

Neutral citation number: [2018] ECC Swk 4

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF ALL SAINTS' CHURCH, SANDERSTEAD

AND IN THE MATTER OF A PETITION BY LYNNE DAVISON, REVD CANON MARTIN GREENFIELD AND REVD JEREMY GROOMBRIDGE

JUDGMENT

Introduction

1. This is a petition dated 3 May 2018 by Lynne Davison, the Revd Canon Martin Greenfield and the Revd Jeremy Groombridge. Ms Davison is the Churchwarden of All Saints and Mr Groombridge is an Assistant Curate there. Canon Greenfield is Priest-in-Charge of the Sanderstead Team Ministry. The petition seeks approval for the removal of seven rows of pews in the north aisle of All Saints' Church, Sanderstead and their replacement by upholstered chairs.
2. All Saints', Sanderstead is a Grade I listed building. The Statement of Significance prepared by the Petitioners assessed the value of the interior of the church as High.
3. The DAC have recommended the proposals to the Court. Following the publication of the proposals by notice in the usual way, there were no objections. Neither Historic England¹ nor the local planning authority object to the proposals. However the Victorian Society have made an objection.
4. The Society accept that the replacement of the pews would not in itself be, in its words, *unduly harmful*. However it objects more strongly to what is proposed to replace the pews:
We take the point that the chairs are already in the possession of the church, and that no cost would therefore be incurred by introducing more of them. However we do not consider them to be suitable for a Grade I listed historic church interior. Their timber frames are jarringly pale, and their upholstering far from ideal. If the intention is to clear the aisle from time to time, how practical are these chairs? How heavy are they? How stackable, and to what height? Or would they simply be lined up in the manner of pews (with none of their aesthetic value)? There is available a number of good quality, timber framed, un-upholstered chairs suitable for historic church interiors. Not only are they appropriately designed and detailed, they are also sturdy, hard-wearing, light weight and safely and easily stackable to great heights.
5. The Society do not want to become a party opponent in this matter but I shall of course take its concerns into consideration in reaching my decision on the petition.
6. I have visited the church in connection with another petition some years ago; and my memory of it has been helpfully refreshed by photographs which have been supplied by the Petitioners.

¹ Historic England have commented on the proposals, as appears below.

The pews in question

7. Although they are not of any intrinsic artistic or historic merit, the pews are of oak and fit in well with the pews in the body of the church². The north aisle came into existence when the church was first extended shortly before the Second World War³ but the pews do not date from that time; they were introduced in about 1970. The Statement of Significance considers that their significance is low to moderate.
8. The font stands in the north aisle. The seven rows of pews are immediately to the east of the font. Until about 1990, there were three further rows of pews immediately to the west of the font. However in that year they were replaced with blue upholstered chairs of the kind with which the Petitioners now wish to replace the seven rows of pews.
9. The Church owns quite a number of the blue upholstered chairs of the kind which are at the west end of the north aisle and which are now in storage. They were originally used in the St Catherine's aisle (the extension of the church in 1980). I am satisfied that they are practical (in particular, that they are stackable) and would enable the area cleared of pews to be used flexibly.

Consideration

10. The Church want to remove these pews for what are familiar reasons – essentially to introduce flexibility into the way the church is used. In particular it will provide a cleared area which will facilitate informal use of the church by children. It will also facilitate the use of a beautiful building for concerts. These are valuable benefits.
11. In the circumstances, I think that, properly analysed, there can be no objection at all to removal of the pews unless indeed it be the case that no possible replacement could be as good as the pews that it replaces (which would seem unlikely). The concern is with the quality of the replacement. What the Victorian Society is saying is that the replacement will cause to harm to the interior.
12. The DAC consider that there will be harm but that it will be minimal. The Church's Inspecting Architect⁴ considers that there would not be any harm. Specifically, he has commented:
I do not have a problem with the upholstered nature of [the chairs] – the blue fits well and there is not too much upholstery.
13. It is well known that the CBC's general guidance is that upholstered chairs are not suitable in historic church environments⁵. Further in respect of this church and in the context of a complete re-ordering, the CBC had expressed the view that upholstered chairs were not appropriate. However in the context of the present petition, its advice was that the more limited pew removal reduced the impact on the building. While re-iterating its general advice it went on to say
... in this instance the Council did not think it was reasonable to ask the parish to remove its chairs and replace them with new ones⁶.

² A re-ordering which would remove all the pews in the church is under active consideration. However that proposal is not before me.

³ There was a further extension in 1980.

⁴ Tim Gough MA DipArch RIBA IMaPS MAPM.

⁵ See *Seating* (revised January 2017).

⁶ See an e mail dated 29 August 2018.

14. Historic England said

Historic England has no objection to the proposals for the north aisle ... We consider it important that the central body of the nave retains its historic pews but are less concerned regarding the significance of the north aisle benches.

In general we would normally object to the introduction of upholstered blue seating within a Grade I listed mediaeval church of this significance ... This is in part because the bold colour contrasts negatively with the character of the interior, and also because upholstered chairs are more likely to wear and stain and thereby reduce the sense of space synonymous with high quality craftsmanship built to last a long time. This is in keeping with the CBC's published guidance on church seating.

As the PCC already own the chairs and have done for some time I think it is reasonable that they can be used in the north aisle. However, we would encourage the applicants to consider upgrading this seating in the future to be better in keeping with the quality of the church building as a whole.

15. Like the CBC, Historic England adopt a pragmatic approach, recognising the fact that the Church already has upholstered chairs which it would like to use. However its comments perhaps suggest that the harm is greater than minimal, albeit it does not suggest that the harm is so great that the proposal should not be permitted⁷.

16. The Petitioners and the DAC make the further point that it would be harmful to the listed building to introduce a third type of seating into the church i.e. an un-upholstered chair in addition to the three rows of upholstered chairs and the existing pews. I see the point but even if good it seems somewhat unrealistic: one would expect the north aisle to be furnished **entirely** with un-upholstered chairs if it were otherwise appropriate that **some** un-upholstered chairs should be introduced. Of course, it would be expensive to provide the north aisle entirely with new un-upholstered chairs but the Petitioners have not argued that this would be ruled out on grounds of cost. (They have put the financial argument the other way round: to use the upholstered chairs which the parish already owns would result in a saving of £10,000).

17. Against this background, I turn to consider the *Duffield* questions⁸. These are as follows:

(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, 26–28, and the review of the case law by Bursell QC, Ch in In re St Mary's Churchyard, White Waltham (No 2) [2010] Fam 146, 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?

⁷ I note that in a letter dated 18 April 2018, the DAC advised the parish that it *encourage[d] long term, the PCC should aspire to dispose of these old chairs and replace them with a new type.*

⁸ As is well known, the *Duffield* questions are the questions which the Court of Arches suggests should be asked by Chancellors when considering proposals to alter a listed building. They were articulated in *In re St Alkmund, Duffield* [2013] Fam 158 (see para 87).

(5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *In re St Luke the Evangelist, Maidstone* [1995] Fam 1, 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 II*, where serious harm should only exceptionally be allowed.

18. I turn to consider each question in turn.

Question 1: *Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?*

18. In order to answer this question it is necessary to consider what the significance is of the church as a building of special architectural or historic interest.

19. The list description is as follows:

Medieval parish church with later additions. Flint with stone dressings. Three-bay nave of late C13, C14 chancel (restored 1832) and tower, north and south aisles, south porch. The tower is built in what was originally the west bay of the nave and rises one stage above the ridge. It is rendered with stone quoins and a small shingled broach spire. Two large buttresses to west wall. Tiled roof carried down over aisles. C14 wall paintings east and west of east window of King Edmund and an archbishop.

20. Thus in summary one may say that the building is mediaeval with later additions. As noted above, the significance of the interior is generally high. However no-one has suggested that the pews themselves are intrinsically of great significance.

21. Such harm that will arise, if any, is from the unsympathetic replacement of the pews which may impact adversely on the high significance of the interior.

22. I think that there is some harm from the replacement of the pews with the upholstered chairs.

23. Accordingly, question 2 does not arise.

Question 3: *If the answer to question (1) is “yes”, how serious would the harm be?*

24. This is a difficult question to answer in the abstract. The new chairs will be situated in the north aisle of the church (and not the main body of it); and there are already some upholstered chairs in the north aisle. It will have been seen that in Question 5 of the *Duffield* questions the Court of Arches said that serious harm should only exceptionally be allowed to a Grade I or Grade II* listed building. In *In re St John, Waterloo* [2017] ECC Swk 1, I said that *serious* had the force of *very serious* (and exceptional the force of *wholly exceptional*) (see paragraph 213). In the present case I do not think that the harm could be described as *serious* in this sense. On the other hand I think that it is more significant than minimal, a word which suggests a level of harm that may be disregarded altogether. I am generally sympathetic to the approach of Historic England, which identifies such a degree of harm that it would like to in due course to see reversed. I think that the harm is serious in the sense that it is significant but not serious in the sense of very detrimental. Moderate seems to me to be a good way of describing it.

Question 4: *How clear and convincing is the justification for carrying out the proposals?*

25. The justification for removing the pews and replacing them with chairs is clear and convincing. The justification for replacing them with upholstered chairs is less clear and convincing.

Question 5: Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *In re St Luke the Evangelist, Maidstone* [1995] Fam 1, 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 II*, where serious harm should only exceptionally be allowed.

26. It seems to me that the moderate harm is outweighed by resulting public benefit. However, a further question will arise in the mind of anyone who has read this far in the judgment. This is whether, notwithstanding this conclusion, it might still not be appropriate to require, as a condition of the grant of a faculty for the removal of the pews, that the pews be replaced by un-upholstered chairs. The result would be that the harm should essentially be **eliminated** by the imposition of an appropriate condition. In *In re Christ Church, Surbiton Hill*⁹, I said that in an appropriate case a condition which might reasonably improve a proposal might be imposed, even though the proposal itself was appropriately permitted by reference to the *Duffield* questions. However the basis for imposing such a condition in that case was not established because, had it been imposed, the viability of a scheme that was beneficial overall would have been jeopardised.
27. In the present case the justification for not replacing the pews with un-upholstered chairs is the fact that the church already owns the upholstered chairs and that to use them instead of buying new ones would avoid expenditure of about £10,000. The common sense of this in the circumstances persuaded Historic England and it also persuades me. Like the DAC and Historic England, I hope however that when the time comes to replace the chairs it may be possible to do so with un-upholstered chairs rather than upholstered ones¹⁰.
28. In conclusion, I come back to the strong presumption against proposals which will adversely affect the character of a listed building. Giving this due weight, the Court will not, in principle, want to permit **any** harm to a listed building that can reasonably be avoided. Doing the best I can, I have decided that the level of harm in the present case is not such that I should decline to authorise the pragmatic solution proposed by the Petitioners to the issue of the replacement of the pews, namely their replacement by chairs already owned by the church. Accordingly I direct that a faculty do issue, subject to the condition that the flooring works are to be completed to the reasonable satisfaction of the Church's Inspecting Architect.

PHILIP PETCHEY
Chancellor

12 October 2018

⁹ [2018] ECC Swk 2.

¹⁰ Looking perhaps far in the future, one can see that it might then be argued that the replacement of the upholstered chairs by upholstered chairs is not harmful. However reference might then be made to this judgment as providing justification for requiring un-upholstered chairs. I am not of course seeking to pre-judge any such case.