

In the Consistory Court of the Diocese of Norwich

Re Fundenhall, St Nicholas

(1) Suzanne Cooke
(2) Dianne BurrIDGE
(3) Carol Eastwood

Petitioners

- and -

The Victorian Society

Party Opponent

Judgment

Background

1. The church of St Nicholas in Fundenhall parish is a beautiful rural church which is Norman in origin. Having progressed through periods of substantial development in the 12th and 15th centuries it was substantially remodeled in 1870. By around 2004/2006 (the documentation provided uses both dates) serious structural concerns had developed such that the church had to be closed and its future looked grim. On 24 October 2014, after impressive efforts by those in the parish, I was able to grant a faculty to the Priest-in-Charge and Churchwardens. That faculty granted permission for substantial works to the church including: repairs to the roofs and rainwater goods, redecoration of the interior, provision of an external toilet and an internal kitchenette, improvements to the heating and lighting and the replacement of the nave pews with new chairs. The faculty was subject to a number of conditions. For present purposes the second condition (Condition 2) is important. It reads:

“No order shall be placed for the new nave chairs/pews until their design has been either agreed with the DAC, English Heritage and the Victorian Society or approved by the Chancellor.”

It will be apparent from that condition that, although two options had been identified, the particular choice of seating had not been finally settled upon by the parish at the time the faculty was determined. I was keen to avoid unnecessary delay in what was a substantial scheme of works and took the view that if the Diocesan Advisory Committee and all of the consultative bodies were in agreement about the choice of chair I was unlikely to insist upon an alternative. If agreement could not be reached then I would adjudicate.

2. On 2 August 2016 I was contacted by the Assistant DAC Secretary seeking approval for the parish's choice of chair under Condition 2. I responded the next day seeking details of the chosen chair and asking whether the views of Historic England (as they now are) and the Victorian Society had been obtained. There then followed a rather complicated chronology. Unfortunately, it took over a month to provide the requested information and on 13 September it became clear that the views of neither Historic England nor the Victorian Society had been sought in relation to the choice of chair. I indicated that I could not determine whether approval should be granted without having regard to the views of Historic England and the Victorian Society. At the same time I highlighted the fact that, under Condition 2, if the agreement of those bodies could be obtained together with the agreement of the DAC then the chairs could be ordered without further recourse to the Court; in the absence of such agreement I would adjudicate upon the issue.
3. It was, therefore, with concern and disappointment that I subsequently learnt that the parish had ordered 50 chairs on 1 September 2016 and that they had been delivered on 4 October. The chairs are matt gold coloured metal framed chairs with seats and backs of a rich brown faux leather. They can be stacked eight high. It is clear that these chairs were introduced without appropriate authority and therefore illegally.
4. The matter came before me again in November 2016 by which time the Petitioners had sought to obtain the retrospective agreement of Historic England and the Victorian Society to their choice of chair. Both bodies responded indicating that they objected to the design of chair chosen as inappropriate in the setting of this Grade I listed church. In light of those responses I was not prepared to approve the choice of chair under Condition 2. I took the view that the consultative bodies were entitled to have their views heard and considered properly in relation to the introduction of a full suite of new chairs into the nave of this highly-listed church. As such, I directed that the Petitioners should apply for a confirmatory faculty for the introduction of the chairs into the church and required Special Notice of that petition to be given to the local planning authority (who were now also entitled to be consulted under the 2015 Rules), Historic England and the Victorian Society. That is the petition which I must now determine.

5. The Petitioners argue that they purchased the chairs in good faith. They sought and obtained the advice of the DAC prior to placing the order. That process commenced in March 2016. The DAC expressed concerns about durability and staining of the proposed chairs and suggested that a single design (rather than two designs as proposed) would be preferable. The parish amended their proposals to address those two concerns and, at its meeting of 12 May 2016, the DAC again considered the issue of the chairs at Fundenhall. It indicated only that that parish should look to "pick one of the earth colours in the tiled floor" for the seats and backs of the chairs. This reflected the advice received earlier from Historic England that neutral coloured upholstery might be acceptable (albeit in the context of timber framed chairs). The parish then chose an alternative rich brown colour (referred to as "Spanish").
6. On 5 July the Churchwarden then received an email from the Archdeacon in the following terms:

"Further to our phone conversation, we have agreed the chair colours as below...and so I think that completes all the necessary permissions."

It is not entirely clear from the wording of the email whether the "we have agreed" refers to an agreement between the parish and the Archdeacon or between the members of the DAC. I take the use of the word "permissions" to mean that the agreement was that of the DAC. It is extremely unfortunate that the Archdeacon used a wording which might be seen to suggest that the agreement of the DAC alone was sufficient to satisfy the preconditions for ordering the chairs. This is particularly so when it is clear from the minute of the 12 May meeting (at which the Archdeacon was present) that the DAC considered the unambiguous requirements of Condition 2. The Petitioners say that as the amenity societies are represented on the DAC they believed that the DAC's agreement was adequate for all purposes, although I note that it was clear that those bodies needed to be consulted separately as part of the 2014 faculty application rather than simply having the DAC representing their views.

7. It is, of course, the responsibility of the Petitioners to ensure that the terms of the faculty which was granted to them were complied with. In particular, I find it surprising, to say the least, that they, through the officers of the DAC, sought the Chancellor's approval for the choice of chair on 2 August 2016 and yet went on to order the chairs on 1 September without having obtained that approval. I find it equally surprising that having been "advised of a problem with the approval process on 13 September by the Registrar's office" apparently nothing was done to halt the production of the chairs which had been ordered only eight working days previously. The fact that the chairs were not ready for delivery for a further three weeks suggests that prompt action

at that stage might have obviated, or at least mitigated, the difficulties in which the parish now finds itself.

Petition for a confirmatory faculty

8. Through this new petition, the Petitioners now seek a confirmatory faculty for the introduction of the chairs into the church. They have, sensibly, limited the permission sought to a period of ten years, a period which reflects the length of the manufacturer's guarantee which comes with these chairs. The rationale for that limitation is that it will allow time to enable the parish to raise sufficient funds for an appropriate replacement chair and also ensure that funds already expended on these chairs will not be wasted.
9. In response to the petition the DAC have issued a Notification of Advice recommending the proposals without proviso. That is perhaps unsurprising given the fact that the current chairs were selected after a reasonably lengthy consultation between the parish and the DAC which resulted in the DAC agreement to the particular chair.
10. No objections were received as a result of the public notices or website notice displayed.
11. The local planning authority was consulted and indicated that it did not wish to comment on the proposals.
12. Historic England's response to this petition has been to refer to its earlier advice that these chairs were not best suited to the interior of this historic church and that an alternative should be sought. Nevertheless, Mr David Eve, in his email of 20 February 2017, states, with an air of resigned pragmatism:

"the parish have now installed the chairs they had previously selected and while I still retain reservations about them [I] do not consider the impact on the historic significance of the building to be such that I would wish formally to object to the granting of a Faculty for them on a permanent basis."

I note that Mr Eve does not suggest that a faculty permitting the introduction of the chairs should be time limited. I do, of course, take account of the views expressed by Historic England in the determination of this petition.

13. The Victorian Society feels sufficiently strongly about what it terms "these harmful changes" to have chosen formally to oppose the petition, thus becoming a Party Opponent in this case. It has been involved in the re-ordering proposals for Fundenhall church since 2014. It attended a site visit on 14 May 2014 and has been broadly

supportive of the proposed changes, including not objecting to the removal of the pews, subject always to its very clear position that

“...the acceptability of this proposal hinges on the detail of the types of chairs that would be introduced, which should be in wood stained to match the existing furnishings. We would oppose the introduction of upholstered seating; as well as being aesthetically inappropriate in the context of an historic Church, upholstery soon becomes stained and faded, looking shabby and requiring regular replacement; removable cushions should be provided if necessary.”

14. The Victorian Society objects strongly to the choice of chair. It is described as “crude” and “lacking any elegance”; as “dumpy” with a “cheap” finish. Concern is expressed that the rounded (rather than flat) top of the chairs draws attention to each individual chair in a jarring manner. Having considered the fact that the Petitioners seek a time-limited faculty such that the chairs would be replaced after ten years, the Victorian Society concludes that it must, nevertheless, object to even this more limited permission. It argues that

“...this would mean a ten year period during which the enjoyment of every visually-aware visitor to the Church was harmed by the incongruous and poor quality nature of this major part of the interior.”

It further expresses concern that the temporary nature of the permission sought might be forgotten in the passage of ten years such that the chairs are not, in fact, replaced after that period.

15. Both the Petitioners and the Victorian Society have agreed to the determination of this petition on consideration of written representations. Considering it expedient to use that method of disposal, I directed that it should be used.

16. Having given that direction, I then gave the parties an opportunity to make such further representations as they thought fit. The Victorian Society rely upon the representations already made. In its Form 5 Particulars of Objection the Victorian Society includes an objection on the basis that the chairs are “contrary to the statutory guidance issued by the Church Buildings Council and are of poor design”. The Church Buildings Council has provided a useful Guidance Note on Seating, much of which guides parishes carefully through the process of decision making about both the removal of pews and the introduction of replacement chairs which has become an increasingly common phenomenon in recent years. In Fundenhall the parish were clearly very careful in adopting the sort of processes advocated in the Guidance Note. They took expert guidance on the significance of the pews to be removed (not least from the Victorian Society), they analysed the needs of the parish in assessing what level of change in the seating was necessary and assessed the impact of those changes. They took steps

to mitigate that impact including by retaining a number of the pews in the chancel. It is in relation to the guidance on the selection of new seating that it is said that the parish have fallen short.

17. The CBC Guidance states that “the use of high quality wooden chairs (i.e. unupholstered) and pews” is advocated. Upholstered chairs are “not considered to be appropriate” because (i) of their impact in terms of colour, texture and character which is not consonant with the quality of a highly listed church; (ii) they are more prone to wear and tear and staining than wooden chairs; (iii) of their weight; (iv) of altered acoustics; and (v) wooden tones and textures fit better within historic interiors. What, then, is the significance of that guidance in this case? Firstly, as guidance which the CBC is, by statute, enjoined to provide¹ its authoritative nature must be acknowledged. Parishes will be expected to pay due regard to the principles contained within the guidance and a departure will have to be carefully justified. That said, I do not think that it can have been intended that the Guidance Note must be applied absolutely and without judgment in each case. The statement that upholstered chairs are “not considered to be appropriate” cannot be read as a rule that upholstered chairs will never be allowed, or that only a limited range of ‘approved’ chairs will ever be permitted. It cannot have been intended to constrain the discretion of the Consistory Court in that way. Chancellors must carefully consider the circumstances of each case before them, giving due weight to the guidance of the CBC and of the other expert bodies whose views are before the Court.
18. It is clear from the papers I have seen that the Petitioners have considered at least four of the five factors set out above from the Guidance Note in reaching their choice of chair (I cannot see that the acoustic impact of the chairs has been expressly considered). In considering those factors they have not reached conclusions with which the Victorian Society would agree, but it cannot be said that they have disregarded those factors.
19. The Petitioners have responded to the objections of the Victorian Society. They respond, initially, by setting out the explanations referred to above for the failure to comply with the requirements of Condition 2. As far as the substantive objection to the quality of the chairs is concerned the Petitioners argue that issues of aesthetic appropriateness are essentially subjective. The chairs were chosen after extensive consultation within the parish as well as with the DAC. As a result those who use the chairs like their appearance and the comfort that they afford. They suggest that the risk of shabbiness is ameliorated

¹ Under section 55(1)(d) of the Dioceses, Mission and Pastoral Measure 2007 the CBC has a duty to “to promote, in consultation with such other persons and organisations as it thinks fit, by means of guidance or otherwise, standards of good practice in relation to the use, care, conservation, repair, planning, design and development of churches.”

by the amendments which they made to the original proposal by choosing a high durability and wipe-clean finish of an appropriate shade. They further argue that the time limit for which permission is sought means that the risk of future shabbiness is avoided. The Petitioners rely upon the fact that approximately 400 visitors have been to the church in the nine months since it re-opened, the complimentary comments received in the visitors books and the many and varied uses to which the church is now being put to gainsay the suggestion that enjoyment of the church has been harmed by the introduction of the chairs.

20. In support of their petition the Petitioners also raise the financial consequences which they say will flow from the dismissal of this petition. It is said that £1 600 of the £3 053 spent on the chairs would need to be repaid to the Heritage Lottery Fund and that other charitable donors would need to be made aware of the situation (presumably with a risk that some of their funding might be reclaimed). The Petitioners describe the financial implications (which include the need to find funds for replacement chairs, having only recently raised funds in excess of £300 000 in a parish of approximately 300 souls) as devastating.

The law

21. In order to determine whether a faculty should pass the seal in this case I must apply what have become known as the *Duffield* Guidelines as set down by the Court of Arches in *Re Duffield, St Alkmund* [2013] 2 WLR 854.
22. Firstly, would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest? Here the proposals have been implemented and it can clearly be seen, from the views of Historic England and the Victorian Society and from my own judgment of the photographs provided of the chairs in situ, that they do result in some harm.
23. Secondly, how serious is that harm? I have not found this an easy question to answer. On the one hand the style and material chosen for these chairs, which are set out in five ranks of five on each side of the aisle, have a significant impact in what is a modest nave. On the other hand, the colour chosen for the upholstery does, as intended, harmonize with the rich tones of the tiled floor which lessens the impact. Nevertheless, I agree with the Victorian Society's view that the rounded and somewhat inelegant tops of the chairs make their appearance rather more jarring than they otherwise might be. They are what has been termed "banquet" chairs and their style, with bulky brushed gold-coloured frames are not really in keeping with the fine pallet of natural materials of this historic interior.

24. I am also mindful of the fact that the introduction of these chairs has no physical impact on the building. They are items of free-standing furniture which have a finite life (particularly so here, where the permission sought is time-limited) and as such the impact that they have is readily reversible. The introduction does, however, clearly have an aesthetic impact on the ability to appreciate the historic and architectural importance of the building.

25. When assessing the seriousness of the harm to the special significance of this building I am aware of the response of the local planning authority. In its response to the consultation the Senior Conservation and Design Officer of South Norfolk Council commented that:

"It is worth noting that when we deal with listed buildings we would generally only comment on alterations to the structure or historic fixtures and fitting [sic]...and we would therefore take the same stance with the faculty applications. We would only have a view in the case of churches for seating if for example fitted historic pews were being proposed to be removed as part of a re-ordering."

This reflects the fact that loose furnishings, such as chairs, are not subject to the requirements of Listed Buildings Consent. The faculty jurisdiction is, of course, of much wider application (and of much more ancient pedigree) than the listing process and undoubtedly has a legitimate jurisdiction over the substantial replacement of furniture in our churches. Nevertheless, it is of interest to note that, had this been a building not subject to the ecclesiastical exemption from Listed Buildings Consent, although the removal of the fixed pews would have been subject to the requirements of such consent, a separate application for the introduction of these chairs such as this one would not.

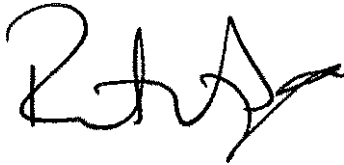
26. I have concluded that the harm caused by the introduction of these chairs is only modest.

27. And so I must ask myself how clear and convincing is the justification for this proposal. I am entirely satisfied that there is a real and strong justification for the introduction of chairs into this church. Unusually, I have available to me direct evidence of the significant enhancement to the use of this building as a place of worship and mission from the introduction of chairs. The achievements of the PCC in this parish have been described by the Victorian Society as "miraculous...in bringing the church back from...the brink of ruin". Perhaps miraculous is right. Prior to the substantial works undertaken by the PCC which culminated in the grant of the 2014 faculty this church was at risk of permanent closure. In the few months since the church has been re-opened after the works many and varied church and community events have taken place within it, many of them on a regular basis, as set out in detail in the Petitioners' Additional Statement of February 2017. New members

have been drawn into the worshipping community. There have been almost 400 entries in the visitors book in that modest period which praise the new facilities and welcoming atmosphere of the building.

28. All of this does not necessarily mean that *these* particular chairs are justified, but it is clear that these chairs have played their part in the growth of mission and worship in this building and there is a manifest fondness with which they are held by those who have actually chosen to and do use them. As in all aesthetic judgments, there is a degree of subjectivity involved.
29. Finally, I must consider whether, in light of the strong presumption against changes which will adversely affect the special character of a listed building, the justification provided outweighs the harm caused. I am mindful of the need for particularly strong justification where, as here, the harm is to a building which is listed Grade I, where serious harm should only exceptionally be allowed.
30. This has not been an easy decision, but I have come to the conclusion that the justification does outweigh the harm in this case. I have reached that conclusion principally because the changes are not only entirely reversible and of no impact on the physical significance of the building but also for a limited period (especially in the life of this medieval church). I have considered granting the faculty for a shorter period than the ten years sought. That period is undoubtedly at the very outside of the period for which I would consider granting this faculty, but given the length of the manufacturer's guarantee on these chairs and, more importantly, the need for this small parish to have time to raise enough money for appropriate replacement chairs after its hugely impressive fundraising efforts in recent years I have decided that a period of ten years is justified. The financial constraints set out are a reality which cannot be overlooked.
31. I do not accept the concerns of the Victorian Society that the time limit will somehow be forgotten in the passage of time. I hope and trust that the Archdeacon, the Registry and the DAC will all help to remind the parish of its obligations in good time to choose and fundraise for the replacement chairs. In order to facilitate this I will make it a condition of this faculty that the Petitioners (or their successors in title) must, by 4 October 2025 (nine years from the date of the delivery of the chairs), apply for a formal Notification of Advice from the DAC in relation to the introduction of replacement chairs. This will give them a year in which to obtain the necessary faculty permission as the current chairs only have permission to remain in the church until 4 October 2026.
32. There have been delay and expense caused by the mistakes made in this matter which could have been avoided if proper attention and regard had been paid to the terms of the original 2014 faculty. I hope that this will serve as a salutary lesson to this and other parishes in

understanding the importance of abiding by the terms of any faculty granted. I wish the parish well in its new and exciting work of growing the kingdom of God in Fundenhall.

A handwritten signature in black ink, appearing to read 'Ruth Arlow', with a stylized flourish at the end.

The Worshipful Ruth Arlow
Diocesan Chancellor

13 April 2017