

Neutral citation number: [2018] ECC Swk 2

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

AND IN THE MATTER OF CHRIST CHURCH, SURBITON HILL

AND IN THE MATTER OF A PETITION BY THE REVD JOHN BIRCHALL, ALISON WADIA
AND JAMES YELLAND

JUDGMENT

Introduction

1. This is a petition dated 14 March 2018 made by the Revd John Birchall, Alison Wadia and James Yelland, the Vicar and Churchwardens respectively of Christ Church, Surbiton Hill. The works proposed comprise a major internal re-ordering of the church, which I describe in detail at paragraph 10 below. The proposals have been developed by the Lee Evans Partnership¹, who are very experienced conservation architects. As set out below there has been consultation with the relevant stakeholders and extensive discussion of the proposals with the Diocesan Advisory Committee.
2. On 30 October 2017, the PCC unanimously resolved to apply for a faculty for the works.
3. At a meeting on 13 June 2017, the DAC considered the proposed works and (subject to a number of provisos) recommended them to the Court². The DAC considered that the works would be likely to affect the character of the church as a building of special architectural or historic interest and recommended that Historic England, the local planning authority and the Victorian Society be consulted. In fact, it need not have done this, since all these bodies had been consulted and had expressed views, which would have been before it at its meeting on 13 June 2017³.
4. Historic England had been consulted and welcomed the proposals⁴; similarly the local planning authority (the Royal Borough of Kingston upon Thames) had been consulted and had no objection⁵. The Victorian Society had been consulted and, while it welcomed the proposals in principle, had concerns about the details. In the light of the Victorian Society's concerns, I required them to be given special notice⁶. Following the giving of that notice, the Society has made further representations but it does not want to become a party opponent in the proceedings⁷. I shall of course take all the representations of the Victorian Society into account in reaching my decision on this petition.

¹ Nicholas Lee Evans is the Church's Inspecting Architect.

² The DAC had been involved with the development of the proposals from an early stage.

³ It is not necessary for the DAC to include a recommendation for consultation with amenity bodies with its Advice if that consultation has already taken place (see rule 4.5 (7)). The form does not have a box which could be ticked to explain that the reason for not requiring consultation is because it has already taken place and I think that the reason for recommending consultation in this case is likely to have been out of an abundance of caution, so that the input of the heritage bodies was not overlooked.

⁴ See its letter dated 21 February 2017 (Claire Brady, Inspector of Historic Buildings and Areas). It suggested one specific change and the Petitioners amended the proposals accordingly (see paragraph 10 below).

⁵ See an e mail dated 16 December 2016 from Elisabetta Tonazzi RIBA, Conservation Architect. Planning permission was required in respect of works to the southern porch and to provide the new north west window, which was granted on 12 April 2018.

⁶ See rule 9.3.

⁷ See an e mail dated 4 May 2018.

5. The petition was publicised in the usual way by notice⁸. The DAC recommended that notice of the petition be posted on the Diocesan website and this was done. No representations or comments on the proposals was received save those set out in paragraph 4 above.

The proposals

6. Christ Church, Surbiton Hill is a fine Victorian church in the Early English style which was consecrated in 1863. It was designed by Charles Lock Luck, a member of the congregation at that time⁹ who was also an architect and is notable for its polychromatic brickwork and painted roof, as well as some fine glass¹⁰. It is listed Grade II.
7. In 1971 there was a major re-ordering, following the sale of the church hall. Kitchen and toilets were provided at the west end, and office accommodation in the north aisle. Replacement hall provision was made at the west end of the church¹¹. The church was re-orientated so that the pews (made free-standing) faced north towards a dais on which the Holy Table was positioned. The chancel was used for storage.
8. These arrangements worked well but there were two disadvantages. First, the amount of space within the main church was significantly reduced. Second, the re-ordering was against the grain of the building. This was particularly unfortunate given that this was such a fine church. (This of course is not to say that the changes were not justified by the benefits that the scheme provided). Also, because the pews were retained, it was not in practice possible to use the space within the main church as flexibly as was ideally desirable.
9. Over the years, the re-ordered facilities became tired and the parish began to examine how its mission might best be facilitated in terms of possible changes to its church “plant”. It has progressed an exciting new re-ordering scheme of which the proposals I am asked to consider forms Phase I. (Phase II will address the hall accommodation at the west end of the church.) I should say at the outset that the cost of Phase I is substantial (in excess of £1M) and not all the money has been raised. However more than £1M **has** been raised, demonstrating the congregation’s commitment both to the mission of the church and this important building. I should also say that the congregation remain committed to the mission of the church beyond Surbiton Hill and Kingston and, in particular, have tithed the money raised for the project, thus assisting a church in Jinja, Uganda.
10. In summary, the proposals involve re-orientating the interior of the church on its original east-west axis (removing the existing dais and providing a new dais, appropriately located); removing the office accommodation in the north aisle; providing improved accommodation on two levels in the north east and south east of the church (ie the areas adjoining the chancel where currently there are rooms on one level) including a new north west window at ground level; providing an immersion font at the western end of the liturgical area; renewing the existing floor to provide underfloor heating and a new tiled floor; replacing the existing pews (and some chairs) with new chairs; improvements to the south porch (including new glass doors); improvements to the lighting and electrical systems; upgrading the audio-visual

⁸ See rule 6.1.

⁹ I derive this information from Pevsner (ie *London 2: South* by Cherry and Pevsner (1983)), and do not know where the congregation was worshipping before it moved into Christ Church. Luck was a pupil of George Smith and had worked in the office of Benjamin Ferrey.

¹⁰ The building history is interesting. First opened in 1863, it was extended in 1866, 1864 and 1871. I guess that at least some of these works were part of the original plan; a planned tower was never built.

¹¹ This is not affected by the works currently proposed. The Phase II proposals referred to at paragraph 9 below propose improvements to this area.

system; and minor modifications to access to the church at the west end. To facilitate the use of the re-orientated church, it was originally proposed to remove the low wall separating the nave from the chancel. After concerns were expressed about this by both Historic England and the Victorian Society, a compromise was agreed by which the wall is now to be reduced in length.

11. The benefits of the renewal of the church's plant that these proposals will bring about are self-evident. Clearly it would have been possible to produce a scheme which did this within the context of the existing north-south orientation but there would have been less usable space; and the new orientation facilitates the use of the church for concerts. As regards the loss of the office space in the north aisle, it has proved possible to replicate this within the improved accommodation in the north east part of the building. However the restoration of the east-west orientation is perceived by the Parish as being an intrinsic benefit. Thus the aim is to provide an inspiring building; with the best will in the world, one could not regard the way the building is laid out at present as inspiring. Although some congregations necessarily worship and meet together in buildings which cannot be described as inspiring, what these proposals are aimed at doing is utilising rather than obscuring what is already there, thus building on an existing resource. The building will become generally more attractive and more welcoming and it will be enabled thereby better to serve the congregation and the wider community

12. The proposed change is a huge benefit from the heritage point of view. It is always good when the interest of the development of the Church's mission coincides with that of the enhancement of the built heritage. In addition to the heritage benefits that I have already identified, the proposals will open up to view a window designed by Burne-Jones in the north aisle and the war memorial (both of which are currently hidden). There will also be this further benefit. In its representations, the Victorian Society took a point about the nave columns:

The nave columns, and certain other areas of dressed stone in the church, were painted with cream masonry paint in 1977 in an attempt to "jazz up" the interior. This has had a major detrimental impact on the coherence and visual integrity of the interior. We would like the parish to remove the masonry paint from the nave columns, which are of a beautiful pink Mansfield stone underneath. This should be perfectly possible, and would be the biggest step that the church can take to restore the building to its original beauty.

13. The Petitioners have agreed to do this.

Concerns

14. Against this background, the petitioners must feel some chagrin in that the Victorian Society, while supportive of the generality of the proposals, continue to object to certain details. Although I can appreciate the Petitioners' feeling, it is worth saying at the outset that there is no reason why, even though a person supports a particular scheme, he or she cannot reasonably object to details of it.

15. The Victorian Society have three remaining areas of concern.

16. The first relates to the tiling.

17. The existing floor covering is carpet. Dating from the 1970s re-ordering, it is laid on latex screed. The aisles were tiled, but the nave pews sat on a timber base. The original tiles are not

recoverable and it is evident that a new floor needs to be provided. The Petitioners propose a geometric arrangement of porcelain tiles produced by Domus. They are hard wearing and have a “through” colour so that if they chip or scratch they maintain their colour. These tiles are preferred to terracotta or encaustic tiles both on grounds of cost and also because, having inspected terracotta tiles installed in a neighbouring church in Kingston, the Petitioners are concerned about the difficulties of cleaning where there is a heavy footfall.

18. In a letter dated 23 May 2017, the Victorian Society commented

We think that the layout of the tiles is perfectly acceptable, and approve of the idea of using pattern and two tones to break up the floor; this is very much in the spirit of the polychromy of the original interior. However, we are concerned at the proposed use of porcelain tiles. We think that terracotta, brick pammets or encaustic tiles would tone much better with the natural, earth tones of the rest of the interior, and that this should be re-thought. There is a real risk of a sea of porcelain tiles appearing more like a very large bathroom or 1980s shopping centre rather than as an ecclesiastical interior.

19. In a second representation dated 4 May 2018, it said

... we regret the specific design of the proposed floor, which would be much improved were it to reference the configuration of the original floor and with the building’s inherent axiality. This would be easily achieved by a minor amendment to the design.

20. In a letter of response on behalf of the Petitioners dated 10 May 2018, John Minter RIBA CA of the Lee Evans Partnership said:

... I would contend that the PCC has allowed for a degree of axiality in the layout. The original central and side aisles will once again be visible as they will be marked out by the lighter tiles. The mission and liturgical needs as expressed in the Statement of Need are for a variety of seating layouts, predominantly facing east, but also allowing for services in the round and other events. Lengthy discussions with the DAC have brought us to this pattern which we believe achieves a very good blend of reflecting the original layout of east facing blocks of seating with central and side aisles, as well as allowing for other seating arrangements to work well.

21. As regards the use of porcelain tiles, Mr Minter referred to a letter which he had written to the DAC, explaining the Petitioners’ choice, as set out at paragraph 17 above.¹² He also expressed the view that, although much more expensive, encaustic tiles were not in fact much different to the porcelain tiles the Petitioners preferred.

22. The second concern is in respect of the chairs.

23. The chair that is proposed is a stackable Alpha 40/4 with an upholstered seat in a natural colour.

24. The Victorian Society commented on 23 May 2017 as follows:

The interior is defined by its palette of muted natural materials and earth tones. We are concerned that the bright shiny metal of the chairs proposed will strike an alien and discordant note. The rounded tops of the Alpha chairs proposed will unhelpfully draw attention to each individual chair when viewed en masse when compared with flat top chairs. We do not accept the need for upholstery in order to provide acoustic dampening in this

¹² It is dated 24 May 2017.

context; this is a church in which singing volume needs to be maximised rather than a restaurant in which sound needs to be dampened so that private conversations cannot be heard across the room. The softness of large amounts of upholstery is alien to what was designed as an urban church interior of hard, long-lasting finishes. There are further practical considerations such as the fact that upholstered chairs get dirty and stained, requiring regular cleaning, and that they also require periodic re-upholstering, all at significant cost. We would strongly advocate a well-designed timber unupholstered chair.

25. In a letter dated 23 March 2018, Mr Minter has responded to these points as follows:

“The interior is defined by its palette of muted natural materials and earth tones.”

We propose a chair colour that is in sympathy with the current colours of the church.

“The bright shiny metal of the chairs proposed will strike an alien and discordant note.”

The muted colours of the chairs will mean that the metal frames are scarcely visible when the church is empty and when the church is full of people, eyes will not be drawn to the frames of the chairs at all. We should also like to add that metal framed chairs are a common sight in many churches and cathedrals and, indeed, are to be found in Southwark Cathedral.

“The rounded tops of the Alpha chairs proposed will unhelpfully draw attention to each individual chair.”

We have not found a flat topped chair that meets our requirement of being lightweight and stackable.

“We do not accept the need for upholstery in order to provide acoustic dampening in this context.”

We maintain that there is a need for some acoustic dampening, particularly with the replacing of the current carpet with a tiled floor. Our context is one where the music is predominantly contemporary and led by amplified instruments. Each of the AV advisors that we have interviewed has raised concerns about the acoustics of the new building and has stated a preference for upholstered chairs.

There are further practical considerations such as the fact that upholstered chairs get dirty and stained, requiring regular cleaning, and that they also require periodic re-upholstering, all at significant cost. We are aware that upholstered chairs may need cleaning or periodic upholstery. The fact that these chairs are less than 1/3 of the cost of wooden chairs means that replacing worn chairs after a number of years is a real and affordable option would strongly advocate a well-designed timber unupholstered chair.

26. In a letter dated 3 May 2018, Mr Minter elaborated on the question of cost:

The Alpha SB2M comes at a cost of £51 per chair, whilst the Howe 40/4, a wooden variant cost £212 per chair (and this is similar in price to other wooden alternatives). If the Church were forced to buy 300 wooden chairs, there would be an extra cost in the region of £48,300 which is deemed prohibitively expensive.

27. I should add on this aspect of the matter that the Victorian Society also drew my attention to the Guidance Note on seating issued by the Church Buildings Council, which includes the following passage:

The Council’s experience is that wooden chairs have the greatest sympathy with historic church environments, present the best value for money with long life-spans, and that a well-

designed, ergonomic wooden chair can provide as much comfort as an upholstered design. Upholstered seats are not considered to be appropriate for the following reasons: they have significant impact in terms of colour, texture and character which is not consonant with the quality of a highly listed church ...

28. In referring to this passage, the Society emphasised the rubric included with that Guidance:

This guidance is issued by the Church Buildings Council under section 55 (1) (d) of the Dioceses, Mission and Pastoral Measure 2007. As it is statutory guidance, it must be considered with great care. The standards of good practice set out in the guidance should not be departed from unless the departure is justified by reasons that are spelled out clearly logically and convincingly.

29. The third concern is in respect of a new window in the north east elevation:

.. we would object to the use of double glazing. Here with the explicitly sham leading proposed, it could only appear inappropriate and detrimental to the character and appearance of the building¹³.

30. Mr Minter has responded:

It is hard to justify putting single glazed windows into a building that we are making more efficient to heat ... Furthermore, the window assembly in question will be installed in the north east room of the church to be used principally for children's ministry and thermal performance is paramount here. The window will not be visible from the road or other public space nor by the congregation in the nave.

He points out the use of "sham" leading comes about at the request of the local planning authority.

Consideration

31. I should begin with a legal point. I accept that the CBC Guidance on seating is guidance given by virtue of the duty of the CBC under section 55 (1) (d) of the Dioceses, Mission and Pastoral Measure 2007

... to promote, in consultation with such other persons and organisations as it thinks fit, by means of guidance or otherwise, standards of good practice in relation to the use, care, conservation, repair, planning, design and development of churches.

32. Evidently guidance under sub-section (d) coming from a body constituted of those with great expertise and experience in this field (as the CBC is) is entitled to considerable weight. Nonetheless it is not given any special status by the 2007 Measure and, in particular, that Measure does not establish a presumption that guidance issued under section 55 should be followed unless there is good reason to the contrary or a justification for departing from it is spelled out. This is so even though, if and insofar as I do not follow its guidance, I will explain why I take this course: the guidance having been raised by the Victorian Society, it is incumbent upon me to consider it and explain in my decision how I have done so.

33. It seems to me that a further legal point arises, which I should consider at the outset.

¹³ E mail dated 12 March 2018.

34. The Court of Arches suggests that the acceptability of proposals to alter a church should be assessed against the Duffield Guidelines, namely a series of five questions identified in *In re St Alkmund, Duffield*¹⁴. 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?

(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.*

35. Essentially, what the Guidelines do is provide a framework within which any harm that arises from a proposal may be assessed against the benefits of a proposal. In the present case, the only aspect of the proposals which may be described as harm is the removal of two short sections of the chancel wall, to which neither Historic England nor the Victorian Society object. I have no difficulty in saying that although there is a strong presumption against proposals which will adversely affect the special character of a listed building, any such modest harm is more than outweighed by the benefits of the proposals before me – looking at the matter both from a “heritage” and a “mission” point of view.
36. It seems to me that neither the replacement of the existing carpeted floor nor the provision of the chairs proposed to replace the existing pews can be described as harm; and the Victorian Society have not suggested that the installation of a new north-west window is intrinsically harmful. Moreover these particular proposals come forward as part of a package which will secure considerable heritage enhancements. There being no harm and substantial benefits from the proposals, it might appear to be self-evident that, applying the second *Duffield* question, the Petitioners’ proposals should be permitted.
37. I should say at once that I am going to permit the proposals as they stand. However I do think that more is involved than the application of the second *Duffield* question. Let me explain what I mean.
38. It is possible that the Victorian Society disagrees with my view of the matter and does indeed consider the proposed new tiles and chairs as resulting in harm. However the thrust of its point stands whether they do or not: what it is saying is that the scheme could be made better if its objections were heeded and changes made to it.

¹⁴ [2013] Fam 158.

39. It seems to me that where an objector is proposing what he considers to be improvements to a scheme which is beneficial, the second *Duffield* question does not exhaust the Chancellor's proper consideration of the matter before him. That question addresses the core issue of whether permission ought or not be permitted. It does not address the question of what conditions are appropriately imposed upon such a permission. It seems to me that, in that regard, the test for the Chancellor is essentially one of reasonableness: whether in the circumstances it is reasonable and appropriate to require the proposals before him to be modified by way of condition. I can test whether it is appropriate to ask this question by reference to a proposed improvement that either would not increase the cost of the scheme or perhaps would even reduce it. It seems to me that it would be absurd not to require what I was persuaded was an improvement which was cost free. Of course once one is looking at improvements that impose additional costs, careful consideration must be given as to whether it is reasonable to impose those additional costs and the point may be made that the viability of the scheme may be imperilled if costly additional requirements are imposed. But I do not think that as a matter of principle a condition to a scheme requiring a change which might impose additional costs is ruled out.
40. It is against this background that I shall now consider the substance of the Victorian Society's objections.
41. I note first of all that the Victorian Society are not a party opponent and that there has not been a hearing; it would not in the circumstances of this case been reasonable or proportionate to require a hearing. In the absence of sworn evidence and cross-examination, I must make my assessment on the basis of the written material before me. I also note that context is given to the remaining objections of the Victorian Society by a recognition that the most important of their concerns (the paint on the columns) has been met¹⁵.
42. As regards the tiles, I do not really understand the Society's point about their layout; and certainly at one stage it was satisfied as to the layout. This is a matter the Petitioners have gone into in detail with the DAC and I am not persuaded that anything further needs to be done.
43. As regards the material of which the tiles are made, the Petitioners have discussed this at length with the DAC. Their choice of porcelain tiles is dictated both by the physical quality of the tiles that they prefer (durability and ease of cleaning) and cost. The Victorian Society have not made any submissions about these points. Even if in appearance they are not quite as good as encaustic tiles (not a matter which Mr Minter expressly concedes), the DAC have recommended the Petitioners' proposals to me. In this context I am not persuaded of the Victorian Society's point.
44. As regards the chairs, I have carefully noted what the CBC says in its Guidance. It seems to me a counsel of perfection, albeit it points out that the wooden chairs that it prefers should last longer than metal alternatives¹⁶. The reason why I say that the Guidance seems to be a counsel of perfection is that in this particular case the price disparity between the Alpha and the alternatives is so great. Further, I also note in the reference to the visual impact of upholstered chairs, the Guidance does refer to the quality of a highly listed church. It evidently has in mind churches which are listed Grade I or Grade II*. Christ Church is Grade II. In the context of the present case, I think that the aesthetic benefits of wooden chairs

¹⁵ See paragraph 12 above.

¹⁶ I have some reservations about this if the chairs are frequently moved but in any event a lot obviously depends on the particular chair being considered. I have put my reservation on one side in considering the petition now before me.

(which as a generality I accept), are not as great as the representations of the Victorian Society would suggest.

45. As regards the needs of the parish, although the Victorian Society questions whether there is an acoustic benefit from upholstered chairs, this is the advice that the Petitioners have been given and the Victorian Society have not produced material to the contrary.
46. It seems to me that if I were to permit the re-ordering should go ahead - but only on the basis of the provision of wooden chairs - there is a strong likelihood that the scheme would not go ahead at all and the heritage and other benefits which it provides would not be secured. This is because it would be too expensive.
47. In these circumstances it does not seem to me that it would be reasonable or appropriate to require by condition a different sort of chair to be provided as part of the scheme.
48. As regards the north-west window, I find Mr Minter's reasoning compelling.
49. Accordingly I direct that a faculty shall issue in the terms as prayed. This is an exciting project which has been well-thought through. I hope that it is a great success. The faculty will be subject to the following conditions, which reflect the DAC's advice:
 - the detailed specifications for the heating system and AV system upgrade are to be agreed with the DAC;
 - the details of the tiling layout are to be agreed with the DAC;
 - the work is to be completed to the reasonable satisfaction of the Church's Inspecting Architect.

In the event that agreement is not achieved with the DAC on any relevant matter, the matter is to be referred back to the Court. The works are to be completed within three years of the issue of the faculty.

50. The particular reason for the tiling condition is a concern of the DAC as to detailing of the tiling around the edges of the baptistery. I think that, given its general concerns, it would be appropriate for the Victorian Society to have the opportunity for further comment, although I do not intend this to be the occasion for the design to be generally revisited. The Petitioners should send to the Society a copy of the details that it submits to the DAC.

PHILIP PETCHEY
Chancellor
25 June 2018