

Neutral Citation Number: [2016] ECC S&N 1

IN THE CONSISTORY COURT OF SOUTHWELL AND NOTTINGHAM

Petition numbers: 17853, 17852, 17880

IN RE HOLY TRINITY, KIMBERLEY

JUDGMENT (1)

BACKGROUND

1. The petitions relate to the Church of Holy Trinity, Kimberley in Nottinghamshire. The petitioners in all three petitions are The Rev'd Canon Barbara Holbrook, Incumbent, and Mr David Lambton and Mr Nick Tennant, Churchwardens. The first two, submitted in August 2015, seek permission respectively for (1) the loan of tubular bells to the Bell Foundry Museum in Loughborough and (2) the removal of a redundant organ and its replacement with a modern instrument.
2. These petitions are opposed by Mr Gordon Banksby.
3. The third petition, submitted in October 2015, seeks permission for a major re-ordering scheme. The proposals, in summary, are for the extensive renovation of the church and provision of community facilities within the building. In detail this includes: the removal of the pews, choir pews and platform area and leveling of the floor; the installation of under-floor heating; the creation of toilets (including a disabled access toilet) at the west end; the creation of a kitchen area, social space and meeting room under the west end balcony, which is to be extended; the creation of storage areas and better access to the balcony (which is to remain a storage area, not an area in regular use); the removal of the 1950s choir vestry and its replacement with a new entrance lobby; the introduction of a new doorway on the south side and the replacement of the west end entrance doors; the provision of a new path to the new entrance lobby; the rewiring and re-lighting of the church; the removal of the redundant brick chimney from the exterior of the west end; the return of the pulpit to its Victorian location; the moving of the font to the South side of the church; the re-use of the oak paneling from the 1930s choir pew area to provide (1) paneling around the font and (2) movable units to separate the areas used for worship and those for community use; redecoration; and the provision of new chairs.

required under Rule 9.3 and Schedule 2 of the Faculty Jurisdiction Rules 2015). Because the re-ordering proposals involve some external works planning permission has been sought and granted by Broxtowe Borough Council in August 2015.

10. The Diocesan Advisory Committee has considered all three petitions and has no objection to any of them. It recommends some conditions to the re-ordering petition.
11. The congregation at Holy Trinity is small. Average Sunday attendance is 33.8 adults and two children. There are 15 members of the PCC, which is around half of the regular congregation. It is financially struggling. It has not paid its modest diocesan quota in full for the past 3 years.

TUBULAR BELLS - 17853

12. As I indicated at the beginning of the hearing, I considered that the loan of the bells to the museum is a matter in respect of which advice from the CBC is required under rule 8.6 of the Faculty Jurisdiction Rules 2013. This is because of the historic significance of these instruments. I have therefore issued a direction for that advice to be requested, and if any advice is received within the appropriate time, it will be sent to the petitioner and party opponent for them to make further representations in the light of that advice if they wish to do so.
13. Therefore, although I have heard evidence on the matter of the tubular bells, I will reserve making any decision in respect of that petition until the advice of the CBC is received, and the parties have had opportunity to respond. A second judgment will therefore be prepared once that information is available.

ORGAN - 17852

14. The organ was installed as part of a major refurbishment of the church in 1937. It is integrated into the raised platform area and its casing is of a piece with the other 1937 oak paneling and choir pews. The organ was described by the Diocesan Organ Advisor Paul Hale as of 'significant interest'. Unfortunately it does not work because the motor that drives the organ has broken. At present a borrowed electric organ is used for worship. However, this organ was described by Canon Holbrook as inadequate for the task because it is too quiet and does not contain sufficient voices. This was not disputed. The temporary organ also takes up a significant amount of space on the platform, alongside the pulpit.
15. Originally, the plan had been for the repair and restoration of the 1937 organ, and a faculty was sought for that work. However, consultation with

worship offered in the church. Attempts to obtain grant funding for repairs was frustrated by the nature of the repairs needed, which would destroy the historic significance of the instrument.

24. Secondly, it is a better use of the remaining, usable parts of this organ that they are used to repair other organs and so continue to provide music for worship, than that they are stored unused by this parish, where lack of use would cause further deterioration. (That is without consideration of the practical difficulties of such storage). I do recommend that the parish seek to receive payment for the re-use of the parts elsewhere if that is possible. I do not make that a condition of the faculty.
25. Third, even if I were not to grant permission for the main re-ordering proposals, it would be necessary to site the new organ console in the location of the existing one.
26. Fourth the proposed new organ was chosen with the advice of the Diocesan Organ Advisor and the advice of the proposed supplier as a suitable instrument to enhance the public worship in the space provided by this church.
27. Mr Barksby's objection that the organ could be repaired does not resolve the difficulty as there was no evidence that it could be repaired at a reasonable cost. So far as he was able to explain, his own investigations revealed that the motor needed to be replaced and the large expense was because it was being replaced with a new motor. This was in line with the evidence of Canon Holbrook. However, Mr Barksby could not believe that there were no second hand 1930s organ motors available to repair this organ. However, I am content to accept the evidence of Canon Holbrook on this point. She and the other petitioners have been advised by the relevant specialists. It also, in my view, seems very plausible that as a hard-working moving part of an organ the motor would be particularly likely to wear out such that they would be rarely available second hand. I also take into account that even with a replacement modern motor the organ would remain a 'very fragile instrument,' which the parish could not afford to maintain.
28. Mr Barksby's objection that the organ was dedicated to the memory of the Hanson family (whose family members are also recorded in stained glass windows in the chancel) is not a reason to prevent the disposal of this redundant instrument. I was heartened to hear Canon Holbrook plans to retain all dedication plaques from items removed from the church and ensure they are properly displayed in a new location. That strikes me as a suitable and sensitive arrangement and, whilst I have no doubt that Canon Holbrook will ensure that this will take place, as it does not expressly form part of the written faculty application I will include a suitable condition in respect of this when granting the faculty.

better toilet facilities, a new pathway, resolution of the dampness in the cellar, disabled access, the replacement of the condemned choir vestry the removal of the redundant chimney and redecoration.

35. The harm to be considered is the removal of pews and platform area with its furniture, and the creation of a flexible community and worship space, meeting room and kitchen area.
36. There was some dispute whether the nave pews were Victorian pews the ends of which were cut down in the 1920s, or whether they were installed in the 1920s. Canon Holbrook referred to old pictures of the church, which were not before me, that showed very different pews. (I was shown one picture from shortly before the 1937 remodelling but, so far as it was possible to tell, the nave appeared to have the current pews.) Ms McEntee was not able to provide evidence to support her assertion that the current pews were Victorian. I do not need to decide the vintage of these pews. They are unremarkable. Red fabric cushions, now faded, have been fixed to them more recently. Some have been cut down to install the present heating system. The experts on the DAC do not consider these pews to be of any particular value or significance. As I have stated above, this is an unlisted church. The secular heritage authorities also do not regard it, or any items within it, as worthy of listing. I consider the harm to be caused by the removal of these pews to be slight.
37. There is a raised platform at the east end of the nave. That was installed in 1937. This contains the organ console, choir pews, a lectern and the Victorian pulpit that has been moved forward to the front of the platform, from its original location in the north-east corner of the nave. It also currently houses the temporary organ. The oak paneling in this area is simple, attractive and seems well made. There is more decorative paneling in the same wood and in a matching style in the sanctuary. The plan is to retain as much of this wooden paneling as possible and reuse it to create the furniture for the moveable barrier between the proposed new worship space and community space. It is also planned to use some of this wood as paneling around the relocated font. I consider the harm to be caused by the removal of this platform and its furniture as limited.
38. Similarly the creation of small rooms under the balcony will also change the layout of the space. I consider any harm to the architectural and historic significance of the building caused by that to be minimal also.
39. So against my findings of limited harm to the architectural and historic significance of the church building, what are the justifications for carrying out these proposals?
40. The extensive re-ordering will provide a renovated, warm, dry multi-use space. The chancel will be largely unchanged (save for a new radiator and

46. In my view the proposed re-ordering will provide increased liturgical freedom and significantly enhanced opportunities for mission. It will very significantly improve access to all, including those with reduced mobility. These proposals are very widely supported by both the church and the wider community, although opposed by a few strong voices. The community petition with 200 signatures evidences this and the letter from Mr Lambton provides a particular example. Pastorally, there are good reasons for enabling such a widely supported project to proceed.
47. These proposals have the potential to secure the viability of this worshipping community into the future. The proposals will also provide important community facilities, which will be lost when the church hall deteriorates such that it can no longer be used. It is already living on borrowed time having a life-span of 40-50 years when built in 1957. The walls are disintegrating. The parish simply does not have and cannot raise the funds to restore and maintain two badly deteriorated buildings. There is some suggestion from Mr Barksby that it should be the church hall that is prioritised. I reject this and confirm the petitioners in their prioritizing of the church building itself. The church may have limited architectural merit but it is obviously of very much more merit architecturally than a 1950s concrete pre-fabricated hall. The church itself is far more significant historically and, most importantly, spiritually for the people of Kimberley.
48. The parties opponent set out various objections to this re-ordering petition in the documents set out in the bundle. These can be summarised as follows:
- a. The loss of the church hall and parking would be a major permanent loss of parish facilities.
 - b. The cost of the works is excessive and wasteful.
 - c. The petitioners are unlikely to raise sufficient funds from the sale of the church hall and land.
 - d. Various proposed works are unnecessary:
 - i. Heating is recently installed and adequate
 - ii. New toilets are unnecessary if the parish hall is retained
 - iii. Making the building water tight, repainting and replacing the vestry is sufficient.
 - e. The public consultation and notice for the proposed works was insufficient.
 - f. The architects brief should have included consideration of a new worship and community building on the site of the church hall.
 - g. Midweek funerals and weddings will not be possible if the church let out to playgroup that currently uses the hall.
 - h. The petitioners should have requested/accepted the assistance of a team from the Built Environment Department of Nottingham University.

July 2015 Canon Holbrook also spoke to the Kimberley Residents Association. Planning permission for the external works was granted in August 2015. Canon Holbrook attended the Town Council meetings again in November 2015 and March 2016.

56. This is undoubtedly a high level of consultation and I am quite satisfied that anyone interested in the future of the church building has had ample opportunity to discover the details of what is proposed. Indeed I was told that there was a petition in support of the proposals which now has 200 signatures. Ms McEntee suggested the text of this petition was misleading. I do not accept that allegation. It reads "Holy Trinity Refurbishment Project: We the undersigned support the project to refurbish Holy Trinity Church and provide better community facilities". There is an opportunity to indicate if the person signing is a current user of the church hall. It is clear that this petition refers to the whole project of selling the church hall and transferring the community facilities to the church. This is particularly if taken in the context of the widely available leaflets and the long term display of the plans. The consistory court is not the intended recipient of this petition. It was not referred to in any of the petitioner's paperwork, and was only mentioned in passing in evidence. I infer that the intended audience for this petition is the local planning authority in respect of the planning permission application for the development of the site of the church hall.

57. There is no merit in the allegations of inadequate consultation, nor in the suggestion that the decision should be delayed for more consultation.

58. I now turn to the objections that can be found in the case papers.

Loss of Church Hall and car parking

59. Whilst it is sad that the parish cannot afford to maintain two deteriorated buildings, that is the reality and there is nothing I can see that will change that. The plans made by the parish will enable one building to be restored and be better used. As set out above, the church is the one that should be saved. For these plans to go ahead extensive grant funding is required. This will not come from heritage grant givers in light of the limited architectural and historical significance of the church. It is hoped and planned that funds will be raised from funding bodies that donate for the provision and renovation of community space. However, these grant making bodies need evidence of an initial contribution from the applicants. Further the grant givers will not donate for the provision of worship space. The church hall and its land provide a potential source of funds for this. It is hard to see how the project can go ahead without the sale of the land.

60. Loss of parking particularly seemed to concern Mr Barksby. Canon Holbrook was able to confirm that there are further plans to provide alternative car-parking. The Archdeacon of Nottingham gave evidence of other churches in

decision was made to give up on the church building and move to a different site, the worshipping community should consider moving to the centre of the town.

Midweek funerals and weddings will not be possible if the church let out to playgroup that currently uses the hall.

67. This is a reasonable concern. It is met however by the evidence of Canon Holbrook that the present playgroup is held 5 mornings and 3 afternoons per week and that any licence agreement for their use of the church building when re-ordered will be on similar terms. This would give two afternoons per week for funerals or other such uses. The number of funerals in previous years suggests that this is sufficient time. If the timing is more important than the location for a particular funeral the other church in the parish, St Patrick's in Nuthall, will be available at other times.

68. With regard to weddings, only one parish wedding has taken place in the church building in the last year, all the others opted to marry in St Patrick's. In light of the current state of the church building it is not hard to imagine why. The renovations will in my view make it more likely that marrying couples would chose Kimberley – but again if midweek timing is more important than location St Patrick's remains an option.

The petitioners should have requested/accepted the assistance of a team from the Built Environment Department of Nottingham University.

69. This was a particularly odd suggestion from Mr Barksby, who even, when pressed, confirmed that he wished the matter to be adjourned to enable this to take place. I refused that adjournment for a procedural reason and substantive one. Procedurally, no previous application for such an adjournment had been made despite ample opportunity. Substantively, members of the Built Environment Department are not the appropriate experts.

70. When Mr Barksby was pressed for clarification of his proposal, his view was that graduate students from Nottingham University should be given permission to undertake a project to come up with alternative proposals for the church and church hall sites. The project would form part of their course work and would take around a year to complete starting, he thought, in July 2015.

71. As I indicated when refusing the adjournment, with the greatest of respect to the University and the talents of their students, they are not the appropriate experts that should be relied upon by the petitioners in making their proposals for the future of their church building, or the Court in considering them. Rather, the petitioners are obliged under the Inspection of Church

not added as it may cause difficulties with the timing of obtaining the various grants required for the project. I was impressed with Canon Holbrook's mastery of the details of the proposals and fund raising requirements and I have no doubt that she will ensure that project will not go ahead until she is certain it will be completed. I am content to leave this in the hands of the petitioners, and not make any conditions in this regard.

76. For the avoidance of doubt the parish is free to sell the pews that are removed, if a market can be found for them.

77. I propose making the standard orders in respect of costs, namely that the petitioner shall pay the court costs and that otherwise each party will bear their own costs.

JACQUELINE HUMPHREYS
Acting Chancellor

17th March 2016

A handwritten signature in black ink, consisting of stylized, overlapping loops and vertical strokes, likely representing the name 'JH' for Jacqueline Humphreys.