

Neutral citation: [2017] ECC Bla No 9

In the Consistory Court of the Diocese of Blackburn

In the matter of Higher Walton All Saints, and

In the matter of a petition dated 25th January 2017 presented by Rev Simon Hunt, vicar, Mr Geoffrey Woods, the vice-chair of the PCC, and Mr Keith Houston, one of the wardens.

Judgment (revised)

1. This is a petition relating to a Grade II building dating from 1864. The petitioners are acting through Mr Woods. They seek approval for the following: removal of heating pipes, and their replacement with new piping and radiators, removal of the pews in the side aisle, and the introduction in their place of upholstered chairs. Removed pews would be sold to parishioners or to a specialist firm. The present church architect has not been involved, but the heating advisor of the **Diocesan Advisory Committee** ('DAC' or 'the Committee'), Mr J R Book, has developed the new heating scheme for the parish.
2. The aspect of the matter in contention relates to the removal of the pews from the south aisle and introduction of similar chairs to those bought under faculty as recently as 2015, following removal of the pews from the nave. Objections are made by the Victorian Society to the introduction of upholstered chairs, in reliance on the Guidance issued by the Church Buildings Council ('CBC'), and also particularly in relation to the colour of the fabric, which is a sort of orangey red.
3. The likely cost of the work overall is put at around £30000, of which only a small part, I believe, is referable to the chairs. I have recently been informed by the secretary to the DAC that the parish in fact purchased some 50 chairs over and above their needs for seating in the nave area when they were given permission to clear that in 2015. Doubtless they could get an improved price by buying a larger number. In most circumstances that would not be a sensible way to proceed, for obvious reasons, but, as I will explain, I am sure the petitioners had intended to deal with the south aisle at the same time, and it was a mistake in the wording of the petition that led to my refusing them a faculty for the south aisle. The fact they already have the chairs is not a factor I can properly take into account in dealing with this petition. Otherwise many more petitioners might 'jump the gun'!
4. I regret however that it has become apparent that I will need to consider the circumstances of the earlier faculty, in order to come to a decision on the present petition.

5. **The building:** The church was built to designs by the well-known architect E G Paley in an early English gothic style with a tower and spire by Paley and Austin. It is made of rock-faced sandstone with ashlar door and window surrounds. It has a steeply-pitched roof over the nave and south aisle, and it has a broached spire at the west end. It is described as cruciform, but this fact is well disguised on the floor plan, as the width of the south aisle is co-terminus with the south transept, and the north transept forms a vestry, and so the additional width of the church at that point is not apparent from inside the building. There are, or were originally, three blocks of pitch-pine pews, two in the nave, either side of the central aisle, and the southernmost one extending beyond three piers separating the nave and south aisle. The main entrance is through a gabled porch at the south-western end of the aisle. The chancel roof consists of a dome inside the outer roof, divided into nine sections with a painted representation of the Risen Christ with angels, and emblems representing the Apostles. The church was consecrated in 1864.
6. **The PCC** passed the present proposals unanimously on 19th July 2016.
7. **Statement of Significance:** I have largely summarised the significance of the building in the description given above. At the moment the aisle is filled with open-backed pine pews, which I take to be original to the building. They will therefore give an indication of how the church originally appeared, but they appear to be of no further interest or significance.
8. **Statement of Needs:** the petitioners are seeking to carry forward the changes begun in 2015, by making the nave and side aisle multi-functional and flexible, and to better meet the needs of their growing congregation, and for the church building to be more available to the community. The chairs can be turned in different directions as circumstances demand, or cleared away if space is required. They describe them as '*claret*', which I take to be '*dark red*'. They are, as I understand it, the same colour as before.
9. The Diocesan Advisory Committee ('DAC') considered the proposals on 10th February 2017, and in its **Notification of Advice recommended** the proposals but added the proviso: '*As the parish had purchased chairs for the nave area in 2015 the Committee agreed that for aesthetic and consistency purposes they would not oppose matching chairs that the parish now wish to purchase*'. That formulation of their advice, indicates to me the Committee had doubts or reservations about the particular choice of chair.
10. The DAC was of the opinion the work was likely to affect the character of the church as a building of special architectural or historic interest, and recommended consultation with Heritage England ('HE') and The Victorian Society ('VS').

11. **Public Notice:** This was exhibited between 17th February and 19th March. No local opposition was forthcoming as a result.
12. I will deal first with the question of seating, and then with the heating issues, which are not contentious.
13. **Heritage England's** response to the consultation, dated 21st November 2016, was to the effect that although it would rightly be considered a statutory consultee under the Rules, in respect of these proposals, it did not wish to comment.
14. The **Victorian Society** ('VS') was consulted by Mr Woods on 28th October 2016, and Mrs Sophie Laird responded on behalf of the Society on 19th December. After apologising for the delay in replying, she affirmed an earlier indication that the Society did not wish to object to the removal of the pews, but *'did wish to object to the proposed upholstered seating. The latest pictures show the new chairs in situ'* (this must be a reference to those installed in 2015) *'and the negative impact of these chairs is clearly apparent. We wish to, again, object to these inappropriate and damaging chairs.*
The bright red chairs are entirely incongruous with the aesthetic quality of the interior. We regret that these chairs have already been installed in part of the church and the replacement of the remaining pews with more of these inappropriate chairs would cause further harm to the character of the church. These bright red upholstered seats offer no public benefit which cannot be achieved with other good quality un-upholstered seating. These chairs are also (sic) do not conform to the statutory guidance of the Church Buildings Council who state:
'The Council's experience is that wooden chairs have the greatest sympathy with historic church environments, present the best value for money with long lifespans, and that a well-designed ergonomic chair can provide as much comfort as an upholstered design. Upholstered seats are not considered to be appropriate for the following reasons: They have a significant impact in terms of colour, texture and character which is not consonant with the quality of a highly listed church.'
When historic fittings are removed, the choice of replacement fittings is essential to maintaining the character of the building. Sadly these chairs are incongruous with the character of the church and we must object to the proposals to replace the nave (sic) pews with more upholstered seating.'
15. The quoted words are from the original **Guidance Note on Seating** issued by the Church Building Council ('CBC') in, I believe, 2013, but this was subsequently re-issued in January 2017, possibly with some minor amendments. However the central section, Part 6, contains identical wording as far as I can see, to that quoted, and stresses the Council's view that un-upholstered seating should be used in historic buildings.

16. In an email to the Registry, dated 9th June 2017, Mr Christopher Costelloe, the Director of VS, indicated that the Society had decided not to become a party opponent (by completing a copy of Form 5 under the Rules), but he maintained the Society's objections made through Mrs Laird and would like me to take them into account in reaching my decision. The Rules require me to do that, and I gladly do so. I also make it clear that I appreciate the Society has limited resources in terms of both personnel and finance, and cannot involve itself fully in every case where it has expressed objections, even where it has done as strongly, as it has here. That will in no way lessen the strength of its objections in my consideration.
17. **Previous decisions:** I have had occasion to consider this Guidance in two recent decisions in the diocese of Blackburn, namely *Re: West Burnley All Saints* [2017] ECC Bia 8 and *Re: Burnley, St Stephen* [2017] ECC Bia 9 in the last few weeks. In the first I tried to explore the legal basis for the concept of '*statutory guidance*' contained in the Guidance Note that the VS relies on, and my reasons for not considering it was as binding as they did.
18. In the course of the first judgment, I also considered the recent decisions of Chancellor Eyre QC in *Long Itchington, Holy Trinity* [2016] ECC Cov 7, and *Salford Priors, St Matthew* [2016] ECC Cov 4, in which he declined to allow either church (both of higher grades than this one) to introduce upholstered seating, in reliance on the CBC Guidance, and as far as I could determine, *on that basis alone*. I also looked at Chancellor Turner QC's decision in *Ashton upon Mersey, St Mary Magdalene* [2016] ECC Chr 1, where he did permit such furniture to be introduced and expressed some concerns about the possible results of the way the Guidance was framed. These three decisions do demonstrate that the consistory courts have been ready to weigh the petitioners' arguments against the content of the Guidance Note, and not simply treat it as a 'trump card'. I fully accept that in individual cases, decisions will sometimes go one way and sometimes the other. The Council also seems to accept that with its use of the phrase '*generally advocates*' un-upholstered seating in the Guidance, (although it gives no indication what factors or circumstances may lead to the acceptance of the installation of upholstered furniture in a particular case).
19. **2015 Faculty:** In this present matter, as I have indicated, part of the background is that, in 2015, I permitted this church to introduce the design of chair that VS so strongly object to in the current round of consultation, and it is covered with a fabric described by Mrs Laird as '*bright red*'. Two photos have been included within the '*supporting documents*' for the 2017 application, neither being of huge help as each is of quite a narrow portion of the building. One shows heating pipes within the wooden structure of the pews. The other mainly shows the upper part of the backs of receding rows of chairs. One cannot only discern the overall shape or design of the individual chairs with some difficulty, save

that they have metal frames and upholstered seats and full backs. Looking at this photo, I have to say the colour is rather startling in its intensity. The colour appears to me more orange than it apparently seemed to Mrs Laird, but it has something of the colour of a high-viz safety jacket about it. I would not want claret of that hue!

20. I have thought it wise to see what was the basis for my decision in 2015. At my request, the secretary to the DAC has provided me with documentation in their possession when the parish sought advice on its plans to re-order back in 2015. I was aware of the design of chair the petitioners had chosen from an illustration from the manufacturers that was provided to me. It has a metal frame and appears generously upholstered on the seat and back.
21. I have an extract from the PCC minutes on 1st September 2014, which indicates that a metal-framed chair was preferred after a trial period, to two wooden-framed ones. The metal-framed one does not appear to have been made by Alpha Furniture, who in fact eventually supplied the chairs for the nave. This minute also said '**dark red** (my emphasis) *upholstery as per sample chair is an acceptable colour. However no final decision was made and this will be formalised at the next PCC*'. I think the 'decision' referred to the overall choice of chair, not just the colour.
22. I have also received from the Registry copies of such documents as were retained there following issue of the 2015 faculty. It is not the practice to retain all the paperwork, for reasons of space. It is therefore not everything that was submitted or came into being, when the faculty was under consideration, but only the major documents that are still available.
23. It seems the 2015 faculty petition dated 20th July 2015 was also being handled by Mr Woods on behalf of the petitioners. The *Works or Proposals* were set out on the petition as follows: *'To remove the pews from the nave and replace with stackable chairs. This would enable this part of the church to become multi-functional and open it up to community use'*. The cost of the new furniture from Alpha was £7344 including VAT.
24. The DAC had considered the proposals on 10th July and *Recommended* them for approval without condition or elaboration. They thought the work was likely to affect the character of the church as a building of special architectural or historic interest, and therefore advised consultation with Historic England ('HE') and VS. The Public Notice was displayed between 20th July and 17th August. The works were similarly (but not identically) described as in the first sentence italicised above, but charmingly the new seating was described as '*comfy, stackable chairs*'.
25. I do not have any correspondence from HE dating from 2015.
26. Mrs Laird replied on behalf of VS to Mr Woods on 5th August 2015. They made no formal objection to removal of the pews but regretted that the

pews were to be removed *entirely* (my emphasis) and made clear that in their view pews provided a '*more economical and sustainable approach than replacement with chairs*' and she then gave a variety of reasons in support of that position. She went on: '*Un-upholstered chairs would be a more appropriate chair choice for the church*'. At two points she referred to *removable cushions* as a possibility. So, in summary, as far as the seating was concerned, her view was that pews were more suitable than chairs, and un-upholstered chairs were preferable to upholstered ones. She gave reasons relating to both economy and appearance that supported these views. However if, discomfort became an issue, removable cushions could be introduced. Although there was no express mention of the CBC or its Guidance, she was plainly adopting and supporting its main features. (She then gave reasons for rejecting the idea of floor covering.)

27. In a brief document in response dated 17th August 2015, Mr Woods expressed gratitude that VS was not objecting to removal of the pews, and stated: '*A great deal of work was put into the choosing of the chairs from numerous Church visits where they had already removed pews, to obtaining samples of 6-7 chairs of various colours, size, comfortability (sic) and style. These were tried out by members of the congregation and PCC over a number of weeks prior to the final choice being made*'. He instanced a number of local premises, including a church and two chapels, where the preferred model of chair had been installed. A price guide from the manufacturer for their *Deluxe Comfortable Stacking High Back Chair* indicated colour swatches were available for customers to choose from, and the (metal) frame was black. I have no Order form or Invoice available to indicate the actual colour chosen by the parish.
28. I must pause for a moment to take up one aspect of Mrs Laird's advice on behalf of the VS, although that of course was given in relation to the 2015 application. One of its strange features, (as it seems to me), that also appears in the Guidance, (and also in the Society's advice tendered in the two other Blackburn cases referred to above), is the notion of having *removable cushions*. That somewhat undermines the strong statement in the Guidance that a well designed and chosen un-upholstered chair *can* be as comfortable as an upholstered one. Inevitably a cushion will be made of some kind of fabric, and that will also be coloured. I do not suppose the Society is contemplating members of the congregation turning up with their own cushions (which like Joseph's proverbial coat, will be of many colours), so the church, if it takes up this suggestion, will have to obtain and provide a stock of cushions for those who wish to ease the rigours of prolonged sitting. Can it really be contemplated that these will be given out for every service and gathered up afterwards? Rather they will be left out for use whenever services are taking place, and will simply be left on the seats at other times. The reality will be that large amounts of coloured fabric will be on display (admittedly on the seats only, not the back rests), but in reality there will be very little difference in appearance between upholstered furniture, and un-upholstered chairs or benches adorned with removable cushions. Also it seems to me to illustrate very little

conception of life in the average congregation. If the PCC could be encouraged to adopt un-upholstered seating, it will take only one person to take along a cushion, and everyone will do it. The last situation will probably be far worse than having upholstered seating in the first place.

29. I did not give anything like a full judgment in relation to that earlier application in 2015. I simply indicated on the relevant page of the paper petition form in use in those days: *'Let a faculty be issued for the removal of pews from the nave (but not the south aisle) and the introduction of stackable chairs of the kind illustrated from Alpha Furniture.'* I then pointed out they had not sought permission to introduce any floor covering and would need to present a fresh faculty to do so. *'The chancellor notes the comments of the Victorian Society and commends them to the petitioners for their careful consideration in relation to future floor coverings'.*
30. **Discussion re 2015 application:** I have no independent recollection of the proceedings, but it seems fair to draw the following conclusions from the terms of Mrs Laird's letter, and the endorsement I placed on the petition. First, the petitioners had intended to include the present work relating to the south aisle as part of the 2015 application, and had also wanted to include some floor covering (a fact emerging from the papers, but not expressly included in the petition itself). Second, the reason for my endorsement arose, from the fact that there is a distinct difference between the *'nave'* and the *'south aisle'*, and the petition referred to the former, not the latter. It was not possible to authorise removal of pews *from the south aisle* therefore under that petition, although I am ready to accept that is what the petitioners had also wanted to achieve, and were using *'nave'* as a compendious term to describe the whole area where the congregation sits.
31. What I think is noticeable is that Mrs Laird nowhere referred to the colour of the upholstered seats in 2015. I cannot believe she had not at least a verbal description even if no photo or other illustrative material purporting to show it. There is no description of the colour, by name or otherwise, on such of the documents as were retained by the Registry. However it can no longer be demonstrated from the documentation available from that time, that the colour of the fabric on the chairs, *was* spelled out in some way, although I would find it astonishing that the DAC, Mrs Laird and myself, were in fact unaware of the colour at that time. *It cannot now be demonstrated* we were in fact aware, but it would have been a serious oversight to be ignorant of that important feature when carrying out our respective responsibilities.
32. I have no doubt the petitioners put in seating they believed they had a faculty to cover the seating they in fact introduced.
33. **Discussion.** The justification put forward in the **Statement of Needs** for this application is in very similar terms to that put forward in 2015, as I

would expect. This is a continuation of the work begun then, which I am satisfied the petitioners had hoped to do at that time as well. The reasoning put forward then was judged to justify any harm to the significance of the listed building, on an application of the criteria in the leading case of *Duffield St Alkmund* 2013 Fam 158. Those reasons still apply.

34. I accept the arguments of VS as to the importance of making good choices for any replacement seating, and not simply looking at the harm that may be done by removing historic pews. The Guidance about un-upholstered seating rather than upholstered, is still being assessed up and down the country, and will doubtless be the subject of many more decisions in the coming months. However the process of removing pews has been started in this church. That does not dictate that removal of all or many of those remaining is inevitable, but it is not a fact to be ignored, nor is the fact upholstered chairs have already been introduced. I do not consider that the removal of more pews, or introduction of more chairs, will cause significant *further* harm to the overall significance of this building, despite Mrs Laird's contrary view.
35. I also accept that the colour of any replacement seating that is upholstered, is very important. The present colour is startling, when viewed on the photo provided. Clearly the congregation like it. Nonetheless, I have come to see that some decisions in the past have not been sufficiently firm on this aspect. I know DAC's can struggle with the choice of replacement seating sought by a parish, and I know this DAC has made real efforts, often successfully, to persuade parishes to adopt better seating than they had proposed, although often it is more expensive. I cannot however recall a case – and I may be wrong in saying this - where they have declined to recommend a choice simply or principally because of *the colour* of the upholstery. I am often surprised that congregations prefer dark or strong colours, usually plain blue or red, when choosing carpet for their churches (which I know the amenity societies also oppose) or for the seating. These colours attract the eye away from the important features in the sacred space, towards essentially mundane functional objects. Earth colours or much softer colours, would give a more soothing and restful appearance in my judgment, and an atmosphere more conducive to worship.. Whether one indirect effect of the Guidance may be that DAC's and others will in future give stronger advice about colour, remains to be seen.
36. I do not myself like the colour of the chairs that the petitioners wish to introduce. My decision is not about my personal views or preferences of course; it has to be a judicial decision, having regard to all the circumstances. The fact is that the petitioners were, as far as I can tell, allowed to introduce chairs of this kind and colour as recently as two years ago. To say now this colour (or type of chair) is not acceptable, would seem to the petitioners and wider congregation, totally wrong, and unprincipled. Further as the DAC comment on the proposals shows, a

question of consistency arises. It would not be reasonable to deny the petitioners more of the same sort of chair.

37. **Conclusions on seating:** The petitioners have justified the removal of the pews in the south aisle, and their choice of chair. **A faculty will issue.**
38. **Heating:** a new more efficient boiler was installed in the recent past. The petitioners now seek to remove the Victorian pipework around the walls and down the centre of the church, and install steel column radiators and steel pipework in accordance with the drawings and specification prepared by Mr J R Book. The pipework is very much integral to the structure of the remaining pews. Plainly work like this, that is expensive, will only be undertaken if it is felt to be necessary. Warm buildings are a necessary part of providing for the worship and mission of the local church in the modern age. No objections or criticisms of this scheme have been made. A faculty will issue in respect of this part of the proposals. To be clear, I do not see any harm arising, requiring an application of the *Duf field* principles.
39. **Conditions:** The petitioners are to have **12 months** to carry out both aspects of their proposals.
40. They are to inform their **insurers** of the proposed work.
41. The petitioners are to pay to the Registrar in respect of the extra work involved in **an enhanced correspondence fee** dealing with this petition, in a sum fixed by me, prior to and as a pre-condition of the issue of the formal faculty.

John W. Bullimore
Chancellor
18th July 2017