

RE ST JOHN THE BAPTIST HEATON MERSEY

JUDGMENT

delivered on 27 June 2018

*Introduction*

1. By their Petition dated 6 April 2018 Marcus Howard Maxwell [‘the Team Rector’] and Howard Smith and Ian Snape [‘the Churchwardens’][collectively described hereafter as ‘the Petitioners’] seek a faculty to remove the pews in St John the Baptist Heaton Mersey and to replace them with 120 bespoke stacking chairs, 24 with arms, made by Irish Contract Seating [‘ICS’] in solid oak without upholstery and with an oak veneered plywood seat and back at a total estimated cost of £32,000.

2. The church was built in 1850 and is listed Grade II. The church was built with an aisle-less nave where chairs were used until about 1927 when the pews were introduced from another church.

*The salient background facts*

3. The Statement of Need in support of the application states:

‘The PCC’s vision for the church encourages greater engagement and participation in worship by the congregation. We have used dramas, discussion groups, multimedia presentations and liturgical processions. All of this is constrained by the present immovable seating: a more flexible environment would be more conducive and lead to more imaginative forms of worship. Our Messy Church congregation would like to use the building more regularly but the arrangement of seating makes this impossible. We would like to use the rear portion of the church for our regular fellowship meetings, allowing seats to be set in small groups for discussion, games or refreshments. We have taken to holding successful coffee mornings in the church, to introduce more people to the building and to build a sense of sharing with the local community, but the space constraints seriously limit the number of people we can accommodate. ...

The PCC is working to develop the church as a resource for the wider community, thus strengthening its mission and also by increasing the size of the congregation, providing the means to ensure long-term sustainability. Dramatically rising costs make it increasingly challenging for the congregation to maintain the building in the foreseeable future.

Increasing the sense of `ownership` of the church by the local community is essential and to achieve this, the building needs to be more fully used by the community as a whole, thereby increasing our outreach and drawing more people in to worship. Re-ordering is the key element of this strategy. The Parish Hall nearby is over-subscribed and suitable community activities could be housed in the church if more space is made available

4. The application has the support of the Parochial Church Council [PCC] in that on 14 March 2018 the PCC agreed without any objections to seek the faculty now sought. It may be noted that in the most recent Quinquennial Report [2010] the architect had recommended the removal of the pews stating `the pitch pine pews are generally sound but not of any particular architectural merit`.

5. Prior thereto the PCC Fabric Committee had undertaken an extensive feasibility study into which chairs might be appropriate for the church and had visited and tried out chairs in over 15 local churches and had tested 10 chairs and had taken the views of the congregation about the same into account.

6. It was in such circumstances that the Fabric Committee took three options to the PCC and in relation to the ICS chair it made the following recommendation:

`The ICS chair is a comfortable, well designed ergonomic chair. It is at the more expensive end of the price spectrum but with a lasting durability and has a `life time` guarantee. A lot of thought, research and discussion have gone into coming to a conclusion. We will have a large open space in an old Grade II listed attractive building. We have a responsibility to decide wisely for current and future generations. We have the chance to create a stylish multipurpose venue, built to house the substance of Christian worship which is a precious asset to share. It will bring flexibility and versatility to those who come after us and in the present, help us to be a visible presence in the community, thus achieving one of the [Mission Action Plan] points of mission.`

7. In their letter dated 11 June 2018 the Petitioners explained the reasons behind the application in these terms:

`The main issues driving the PCC`s wish to remove the pews are their poor condition, their inflexibility for modern styles of worship and the restrictions they place on greater use of the church outside regular worship. ... Their seat depth is 12.5 ins /32 cm which offer no support to the thigh; this compares to 17 ins / 43 cm on the ICS chair. Their backs are very close to the vertical and comprise tongue and groove boards with very little structural strength. In fact they depend on being connected to adjacent pews to provide rigidity ... . ... One regrettable indicator of their poor quality is that there has been virtually no interest in them from the reclaimed ecclesiastical furnishings trade. Roughly half the pews are in very poor condition and have reached the end of their useful life. Their obvious decrepitude does not enhance first impressions on entering the church, detracting from what is generally considered to be a well-maintained interior. New seating will not in itself allow the church to grow but we believe it will be a factor leading to its greater use by the community as a whole and therefore its long term sustainability.

8. Later in the same letter the Petitioners stated:

`We have appraised the Archdeacon of the objections from the [Victorian] Society since our ability to deliver our Mission Action Plan is contingent on being able to make full use of the church. Removing the pews is central to this. It would also impact on the Church for a Different World vision for the parish. The PCC has no illusions about the operational and management measures which will have to be put in place to fully exploit the potential of removal and understands that installing chairs in itself will not result in greater use being made of the church, but unless we can proceed, there is no chance of fulfilling our aspirations. We are proud of our church building and have spent over £350,000 over the last two decades to ensure its continuing survival. This survival depends on meeting the needs of a contemporary congregation, attracting young participants and increasing the sense of ownership by the local community ... . The PCC wishes to introduce more engaging forms of worship and teaching etc, all of which are restricted by the pews,`

9. The Petitioners conclude by referring to the service for native Farsi speakers on a Sunday afternoon where attendances can often exceed 100 and to Messy Church, with often over 80 attendees, which currently takes place in the community centre but which could easily be held in the church with the pews removed.

10. On 5 March 2018 the Diocesan Advisory Committee recommended the works for approval. It did not adjudge that the works were likely to affect the character of the church as a building of special architectural or historic interest.

11. There were no objections received in response to the Public Notice.

*Special Notice*

12. Having given some preliminary consideration to the application, on 27 April 2018 I directed special notice be given to Historic England and the Victorian Society. Both had been previously consulted in that in October 2014 each had been sent the Statement of Need and invited to visit the church but neither elected to do so

13. Historic England has raised no objections to the application.

*The Victorian Society*

14. In its email sent on 29 May 2018 the Victorian Society, who did not avail itself of the opportunity to visit the church stated, inter alia, that:

14.1. on the basis of the list entry and the floor plans `we consider that the present seating is an integral part of the historic interior, the intactness and coherence of which are amongst the principal reasons for the building`s Grade II listing. That being the case we advise that the wholesale clearance of the pews would have a major impact on the building`s special interest.`

14.2. although it accepted that the documentation produced by the PCC `makes a change for *some* degree of additional flexibility` it contended that `on the basis of the information provided the wholesale clearance of the historic seating would not be a proportionate response to the stated needs and options such as partial clearance/retention, shortening of benches, making them moveable and adapting them to make them more comfortable ought all to be considered`.

14.3. it was concerned `that what is proposed would effect a radical change of the building`s well preserved and important interior and undermine the basis of its statutory designation` and that the justification provided for the change is `in our view, regrettably weak`. It may be noted that Historic England did not share the Victorian Society`s views that the proposed works would undermine the church`s statutory designation

15. Such matters notwithstanding, the Victorian Society did not wish to become a party to the proceedings but wished me to take their views into account in determining the application for a faculty.

16. I confirm that I have done so.

*Responses to the Victorian Society*

17. There were two responses to the views of the Victorian Society, firstly by the church architect and secondly by the Petitioners.

18. In his letter dated 8 June 2018 Ian Lucas, the Church's Architect, expressed the following views:

18.1. The existing pews were in solid pitch pine and, although in a fair condition, were not to a consistent design or date. The pews were not original to the church's construction in 1850 and have been replaced in phases with those on the north side being more robust and in better condition than those on the south side. The pew ends were unremarkable, having no carving or embellishment and that many of the original fittings have been lost.

18.2. Internal access is difficult and makes access for wheelchair users awkward.

18.3. He thus supported the removal of the pews to 'enable the congregation to provide more flexibility for new and modern forms of worship and to encourage more inclusive community use within this existing *active* place of worship.'

18.4. He was impressed by the proposed replacement chair which is easily stackable and believed that the degree of personalisation offered by the manufacturer would 'enhance the setting of the existing grade II listed church building.'

18.5. He encouraged the PCC to 'retain a number of pews around the perimeter of the building where they can be useful as additional bench seats' even if shortened to a more manageable size of 7-8 feet length

19. In their letter dated 11 June 2018 the Petitioners stated:

19.1. The existing pews were in a poor condition, inflexible and inhibited the use of the church outside regular worship. The DAC was informed [see Liz Murray's email sent on 27 February 2018] that at a recent funeral two pew

backs collapsed during the service, causing great distress to the family of the deceased and disturbing the sanctity of the proceedings.

- 19.2. The suggestion that the benches could be shortened to make them more comfortable was not practicable.
- 19.3. Although the Petitioners were against any partial removal of the pews as suggested by the Victorian Society, they were willing to adopt Mr Lucas's suggestion of installing sections of the existing pews at an appropriate location towards the back of the church where they could provide additional seating.
- 19.4. There was evidence that there would be a strong demand for the use of the church outside periods of worship in that the nearby Heaton Mersey Community Centre is heavily over-booked and, when asked, users have expressed an interest in using the church instead. There is also a demand for performance space and the church is already used by the Heaton Mersey Youth Festival for recitals and community concerts
- 19.5. As set out above, the PCC Fabric Committee had undertaken extensive research to select a chair to replace the pews and obtained samples from 5 manufacturers before recommending the ICS chair with a solid oak frame and oak veneered plywood seat and back which was able to meet their required specification of robustness, comfort and practicality.
- 19.6. It was not proposed to stain the chairs `because an important objective of the scheme is to present a generally lighter appearance of the church interior` and `the natural oak finish is integral to this so staining would significantly compromised the concept.`

#### *The law*

20. In *In re St Alkmund, Duffield* [2013] Fam 158, at paragraph 87, the Arches Court of Canterbury agreed that diocesan chancellors should be freed from the constraints set out in the *Bishopsgate* questions, approved by that court in *In re St Luke the Evangelist, Maidstone* [1995] Fam 1, because there was a danger of imposing an unduly prescriptive framework on what was essentially a balancing process and stated that chancellors might be assisted by the following approach of asking:

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 (see *Peek v Trower* (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in *In re St Mary’s, White Waltham (No 2)* [2010] PTSR 1689 at para 11). 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 (see *St Luke, Maidstone* at p.8), 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 2\*, where serious harm should only exceptionally be allowed.

### *Conclusions*

21. I thus ask myself the questions posed in *In re St Alkmund, Duffield*.

22. Notwithstanding the view expressed by the DAC that in its opinion the proposed works would not affect the character of the church as a building of special architectural or historic interest, I have concluded [but only just] that the proposed re-ordering of the Church would cause *some* harm to the significance of the church as a building of special architectural or historic interest, but I am completely satisfied that the degree of harm to the significance of the church as a building of special architectural or historic interest is very low.

23. Having so concluded I have asked myself whether the Petitioners have provided a clear and convincing justification for the works. In this context I bear in

mind the Victorian Society's contention that the justification provided for the removal of the pews is 'weak'.

24. I am satisfied that the Petitioners have discharged the obligation on them to put forward a clear and convincing case in relation to the need to remove the pews. I accept what is said in the Statement of Need. In particular, I accept that the pews are in themselves plain and unremarkable, that they are uncomfortable to sit on, that they are not of any significant historic or architectural merit and that, by reason of the recent accident referred to in paragraph 19.1 they may be unsafe. I also accept that the pews make access for wheelchair users awkward. I am also satisfied that the removal of the pews will allow for much greater use of the church in relation to both church and community activities.

25. I am also satisfied that the very low degree of harm which would result from the removal of the pews is very substantially outweighed by the substantial public benefit that will be achieved by their replacement by bespoke stacking chairs which will be of considerable benefit to the Church and the wider local community.

26. I am thus satisfied that the case for the removal of the pews is made out.

27. The Victorian Society made no comment about the type of replacement chair sought to be introduced and indeed erroneously believed this to be a Roskill chair. However, it was concerned about the weight and stackability of the chair to be introduced. I am satisfied that the PCC Fabric Committee undertook a huge amount of research on which chair might be appropriate and the DAC do not criticise their choice. Neither do I. I am satisfied that it is appropriate to introduce this ICS chair with a solid oak frame and oak veneered plywood seat and back into this church.

28. In these circumstances, I have no hesitation in granting the faculty sought.

29. The Petitioners accept that it would be sensible to install sections of the existing pews at an appropriate location towards the back of the church where they could provide additional seating. In such circumstances I will make it a condition of the grant of the faculty that sections of the existing pews should be installed at an appropriate location around the perimeter of the building, as was suggested by Mr Lucas, but I will leave it to the good sense of the incumbent, in conjunction with the church architect, as to how many sections of the existing pews are so installed and precisely where they are to be installed.

30. In accordance with the practice of this court the Petitioners must pay the costs of the determination of this Petition.



**GEOFFREY TATTERSALL QC**

Chancellor of the Diocese of Manchester