

Neutral Citation Number: [2023] ECC Bri 4

In the Consistory Court of Bristol

In re Lydiard Millicent, All Saints

JUDGMENT

1. This is a petition that was originally for:
 - new servery in the bell tower;
 - removal of organ and replacement with new standalone organ;
 - removal of pews and introduction of chairs;
 - new heating system including introduction of underfloor heating;
 - new entrance with internal glass doors;
 - introduction of WC and storage to house the new chairs; and
 - improvements to vestry.

2. As the Church is Grade II* listed the amenity bodies were consulted. Sadly this consultation happened rather late in the process and appears only to have happened after my encouragement. After the objections from the CBC, the Victorian Society and SPAB were received the following amendments were made to the petition:
 - Remove requirement to glaze the Vestry door and screen and only glaze the top of the door for health and safety reasons (installed in 1926 and moved in 1964)
 - To retain the carved relief panel at the lobby
 - To leave the pulpit in its current position
 - To remove the requirement for a lift and provide a ramp
 - To lower the height of the new floor so that the bottom of the pillars can be seen
 - To replace the proposed raised wooden floor with Cotswold Stone floor
 - To use a stone louvre for the extract vents in the toilet

3. I encouraged a meeting with the amenity bodies as it was clear that they were still objecting to the proposals. I am glad to say that a meeting was held with Historic England and SPAB, and the following further were amendments:
 - Move the store and toilet to the SW wall of the South Aisle and away from the lobby,
 - Retain the carved surround at the lobby door,
 - Replace the 'green' lobby doors with glazed doors, removing the necessity for cupboards on the SW wall of the South Aisle, and retaining part of the current SW creche area.

4. The sticking points appear to be the removal of the pews, the replacement of the flooring and the introduction of underfloor heating.
5. The amenity bodies appear to be content with the replacement of the organ, ideally so long as a new home is found for it.
6. The DAC approve the petition.
7. The petitioner in this case is the Vicar, the Revd Tudor Roberts. After I had encouraged the meeting noted above the petitioner made a further submission as a statement of need. Within that he wrote:

If we are not able to bring life to our church in all the ways we are planning, we don't really have a reason to proceed with the reordering. We will need to take our activities elsewhere and we fear that this will result in All Saints becoming a redundant church. This is the last thing we want to happen and want to see this beautiful ancient building becoming a lively hub for the full spectrum of Christian worship, celebration, teaching and fellowship. A place that draws the community into through a wide range of activities which allow them to connect with each other and with God.

8. I confess that I have never been threatened with the closure of a church if I do not grant a Faculty petition, particularly not from an incumbent. I have ignored this during my consideration of this application. This is also not the test for granting a Faculty. The test is set out in the case of: *St Alkmund, Duffield* together with the Church's statutory duties under S 35 Ecclesiastical Jurisdiction and Care of Churches Measure 2018.

Re *St Alkmund, Duffield* [2013] Fam. 158 at paragraph 87 (with editions):

(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 the question (1) is 'no', the ordinary assumption 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 Peak v Trower (1881) 7 PD 21, 26-28, 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 [1995] Fam. 1 at 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), it is well established that 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 II*, where serious harm should only be exceptionally allowed.

Ecclesiastical Jurisdiction and Care of Churches Measure 2018

35 Duty to have regard to church's purpose

A person carrying out functions of care and conservation under this Measure, or under any other enactment or any rule of law relating to churches, must have due regard to the role of a church as a local centre of worship and mission.

9. The balancing exercise using the Duffield framework is helpfully set out as follows at paragraph 87:

Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building [...], 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?

10. I will take each contested area in turn, although the plans do 'bleed' the one into the other.

The replacement of the flooring

11. The meeting between the amenity bodies and the parish on 6th July 2023 was minuted as:

HE would like the existing stone floor to be retained. They examined the section of stone floor between the organ and the path in from the main door. They would like to see photographs of the full condition of the whole floor and an expert view on whether this is beyond repair as this is rarely the case. HE believes accessibility to the vault should be available.

....

All Saints advised that the existing floor would be retained (not dug up). They will review the entire floor and assess the feasibility of its retention and the impact on accessibility. The vault is not accessible as it has a 2-ton stone over the entrance and

ring to lift this is rusted away. The vault has 18 bodies in it, 16 of which are in wooden coffins, which it would not be wise to access on health and safety grounds. The bottom of the vault is likely to be waterlogged. All Saints could provide liftable slabs or a plaque on top of the entrance stone.

12. There does, therefore, appear to be potential reversibility of the plans.

13. There is an anonymous 'existing floor condition survey' which reads:

Introduction

An existing floor condition survey was carried out on Wednesday 12th July 2023. This was to determine the condition of the stone floor within the North and South Aisle.

...

Description of Existing Stone Floor

The existing stone floor consists of rectangular and square shapes with various sizes ranging from 300x300mm, 600x600mm and 600x950mm. The stone is set off 2-3mm from the bottom ends of the pews. It would appear that the stone has been laid considerably later than the Pews.

The raised area in front of the chancel is of modern stone construction which was paved in 1987. Over time the floor has been repaired with concrete slabs and infilled with concrete which can be seen in various areas. The finish of the stone in the majority of locations is rough and stained. Damaged and crack stone is obvious in many locations. The existing stone floor areas within the North and South Aisle which also includes the west of the church is covered by green carpet.

14. SPAB replied to the circulation of the minutes as follows on 20th July 2023:

The existing church floor

It was very helpful to see the carpet pulled back during the meeting to reveal the floor beneath. We would strongly recommend that all the green carpet is removed to allow the floor to breathe. This will significantly help with the damp issues.

The survey of the floor only reinforces our opinion that it is very capable of being repaired and cleaned, with the few areas of concrete, some grates and the pew platforms (if any pews are removed) being replaced in stone. It is in surprisingly good condition considering it has been beneath the damp carpet for years. It will be far cheaper to retain and repair this floor than to hide it beneath a new one which will look considerably different. It is not clear if only the SW corner of the nave was repaved in 1987 or whether this refers to the whole church, so it would be helpful if this could be clarified.

The parish has already agreed to remove the proposed platform lift and to use a ramp instead which we welcome, but this and any other ramps need to be shown on the revised drawings. Repairing the floor and removing the concrete and metal grills will provide a smooth level surface which is part of the parishes requirements. We also feel that some form of access to the large burial vault should be maintained otherwise it would be very harmful to the floor if emergency access was required to it in the future.

15. I am satisfied that the floor is not original, or even of any particular antiquity. It is also uneven and unsightly.

The introduction of underfloor heating

16. At the meeting of the petitioners and the amenity bodies the following was minuted:

SPAB believe underfloor heating is not economic unless the church is in use 5 days a week for 5 hours a day. This is not reflected in our activity survey.

...

All Saints stated that the underfloor heating is not the main source of heating. This will be provided by the convection heaters. The underfloor heating will be set to around 9 degrees to give ambient background heat and reduce the damp. We intend to increase our activities when the church is reordered and can accommodate different uses.

17. A heating report from BJP consulting engineers dated December 2019 concluded:

The integration of underfloor heating into the scheme will greatly enhance the thermal comfort and quality of the space. The differential in cost between the fan convectors and underfloor options while significant, may be offset somewhat when the raised floor is detailed, as this cost includes the insulation beneath the heating loops.

It may also be economically beneficial to utilise radiators in the Nave in lieu of the fan convectors.

The report recommends retaining the existing boiler and installing underfloor heating with supplementary fan convectors or radiators.

18. Whilst the heating report is now 4 years old I accept its conclusions along with the clarification given by the petitioners at the meeting with the amenity bodies.

The Pews

19. A Pew Report was commissioned from Oxford Heritage Partnership. The conclusion of their very full report reads:

The present pews were installed in 1847-8, probably under the supervision of Thomas Smith of Swindon. It replaced an earlier arrangement of private pews and open benches, many of which were dilapidated by 1847. The new seating included a block of children's benches at the west end of the south aisle. The cost of the pews and use of oak theoretically places them in the middle to upper ranks of contemporary seating, but this is undermined by the rough quality of construction. There is also a lack of the considered design seen in the best 19th century seating: the tracery design does not reflect the style of the church or any feature within it, there are no integral kneelers, the backs are not raked, and the seat depth is closer to the contemporary ICBS recommendations for children's seating than it is to the adult recommendations. Overall this places the pews firmly in the middle rank of mid-19th century church seating.

The first modification to the layout of the pews took place in the 1940s, c. 100 years after their installation, when pews were removed from the east end of the church and timber from them reused to create liturgical furniture. It is likely also at this time that the easternmost of the remaining pews were converted into frontals. Further pew removals took place in 1965, to allow the relocation of the choir stalls to the west end of the nave, and in the mid-1980s when the welcome area at the west end of the south aisle was created. In this last case, timber was again reused to create new furniture. The children's benches were removed at an unknown date. In total 16 out of the original 37 adult pews - 43% - have been lost.

Based on the existing evidence and the degree of loss to the original layout, we consider the pews to be of moderate-low significance. They have some value as evidence of typical mid-19th century church seating and of subsequent recycling of material in the 20th century. However, they appear not to have been designed in reference to their setting, nor are they the product of an outstanding designer or workshop.

The oak choir stalls installed 1870-1 are a marked contrast to the congregational seating. They formed an integral part of the G E Street refurbishment of the chancel together with a complete set of chancel furnishing, most of which has now been lost. The quality of design and construction is superior to the earlier pews. The moulding to the rear stalls echoes the arcade capitals and the lively fleur dy lys carving to the front bench ends is well executed. The surviving candelabra mounted on the choir stalls echo this foliate design and may also be the work of G E Street's practice. We consider the choir stalls, together with their candelabra, to be of moderate-high significance for their evidential and aesthetic value.

20. Historic England made their submissions in relation to the removal of the pews:

In the absence of a rector, the existing pews were commissioned by the Lord of the Manor in the first half of the 19th century and built using the oak from the

pews installed in 18th century. The design by the local architect, Thomas of Swindon, still survives today. With their tongue and groove back board, a moulded top rail and a carved end panel, they are a pleasant example of Church joinery of the mid-Victorian period. As such, they are of inherent historic significance. Given their solid, quite integral presence across all the worship areas, they also have group value and contribute to the character and overall understanding of the C19th church interior, an important turning point in the history of development of this building.

Therefore, their proposed complete removal is considered to cause harm to the significance that is derived from their extensive presence and the stylistic congruence they share with the rest of fittings and furniture.

However, we would suggest that a partial removal of pews, though still harmful, could be acceptable in order to deliver those much-needed extra services. Given the past removal of pews from the western end of the south aisle, we would envisage that this area should be explored for further pew clearance in conjunction with the removal of the second altar at the eastern end.

21. The petitioners amended their proposals and the following minutes were taken at the meeting of the amenity bodies and the petitioners:

PEWS

HE would like to see a meaningful number of pews retained. The pews were designed for the church with a perpendicular end to compliment other features of the church. They bring coherence to the space. Specifically, these need to be in the nave to retain the processional area and the current experience of the church. Without the nave pews the sense of order will be diminished. It is currently stylistically congruent. HE suggested that the required space is made available by clearing the South Aisle pews only. For those pews that are removed, HE would like to see the carved end panels incorporated into the cupboards or wall panels rather than the pews sold and removed entirely from the church.

All Saints stated that the pews were of moderate-low significance and machine made. Retaining pews in the nave would negate all the goals of reordering (e.g., creative worship, accessibility, reorientation of the church for main services, space for large services and community events, full visibility etc). As a compromise All Saints suggested keeping two rows of pews in the South Aisle facing the Margaret Rope window and below this either the altar or the altar cloth cupboard with carved frontal.

HE advised that the above compromise was not acceptable and from their perspective the retained pews need to be in the nave. They felt that the pews in the south aisle would simply be removed at the next reordering.

Christopher Bryan noted that the difference of opinion is around the difference between form and function. Many churches are finding that architectural historical coherence doesn't meet the function of modern worship.

22. Historic England, after the meeting replied:

With regard to the amendments, we note that the further revisions proposed to the scheme minimise some of the harm identified and reiterated in our communication and on site. However we remain of the position that other interventions which remain unchanged, still carry harm to the significance that the Church derives from the historic fabric, architectural quality and group value associated mainly with first Victorian re-ordering.

23. SPAB, after receiving the final amended petition stated:

Removal of the pews

We fully appreciate the desire for more flexible space within the church, but it must also be recognised that the parish have a responsibility to the building and to the future generations who will use it, so compromise is vital. The pews are of low-moderate significance in their own right, but they have a very considerable impact on the internal character of the Grade II* listed church. Removing all the pews would therefore have a very significant and harmful impact on the space. We appreciate that consideration is being given to retaining some pews within the south aisle, but we feel that this would still result in the harmful removal of the majority, and no doubt any which are left would be removed in time.

We would be very happy to look at the removal of some pews from the west end to allow a flexible space near the servery for café style gatherings and possibly a performance space at the west end. Removal from the south aisle may also be supported, but we would like to see options considered that allow a meaningful block of pews to be retained within the nave. We appreciate that this may not allow the entire congregation to face north (we are not clear why this is being proposed so further clarification would be helpful), but we are sure that sensible compromises can be found.

24. The petitioners are not prepared to consider any further retention of pews. The proposed seating arrangements envisage between 94 and 122 seats being available, often for reasons not entirely clear, facing North - indeed this is one of the reasons given in the document I cited at paragraph 6 above as a reason to grant the petition.

25. The activity survey that they have helpfully uploaded identifies that, currently, the church has between 8 and 40 people for Sunday and weekday services. Seasonal

services have between 60 children, 30 parents and 15 staff quarterly. Once a year there are 160 people attending the Christmas school service. 'Special services' e.g. a 'Staycation', memorial services and concerts have up to a 100 people attending. Pews apparently are not acceptable for these events as they restrict the view, are uncomfortable and get in the way of circulation.

Discussion

26. The petitioners have made many assertions about how their mission would be assisted by the removal of the vast majority of the pews. They have expressed their desire to make their Grade II* Church more accessible and flexible. The only evidence they have provided me with, however, is that a few events in the year are mildly inconvenienced. Efforts to compromise suggested by the amenity bodies in relation to the pews have been rebuffed.
27. Two documents have been submitted to me for my consideration: one is an anonymous hand written report by someone who stopped attending church 9 years ago. It is a report of a 'vision' that they had. It described the interior of the church having bean bags, comfortable seats and a coffee area and kitchen 'which reminded me of Starbucks'. The other document is headed 'Statement of needs' and includes another vision of the re-ordered church drafted by the Petitioner. Both make interesting reading but are wholly unsupported by any evidence. I am rather at a loss what make of them, but I applaud the sense of warmth and desire for mission that they extol. I can, however, give them no weight when it comes to making any assessment of the proposed petition.
28. In relation to the new flooring and the underfloor heating I am satisfied that, having reviewed the evidence submitted to me, the existing floor whilst of some age is not of such importance in terms of antiquity or quality that the introduction of (potentially reversible) new flooring and underfloor heating would result in harm to the significance of the church as a building of special architectural or historic interest. I am also of the view that, in terms of accessibility and welcome it satisfies the requirements of S 35 Ecclesiastical Jurisdiction and Care of Churches Measure 2018
29. I am not, however, of the same view about the Pews. The amenity bodies have made it clear, that in a Grade II* listed building with foundations in the 14th Century sensitive and evidence-based alterations to the interior must be demonstrated. I agree. I have been scrupulous in trying to persuade the petitioners to compromise on their insistence that all save a very few pews should be removed from this beautiful church. They have refused to. I am quite satisfied that they have done so on the basis of a vision for the future of this church that they have which appears to be rooted entirely on an optimistic interpretation of the local community needs which they have entirely failed to substantiate with evidence. I cannot therefore accede to this part of the petition.

Conditions

30. I grant part of this petition with two conditions.

31. These are:

- a. No building work will commence until all funds are in place for the faculty now granted,
- b. No building work will commence until the organ has been re-housed.

21st November 2023

Justin Gau
Chancellor