

Holy Trinity the Lickey- judgment – September 2010.

The affairs of this Holy Trinity in the last few years have not been without controversy. The Birmingham Diocesan Registry has been in receipt of correspondence which complains of the treatment of some and of various other matters during the incumbency of the former vicar, who has now left. For my part I cannot involve myself in matters unrelated to ecclesiastical law and practice, and can and must play no part in determining the churchmanship of the parish or the way in which it conducts its worship. Moreover the overall impression I have received reveals a generally united PCC, content with and supportive of the changes brought about by its former priest. When I have had cause to inquire into matters raised with the Registrar I have found the wardens and the PCC entirely co-operative and supportive of business being undertaken properly.

Such matters that were dealt with irregularly have been as far as is possible dealt with and I am satisfied that the PCC and wardens intend to see that there is no repeat of this. As this Faculty petition does not relate to such matters I will not delve into them further here. Suffice it to say that I withheld my approval or otherwise of this petition unless and until any anxieties I had were resolved to my satisfaction.

Before me now is a petition by the former vicar and wardens to dispose of three of the four oak choir stalls and clergy seats removed pursuant to a Faculty granted on 29th September 2004 by Deputy Chancellor Pittaway, and to undertake such removal in accordance with the advice of Diocesan Advisory Committee ['DAC']. The Parish proposes to retain the fourth stall on site in the church's lower vestry.

I granted a Faculty in 2007 for the removal of remaining nave pews provided a sample pew was retained on site. I do not recall there being an objection to that proposal.

The church dates from 1856 though is not a listed building. The petition for the Faculty for disposal is dated 28th September 2009 and sets out the wish that parishioners purchase the stalls to be disposed of, though I understand no interest has as yet been expressed. I see that on the PCC that those present all voted for the disposal save for one vote against and one abstention.

I have seen the minutes of the DAC meetings discussing this proposal. The DAC in Birmingham is an able and well-informed group of experts in architectural and other related church matters and is no 'push over' for any Parish planning change which would damage the integrity of a church building or its contents. I listen to its advice with the greatest care and in my view should always give sound and very carefully argued and cogent reasons were I to disagree with its recommendations. I note that there was some considerable controversy regarding the removal of the stalls in the first place in 2004; and as a result the DAC arranged for a visit to view the items with which I am now concerned by both its architectural adviser and the amenity society representative. The latter is Mr Tim Bridges, himself a prominent member of the Victorian Society [VS], and a person not at all inclined to approving steps to devalue church buildings and furniture from the 19th century. The DAC carefully considered a full report on the condition and the state of the items involved together with an assessment of the historicity of the stalls. Concerns related to the possibility of mechanical damage in moving the items again, and possible break ins/vandalism where the items are stored. Minor damage in the initial removal was, it was thought, repairable.

Having considered the matter with obvious care the DAC recommended that the Faculty be granted by myself subject to the pieces being re-used ideally within a church setting.

To set the scene further, I see with the papers a letter of commendation from John T Christophers, architect, setting out his view that the re-ordering of the church had been a great success and giving his view that the new facilities establishing a flexible space in the church *enhance the existing Victorian building*. Mr Christopher's view is by no means determinative but it is a further indication that steps taken by the parish have not necessarily been at all corrosive of the church building and setting. Indeed his view is to the contrary - there is nothing he considers destructive in what has been done.

I have seen a summary of the history of the position from the Rev'd Philip Swann, the former vicar.

I have also seen strong support for the disposal from Mr K Beresford pointing out that the choir stalls used to obstruct the altar, a point which concerned the then Bishop Dr John Sentamu [now Archbishop of York].

No particulars of objection have been received, and no party seeks a formal consistory court hearing before me. I have therefore determined that the matter can and should be resolved on the basis of written representations. I have of course seen letters of objection and shall evaluate the views contained therein below. The letters I have seen come from Dr and Mrs Yates, Dr Elliott, Mr and Mrs Rogers and Mr G Evans.

I directed given the history of controversy that English Heritage [EH] and VS be formally notified and the Registrar has properly dealt with this. It is worth recording that:

- i. EH has stated by letter dated 22nd January *we do not wish to offer any comments on the proposal*. Had they objected I would undoubtedly have received strong representations.
- ii. VS replied by email on 28th January 2010 saying *we have no objection to the petition as recommended by the DAC*. They commended the suggested order of disposal for the choir stalls to which I shall come and hoped that the Parish might be able to keep one further pew or re-use it in some way, but did not insist upon that.

The views expressed here are important because both groups are concerned with the preservation of historic buildings and their contents and in particular VS is very cautious as to damage which may be done to 19th century items of value, the loss of which we may regret in subsequent generations.

I gave a final opportunity to the wardens and to the objectors in July to make further representations.

- i. A response from a churchwarden was received indicating that the Parish still wished to proceed. I note in particular that the removal of pews has given it is argued greater flexibility for the development of Sunday worship and mid-week usage. New forms of worship have it is argued now been possible such as the use of dance as well as work with children and toddlers plus the use of the church for retreats.
- ii. Dr and Mrs Yates adhere to their views [to which I shall come] and wish me to proceed by written representations
- iii. I have not seen an updated letter from Dr Elliott but assume his views remain the same
- iv. Likewise I have seen no further response from Mr and Mrs Rogers or Mr G Evans

- v. I am aware however that all the objectors wish me to proceed by written representations

What are the objections?

Dr and Mrs Yates complain that in 2004 they were amongst a *large group of parishioners* who objected to the removal of the stalls. They allege that they were assured by the Registrar that the stalls would be safeguarded within the church and had not been. That is not of course quite as Deputy Chancellor Pittaway directed and I do not consider that the storage to date has been defiant or wrong. They allege that the disposal of the items drives a *wedge* between more charismatic members of the church and those who prefer traditional worship. *Those members of the congregation who prefer a more traditional form of worship are constantly ignored.*

Dr Elliott says that the vicar should abide by his commitment to store the stalls in the church. She draws my attention to the wrongful disposal of other items without Faculty. That is a separate matter with which I have dealt.

Mr and Mrs J Rogers took the same view as Dr Elliott as to retaining stalls in the church. Both they and Dr Elliott hoped that one day the stalls would be reinstated. In a later letter [November 2009] they took the view that the stalls were *exceedingly valuable* [I have seen no direct evidence of this] and added *it has been deeply distressing to see woodwork (pews and stalls) which have stood the test of time disposed of without clearly any depth of thought and rendering the interior of the church to resemble an Air Port waiting area. The present contents of which will certainly not last as those which have been so callously destroyed.* By a further letter of 23rd February Mrs Rogers reported that some furniture had been sold without authority. That allegation appears to have been correct in part and I have now obtained an appropriate assurance that it will not happen again - I have to say I put that down to ignorance rather than any deliberate and wrongful disposal of assets though it was extremely unfortunate in the light of the present dispute and highly likely to cause discord and suspicion - which it has. The letter goes on to attack the Rev'd Swann's ministry and approach about which I cannot and do not take a view. Such comments have no part in my consideration of this particular Faculty.

Mr G Evans objects on the basis that the matter of the pews had been *put to bed five years ago*. That of course in itself is an insufficient basis of objection. Any party can renew and application to court where appropriate, subject to the Rules. He says that the Deputy Chancellor's decision as to the re-ordering petition involved movement of pews that was not irreversible and that the pews could be reinstated under a future incumbency. So they could be - but that as I say does not prevent a further petition being lodged either to reinstate or dispose of the items. I am unable to comment on the allegation that the vicar gave a commitment to safeguard the stalls. His letter continues to make some personal attacks upon the vicar's conduct which it would be tasteless and inappropriate for me to determine. He exhibits a letter from the Archdeacon of Birmingham as to the storage of choir robes and music though I am not quite sure where that takes me. I understand there is not a choir now but doubtless there could be under a future vicar. Mr Evans suggests that the PCC vote in favour was invalid and suggest that the vicar did not present the full picture. It is not for me to challenge that here - I note that no successful attempt has been made to set aside the PCC decision. In addition Mr Evans suggests that the vicar be personally responsible for safe storage of the stalls and that he has failed in his obligations. In the first place that is not the view of the DAC and in the second I know of no deterioration which requires remedy.

By a second letter Mr Evans raised queries about items disposed of by the vicar; I have dealt with that elsewhere and although his inquiries are valid the matter does not relate to the present petition. He suggests that the Registrar's previous letter was the *basis of the agreement with the*

104 families (who had previously objected to the removal of the stalls). I am quite unable to confirm that there was a negotiated or binding agreement to last ad infinitum as to the retention of the stall from the papers before me. He objects to the churchmanship of the vicar again and suggests that his replacement should embrace all church traditions. He also suggest that the wardens are unaware of the undertakings of the Rev'd Swann.

Any objections from established parish members should be treated with the greatest respect and I duly do so treat them. I am nonetheless disappointed to see attacks on the churchmanship of the vicar and indeed personal attacks which have little to do with the matter in hand. The opinion that the church in part looks like an airport waiting area does not stand up to scrutiny, given the opinions of the DAC, EH and VS. I shall confine myself to the observations on the merits of the petition:

I bear in mind that in coming to the conclusions that I do that an appropriate balance must be struck between the dynamic quest for change and the dogged retention of the present or half-remembered past. The church is constantly evolving and yet I bear in mind that the present PCC and wardens are but temporary custodians of the fabric and fixtures of the church.

The burden of proof in connection with the petition lies on the petitioner i.e. the wardens must have shown me on balance that their plans are appropriate. There is no presumption that the views of the PCC will prevail. On the other hand petitions in opposition are of little value [even though there was one some years ago relating to the re-ordering] as all depends on the individual representations made to elicit each and every signature. In any event things have moved on - I have but 4 objecting letters [plus follow up letters] before me, not 104.

Although I am not dealing with a listed building it is appropriate to set the petition in the context of the so-called *Bishopsgate questions* so I ask myself:

- i. Have the petitioners proved a necessity for the proposed removal of the stalls because this is necessary for either the pastoral well-being of the parish or some other compelling reason?
- ii. Will the disposal adversely affect the character of the church?
- iii. If the answer to (ii) is 'yes' then is the necessity such that I should in my discretion grant a Faculty?

In my judgment there is no evidence whatsoever that the disposal will adversely affect the character of the church. That issue was determined in effect by permitting the reordering in 2004. I have read as I have said above enthusiastic support for the changes effected so as *not* to affect the Victorian building.

Likewise I am persuaded that the disposal is necessary for a compelling reason - there are no prospects of the stalls being reinstated, the area created by their removal being used well and frankly the parish cannot simply store the stalls ad infinitum. There is a risk of vandalism and theft of the stalls - it is not simply a matter of convenience but also of disposal being reasonable necessary for the parish being burdened by something it does not wish to have.

In coming to my decision I have borne in mind the decisions in *Re Holy Cross, Pershore* and *St Anne, Fence-in-Pendle*. Whilst some have complained of high-handed treatment and wishes ignored the truth appears to be [as in the latter case I cite] that there is simply a lack of agreement. The disposal of the stalls will not affect the character of the church, and there is now a need to dispose of them. Whatever the failings [and I make no judgment and draw no conclusions about that] may or may not have been of the previous incumbent the church has a

clear vision for its worship and future and I do not see an appropriate reason for not granting the petition.

I wish to make it clear that this decision is emphatically not a judgment upon churchmanship. Indeed the removal of choir stalls does not preclude catholic or traditional worship at all - many churches manage to hold both traditional and more modern forms of worship. I do not see any pastoral consequences of my decision.

I am aware that a new vicar will be instituted this autumn and the church can I hope recover from past controversy. Whatever the problems of the past I am sure she will bear in mind some of the distress that has been caused and I shall accordingly direct that a copy of this judgment be sent to her now so she is aware of some of the historic problems. But in the light of the representations made and the expert advice I have received I have no hesitation in saying that the petitioners have proved their case on the balance of probability and shall grant the petition. I simply add the conditions:

- i. That before disposal the church considers whether it can retain one further stall
- ii. That the items to be disposed of are first offered to parishioners.
- iii. That thereafter they are offered to other churches.
- iv. Only then are they to be disposed of in the best way possible and without destruction.

His Honour Judge Cardinal, Chancellor, 7th September 2010.