dated 23 January 2017, having noted that the works were primarily repairs but also included the partial re-ordering of certain 19th century pews, the Georgian Group confirmed that they were happy to defer to the expertise of the DAC in this matter. In an email dated 27 January 2017 the Church Buildings Officer addressed only the proposed reordering, indicating that if input was required on the repair works to the roof she would pass the matter over to a colleague (which was later duly done). Regarding the reordering, the writer understood that this entailed the introduction of a ramp to the north door, the removal of some pews to provide circulation space, and the introduction of a WC within the south porch. It appeared that the works would have a low impact on the significance of this Grade II* listed church, in which case the CBC would be content to defer to the DAC on the consideration of the proposals. However, the Church Buildings officer highlighted the need for a proper statement of significance, which should provide information on the pews and an assessment of their significance, noting that the existing statement of significance referred to the entry for the church in *Pevsner* but did not append a copy. Provided that the pews were not of high significance, however, the CBC stated that they would not be opposed to the removal of a small number to enable improved access into and around the building. I have consulted the relevant entry in *Pevsner*, and also the listing particulars, and I am satisfied that the minor reordering which is proposed will have only a limited impact upon, and result in no harm to, the significance of the church as a building of special architectural or historic interest. From the plans, it would appear that no pews will be removed from the east end of the north aisle. Two rows of pews will be removed from each side of the east end of the nave. It would appear that four rows of pews will be removed from the east end of the south aisle but this will give a more symmetrical appearance to the front of the aisles. The removal of all of these pews will create space in front of the chancel and the Lady Chapel. A number of pews will be removed from the west end of the nave and the aisles to create additional space for movement around the church and disabled/wheelchair access and a larger family-friendly pew area at the rear of the south aisle. As regards the works of repair and restoration to the roof of the church and its historic timberwork, having been supplied with further documents and material by the church's architect, the CBC's Conservation Officer has confirmed, in a letter dated 20 February 2017, that the CBC has no comments to make on the proposal to carry out works to the historic timbers and, with regard to the corbels, to remove infested timber and to splice in new sections moulded to the original pattern.

6. The decision I have to make is governed by the guidance afforded by the decision of the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158. Proposed changes to a listed church building (of whatever grade) need to be addressed by reference to a series of questions, namely:

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. 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, 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 II*, where serious harm should only exceptionally be allowed.

7. *In re St John the Baptist, Penshurst* [2015] PTSR D40 the Court of Arches confirmed the approach it had laid down in *Duffield* for the determination of faculty petitions affecting listed buildings. At paragraph 22 it made four observations about the *Duffield* questions:

(a) Question (1) cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church. That is why each of those matters was specifically addressed in *Duffield* paragraphs 57-58, the court having already found in paragraph 52(i) that “the chancellor fell into a material error in failing to identify what was the special character and historic interest of the church as a whole (including the appearance of the chancel) and then to consider whether there would be an overall adverse effect by reason of the proposed change”.

(b) In answering questions (1) and (3), the particular grading of the listed church is highly relevant, whether or not serious harm will be occasioned. That is why in *Duffield* paragraph 56 the court’s analysis of the effect on the character of the listed building referred to “the starting point...that this is a grade I listed building”.

(c) In answering question (4), what matters are the elements which comprise the justification, including justification falling short of need or necessity (see *Duffield* paragraphs 85-86)? That is why the document setting out the justification for the proposals is now described in rule 4.3(1)(b) of the FJR 2015 as a document “commonly known as a ‘statement of needs’” ..., in recognition that it is not confined to needs strictly so-called.

(d) Questions (1), (3) and (5) are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article.

8. In the recent case of *Re St Peter, Shipton Bellinger* [2016] Fam 193 the Court of Arches added (at paragraph 48) that when applying the *Duffield* questions, chancellors might find it helpful at all stages to bear in mind (if they were not doing so already) that the desirability of preserving the listed church or its setting or any features of special architectural interest which it possessed was a consideration of considerable importance or weight. In the light of the terms of section 16 (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the tenor of paragraphs 40 to 47 of the judgment, I consider that the words “or historic” should be treated as inserted between the words “architectural” and “interest” in this passage.
9. I am enjoined to consider whether the proposed works will adversely affect the character of this church and its setting, not in the abstract, but rather as “a building of special architectural or historic interest”. Having carefully considered the plans, the details of the proposed works, the listing particulars of this church, and the relevant entry in *Pevsner*, together with the other documents submitted in support of the faculty application, and bearing in mind the views of Historic England, the CBC and the Georgian Group, I am satisfied that whilst the proposed works will affect the character of this Grade II* church as a building of special architectural or historic interest, the effect will be limited and will not result in **harm** to the significance of the church as a building of special architectural or historic interest. The repairs and remediation works to the rotten and infested roof timbers and beams and the floor supports and floors are to proceed on a like for like basis and will be covered up and out of sight once completed. They will not affect the appearance or character of the church. The other works involve a minor re-ordering which, although affecting the character of the church, will in my judgment have a limited impact upon, and will result in no harm to, the significance of the church.
10. Since I am satisfied that proposed works will not result in any harm to the significance of the church as a building of special architectural or historic interest, the balancing exercise provided for in *Re St Alkmund, Duffield* is not applicable and the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable. This can be rebutted more or less readily, depending on the particular nature of the proposals. Essentially, the question is whether the petitioners have discharged the burden that rests upon them of showing that the proposed changes will make things better than they presently are. In the instant case, I am entirely satisfied that the ordinary presumption in favour of things as they stand is rebutted for the reasons stated in the petitioners’ statement of needs (and summarised at paragraph 2 above). Questions 3, 4 and 5 of the *Duffield* questions therefore do not arise and do not fall to be considered by me. Had they been, I would have concluded: (1) (and inevitably in view of my conclusion on question 1) that any harm to the church building would not be serious; (2) that there was a clear and convincing justification for carrying out the proposed works; and (3) notwithstanding the strong presumption against proposals which would adversely affect the special character of a listed building, the resulting public benefit (in terms of pastoral well-being, enhanced access for all of the public and facilities for families, opportunities for mission, and putting the church to viable uses that are

consistent with its role as a place of worship and mission) would readily have outweighed the limited harm to the church as a result of the implementation of the proposed works.

11. Subject to no objections having been received, I will therefore direct that a faculty be issued on condition that:

(1) the works are carried out within 12 months of the date of the faculty;

(2) the pews referred to in the entry in *Pevsner* are replaced in their original position once the works to the floor are completed and no pews are to be disposed of without the permission of the DAC or further faculty of the court; and

(3) the church's insurance company is notified and approves of the works before they commence and they are carried out in accordance with any requirements of the church's insurers.

His Honour Judge David Hodge QC
Deputy Chancellor
30 March 2017