

IN THE COMMISSARY COURT OF
THE DIOCESE OF CANTERBURY

Petition No 0728

RE: PETITION IN RESPECT OF
HOLY TRINITY, SITTINGBOURNE

JUDGMENT

1. The Petition before me relates to proposed works at the Church of Holy Trinity, Sittingbourne (which I shall refer to as "the church"). I held a hearing at the church on 24th November 2017. At the hearing, the petitioners asked for time to consider whether to make any amendments to the petition. I directed that any such request should be submitted to the Registrar within 2 weeks. Following an application from the petitioners for further time, I allowed an extension of time until 22nd December 2017. I shall refer to this further below.

The church and its significant features

2. Holy Trinity is a Grade II listed church, dating from 1869.
3. As recorded in the Statement of Significance submitted with the Petition it is a Gothic Revival church built in the style of the late 13th century, and largely plain in design. It goes on to state that most of the fixtures are original to the Victorian church.
4. Of particular relevance to the present petition, the Statement of Significance notes that there are “a series of stalls with open traceried fronts and poppy-head ends, and pews made of pine, many of [which] still retain their Victorian numbering”. The stalls with the features referred to are the clergy and choir stalls.

5. It is also to be noted that the choir stalls were installed in 1919 as a memorial to parishioners who died in the First World War. The clergy stalls are of the same design and appear to be part of the whole.
6. A number of pews at the back of the church were removed in 2009 to create a circulation space with refreshment facilities. I note that the church was listed in 2010, shortly after this had occurred.
7. The clergy stalls were temporarily relocated within the church in 2016 under an Archdeacon's licence for temporary minor reordering, in order to accommodate plays and musical performances in the chancel.

The Petition

8. By their petition, The Revd Michael Johann Resch, Mr Robert James Groombridge and Mrs Anne Denise Sidney ("the petitioners") seek a re-ordering of the interior of the church to include the complete removal from the church of the pews within the nave, aisles and north chapel, and of the two relocated clergy stalls, referred to in paragraph 7 above.
9. The pews are intended to be replaced by metal framed chairs, photographs of which have been provided. Alterations to floor levels and the heating installation in the church are also sought.

Diocesan Advisory Committee's Views

10. The Diocesan Advisory Committee ("DAC") by advice dated 23rd March 2017 considered the proposal to be likely to affect the character of the church as a building of special architectural or historic interest, but recommended approval of all the works.

Objections

11. There were two objections received to the petition. The first was by way of e-mail from the Victorian Society dated 25th January 2017. This refers to the contribution the pews make to the feel of the building, and states that the metal framed upholstered chairs proposed would not be suitable. It indicated that it would not oppose the removal of the pews if appropriate wooden, unupholstered chairs were to be provided by way of replacement.
12. The second objection was by letter from Miss Sally Jenkins dated 25th April 2017 objecting to the removal of the clergy stalls and the pews from the church. This referred to what was described as the decorative

and pleasing carving on the clergy stalls, which is the same as that on the accompanying choir stalls and her research as a local historian which showed the stalls were dedicated as a whole by the Bishop of Dover in 1919 as a memorial to parishioners who died in the First World War, and to the value of the Victorian pews as being original to the Victorian church. She also referred to certain practical matters relating to the pews, and to the parish hall near to the church.

13. A response to the objections was provided by the petitioners to the Registrar on 6th June 2017. The only change put forward was from a red to a blue fabric for the proposed chair, pointing out the convenience and lesser cost of metal framed upholstered chairs. The response did not dispute anything said by Miss Jenkins (save for addressing a suggestion people would be unable to kneel in prayer if the pews were removed) but focused instead on the almost complete absence of objections from members of the church at a meeting in 2015 (or since) and the need for more useable space and flexibility within the church. No attention was given in the response to the effect on the character of the church as a building of special architectural or historic interest. As part of the response, it was said in relation to the reference made by Miss Jenkins to the nearby Parish Hall that, “The Parish Hall is, indeed, a Parish Hall and does not belong to the church. It is run by a board of trustees and is used by a number of groups from across the community. The church has no automatic right to its use”.
14. Miss Jenkins subsequently submitted further written representations on 30th October 2017, in response to my directions order of 16th October 2017. This amplified a number of points, including the availability of the nearby Hall on a practical level.
15. Sadly, Miss Jenkins died at the beginning of January, before this petition could be determined. I would like to record my gratitude to her, posthumously, for taking part in the faculty process and bringing relevant matters to the attention of the Court, though, as I told Mr Resch at the hearing, they were all matters the Court would have wanted to raise itself even if she had not done so.
16. Historic England made no objections to the proposals but appears to have misunderstood them to an extent in that its letter of 27th January 2017 refers to making permanent the relocation of the clergy stalls from the chancel, rather than the removal of them from the church altogether.

17. There are no objections to the levelling of the floor as such or to the replacement of the heating system, which are uncontroversial.

Applicable Principles

18. In terms of the effect of the proposals, if carried out, on the character of the church, what in summary I have to consider as set out by the Court of Arches in Re St Alkmund, Duffield (at paragraph 87), is, in the context of this case, 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 not, then the ordinary presumption "in favour of things as they stand" is applicable, but, generally speaking, that can readily be rebutted by reference to need for change;
- (3) If, however, the proposals would cause the harm I have referred to, how serious would that harm be?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) Bearing in mind there is a strong presumption against proposals which will adversely affect the special character of a listed building, would any resulting public benefit (including matters such as pastoral well-being, opportunities for mission, and putting the church to viable uses consistent with its role as a place of worship and mission) outweigh the harm? The more serious the harm, the greater will be the level of benefit needed in order for the proposals to be permitted.

19. If the final stage of weighing the balance is reached, I need also to consider whether the works would be readily reversible in the future and to what extent that helps in justifying any harm in the context of this case.

The Statement of Need

20. The Statement of Need describes the needs of the church, arising out of what is described as a recent church building survey, as being as follows:

- “(1) A better welcoming space and reception area;

- (2) Need to improve disabled access to modern standards;
- (3) Being more welcoming to wheelchair users by having a building that will work for them;
- (4) Seating needs improvement as the pews are too uncomfortable for conferences and long talks;
- (5) A creche area...;
- (6) Celebration of communionare in two places at the moment, we need to try to make these closer together;
- (7) More space for the worship music team;
- (8) More notice boards to help information and increase communication;
- (9) Some additional spot light for events where they are needed...;
- (10)To be able to use the church building for events such as quiz nights, barn dances and children’s clubs;
- (11)To have more space for our lunch clubs.”

Under the heading “What do we need?” it is stated “We can’t fix or do all these things but we do need to start somewhere. After much discussion and consultation we have come to the following conclusion: we need to replace the nave pews for comfortable and stackable chairs”. There is then reference to the need to accommodate more people within the church, including wheelchair users, to have more flexibility, and to improve safety, which is hampered by the hot pipes and plinths.

The Court’s Directions

21. On 16th October 2017 I gave directions which identified the following principal issues on which the Court required evidence to be filed: (a) the historical value of the pews and stalls, (b) the contribution, if any, of them to the character of the church, (c) the visual and practical effects of the proposal, and (d) the needs of the church forming the reasons for the proposal. I set out a timetable for the filing of witness statements, written representations, and any further comments the DAC wished to make in response or otherwise, and invited the DAC to consider whether it wished its chairman or someone else to give oral evidence at the hearing.

The Evidence

22. Witness statements dated 19th October 2017 were filed by The Revd Michael Resch (Team Rector), Mr Robert Groombridge (the second named petitioner), and Mrs Denise Sidney (the third named petitioner), which focused on the practical benefits to the church and the absence of adverse comment by the congregation.
23. At the hearing, I looked round the church building, and nearby Hall, accompanied by the petitioners and the Registrar and had relevant places and features pointed out to me. I then heard evidence on oath from Mr Resch, Mr Groombridge and Mrs Sidney. They each gave evidence on oath as set out in their witness statements and confirmed the statements made to me by them as we had gone round the church together and by way of answer to my questions. I shall refer to this in more detail below.
24. No-one from the DAC was present and, although given the opportunity to do so by my Directions, it had not added to its earlier brief advice of 23rd March 2017, referred to in paragraph 10 above, which simply recommended the approval of the works notwithstanding the effect on the character of the church.

Events following the Hearing

25. During the course of the hearing, I queried the need for the historic clergy stalls to be removed, and it was agreed by those present that there was no need for their complete removal from the church and that they could without any inconvenience be placed in the north chapel, where they would still be able to be viewed in conjunction with the other stalls in the adjoining chancel.
26. Following the close of evidence and representations, I suggested the pews may be regarded as of considerable significance to the character of the church in that, though simple, they were original Victorian pews with original Victorian numbering and features original to the church itself. Further, I suggested that whilst I was highly conscious of the needs of the church, the effect on character also needed to be considered and that it may be desirable to consider some arrangement less than total removal of the pews, though the needs of the church may at the same time mean that the removal of some of them may be justified. I suggested - which was intended to be by way of example - that this might be by means such as the removal of the pews from the

middle part of the nave, and a rear section of the aisle pews to the sides of it (outside the pillars), with the rest remaining, with some adjustment in their position. I also pointed out that in this particular church, wooden chairs may be regarded as more suitable than those currently proposed.

27. Though Mr Resch emphasised to me in emphatic terms that “The building is there to serve the church, not the church to serve the building”, I endeavoured to point out that the Court is required to consider character and needs by reason of the legal framework within it operates, though I am not sure I was entirely successful in conveying this.
28. I emphasised, however, that I was not determining the petition, and that these were only provisional views pending my full reflection on and consideration of the matter. These were not directions, but observations. The petitioners wished for time to reflect on matters and consider whether they wished to make any amendments to the petition, and I did direct they should have the opportunity to do so and that I would not determine the petition for a further two weeks, which period the petitioners subsequently asked I extend to the 22 December, which I did.
29. By letter dated 15th December 2017 the petitioners, through Mr Groombridge, have confirmed that they are prepared to retain the clergy stalls, re-sited within the church, but otherwise have indicated that - aside from forgoing blue fabric for the chairs and working with the DAC to achieve what they describe as a more subdued and less intrusive choice of colour - they wish their petition to be wholly unchanged, which they are of course fully entitled to do.
30. The letter is accompanied by what is described as a revised statement of need, which is a new document and begins with quotation marks around the phrase “Church buildings are to serve the church and not the Church to serve the buildings”. This sets out a number of reasons why the church requires flexibility (and, for example why wheelchair users ought to be able to be placed at the front of the church on occasions), though nothing which actually demonstrates a need to remove all the pews from the church. It does, however, state that it considers that moving the side pews in would “look a bit odd”. It also states that they are “mindful that Chancellor Eyre QC and Chancellor Turner QC treat the Church Buildings Council (CBC) guidance as such, that is, as guidance” in relation to wooden chairs, and says that

metal framed upholstered chairs would be cheaper, and more comfortable and convenient.

Discussion and Decision

31. As part of his evidence, Mr Resch accepted on oath, by way of confirming his answers in response to questions by me whilst walking round the building, that there was a close connection between the nearby Hall (which has kitchen and toilet facilities) and the church. Not only are the two physically close but in fact he, as the vicar, is the chairman of the trustees, and the trustees are closely connected to, and favourably disposed towards, the church. In practice there appears to be nothing precluding the church from booking events in the Hall, or making it difficult for it to do so, either as a standing booking for a particular day of the week or year or for particular events, though of course, if an advance booking by an outside group is accepted a long way in advance where there is not a booking already made, the church will have to work round that. No evidence was provided in the witness statements or otherwise of any problems that had ever actually been caused by the Hall being unavailable.
32. At the same time, though the Hall can clearly accommodate such things as quiz and curry evenings such as were referred to, I accept that holding events in the Hall (for example, refreshments or meals before or after carol services, or events for the homeless) is not, of course, the same as holding them within the body of the church, with the added significance that has, as well as potentially greater convenience and attractiveness. Obviously, so far as services themselves as concerned, it is plainly appropriate they be held in the church itself rather than anywhere else.
33. In summary, the nearby Hall gives the church added facilities and flexibility, though it plainly has limitations.
34. The church does, however, also already benefit from having an entirely flexible space in a substantial area at the back of the nave which has (non-upholstered) chairs in it. Again, I accept this has its limitations in that it is at the back of the church and is by no means so large as the rest of the nave, which does not benefit from such flexibility, and where wheelchair access, for example for participants in weddings, is difficult and services set around a central altar in the middle of the nave itself of the type Mr Resch wants to conduct on occasions, are not really practical.

35. In my judgement both the clergy stalls and the pews are of importance to the character of the church, and their removal would result in harm to it as a building of special historic interest. The DAC, though without elaboration, also considered this to be so in its Notification of Advice, which stands. In my judgement the importance of these features in this respect flows from the following matters.
36. The clergy stalls are contemporary with the choir stalls properly so called, and, as noted in the Statement of Significance, have poppy-end heads and traceried fronts, which are elegant. They also date from just after the First World War and are connected with the history of the parish in that there appears to be no dispute that they were provided as part of a number of stalls forming a memorial to fellow parishioners who lost their lives in that War, which is bound in with the history of the church in which these were placed. They also mark the importance members of the church placed on providing what the then Bishop of Dover hoped at the time would be “gifts...treasured in memory of those who gave their lives for their country and for you”, to quote from a contemporaneous press report.
37. The stalls have been moved to another part of the church under Archdeacon’s licence. As I have already noted, this was to enable the chancel to be used for performances. This, in my judgment, does outweigh the importance of keeping them in their original position as part of the rest of the memorial stalls, though Ms Jenkins suggested they ought to be kept in their original position. There is no evidence of any need to remove them altogether from the church, as indeed, the petitioners themselves accepted at the hearing. Accordingly, notwithstanding the recommendation of the DAC to allow the petition including this, there was and is no proper basis for their removal.
38. It follows that the petition as presented would be dismissed for this reason alone. However, from their subsequent representations I understand the petitioners would be prepared to amend this part of the petition to retain the stalls and relocate them in the north chapel, though they have not formally sought such an amendment, and following her death there is now no opportunity to consult Miss Jenkins in relation to it. Were this the only impediment to a Faculty being granted an amendment may well have been permitted however. However, for the reasons I shall now set out, it is not the only impediment and it would therefore be of no benefit to the petitioners to amend the petition in this limited respect (which, as I have said, has not formally been sought).

39. So far as the pews in the nave are concerned, I did not at the hearing direct there should be a further opportunity for the petitioners to submit further evidence or submissions in support of the petition. This they had a fair and ample opportunity to do in accordance with my directions order of 16th October 2017 to achieve the overriding objective laid down in the rules. The purpose of the adjournment was for them to consider whether they wished to amend their petition or not, not to provide further evidence in support of their case. Whether they wish to apply to amend the petition, and to what extent, is entirely a matter for them.
40. The DAC has by letter dated 14th December 2017 provided what it describes as a response to my directions, though in fact I merely directed a delay in the determination of the petition for the petitioners to decide whether they wished to seek leave to amend in any respect, as I have said. Had the petition been sought to be amended I would undoubtedly have wished to know the DAC's views in relation to that, but it has not been sought to be amended so far as the pews are concerned, which are all that the DAC in its letter comments upon, aside from now accepting that the blue upholstery proposed for the replacement chairs would be "visually incongruous". The DAC otherwise supports the petition, as it did originally, though without the comments contained in their letter of 14 December.
41. A note was also attached from Mr Nick Lee Evans, Inspecting Architect, who also supports the petition. This states, "Holy Trinity was only listed in 2010, when I understand there were some threats to the building. The Listing Description ...mentions the pews: 'The pews are of pine and have simple shaped ends of the rounded shoulder type and many of them still retain their Victorian numbering.' I query if the numbering is original and Victorian, as the style of lettering seems later and the paintwork seems too bright I am also surprised if a church established to serve the 'very poor brick workers of the town' collected pew rents when it was getting established". The DAC refers the Court to Mr Lee Evans' note, and appears to adopt it, though it elevates his query in relation to the numbering of the pews to being that "the numbering almost certainly post-dates them".
42. The Statement of Significance records that many of the pews "retain their Victorian numbering". The purpose of the Statement of Significance is, as set out Faculty Jurisdiction Rules, Rule 4.3(1), to describe,

“(i) the significance of the church or other building in terms of its special architectural and historic interest (including any contribution made by its setting) and

(ii) any significant features of artistic or archaeological interest that the church or other building has

so as to enable the potential impact of the proposals on its significance, and on any such features, to be understood”.

43. The Statement of Significance was no doubt prepared on an objective basis, regardless of whether it supported any particular proposal or not, in accordance with these rules. The views of the DAC and indeed of Mr Nick Lee Evans, who I know is rightly held in great respect as an architect, are worthy of full and careful consideration. However, I cannot accept that the raising of this query by Mr Lee Evans or the other points made (not previously made despite the directions order) displace the contents of the Statement of Significance in relation to the numbering of the pews or otherwise.

44. The pews though simple, are original Victorian pews in an original Victorian church, and are in my judgment of considerable significance to the church as a building of special historical interest.

45. In addition, I am not persuaded, on the basis of the limited comments made at this stage that they do not bear original Victorian numbering and other features.

46. Whilst I am highly conscious of the needs of the church, as set out in the Statement of Need and (though not permitted under the rules or directions of the Court) the “revised” statement of need, I do not consider that the entire removal of all the pews is necessary to meet them or that this would be justified.

47. I note the views of the DAC that the retention of the pews in the side aisles would be an inappropriate solution which would appear “visually idiosyncratic”. However, nothing said by the petitioners, either in general (though unspecific terms) in relation to numbers or in relation to the needs of the church as set out in the Statement of Needs or the “revised” statement of need, demonstrates to me that it is necessary for all the pews to be removed or that the retention of some of them, somewhere, would be either impossible, impractical, or of no value in terms of retaining at least a degree of their current contribution to the historical interest of the church whilst catering to a very large, and probably entire, degree for the church’s current needs

against which the effect of their removal on its significance is to be balanced.

48. In terms specifically of the principles laid down in Re St Alkmund, Duffield, the proposals, if implemented, would, in my judgement, result in considerable harm to the significance of the church as a building of special historic interest and any resulting public benefit would not in my judgement outweigh that harm, which would be considerable. As stated in Re St Alkmund, Duffield, there is a strong presumption against proposals which will adversely affect the special character of a listed building. It has not been shown that the bulk of the benefits, if not all, could not be delivered by something less than the entire loss of all the original Victorian pews albeit with the removal of some and the relocation of others.
49. If the final stage of weighing the balance is reached, it is also necessary to consider whether the works would be readily reversible in the future and to what extent that helps in justifying any harm in the context of this case. They would not be reversible in that as I understand it the proposal is to permanently dispose of the original Victorian pews, and whilst pews as a type of seating could be re-introduced, these particular pews, where the historical value to the church is as I have stated it to be, could not be, and this would not therefore overcome the harm caused by their removal.
50. I would add as a further matter, that I do not consider the replacement steel framed upholstered chairs would be likely to be an appropriate replacement for the pews in this particular church were they to be removed. I have taken into account in considering this aspect of the matter not only the Church Buildings Council guidance on seating (which of course I accept is only guidance, and which I treat as such, though it is statutory guidance which is entirely up to date and which the Court is required to take into account) but also everything said by the petitioners and others, and come to this conclusion having also viewed the church.
51. If any further petition is presented involving the retention of some pews, this aspect of the proposal will fall to be judged afresh on its merits in the light of that particular proposal, at that time, however, including where and how the seating is to be placed and where any remaining pews are to be, all of which will need to be viewed as a whole.

52. Finally in relation to this, I should mention that though there has been subtle reference by the petitioners to the removal of pews in the Cathedral and the type of chairs introduced there and elsewhere, it is to be pointed out that each church has to be considered on an individual basis having regard to its own particular character, and in this case in relation to the pews it must be borne in mind that the proposal is not for Victorian fittings to, for example, a mediaeval church, to be removed, but for original Victorian pews of the sort described in the Statement of Significance to be removed from a Victorian church where they are its original fittings contributing significantly to its historical interest.

53. For the reasons I have given, I dismiss the petition.

Costs

54. In relation to the costs of the petition, there are no formal parties to the proceedings other than the petitioners. There are therefore no inter parties costs to consider and I can only direct that the Court costs be paid by the petitioners. I have endeavoured to keep them to a minimum by avoiding anything other than paper directions, a half day hearing and view, and a written judgment.

STEVEN GASZTOWICZ QC

Deputy Commissary General

7th February 2018