

**IN THE CONSISTORY COURT
of the DIOCESE OF LIVERPOOL**

IN THE MATTER OF ST MARGARETS OF ANTIOCH TOXTETH

AND IN THE MATTER OF AN APPLICATION FOR A FACULTY FOR PEW
REMOVAL

JUDGMENT

1. The petitioners seek a faculty for the removal of pews from the nave of St Margaret's of Antioch in Toxteth, Liverpool. It is a grade 2* listed building. Whilst there has been no formal objection to the petition, because concerns have been expressed as to the provenance of the pews, and whether or not they were installed at the time of construction, and thus of historic interest to the architecture, I propose to provide reasons for my determination in this short judgment, having had an opportunity to visit the church, to meet with the priest in charge, the Reverend Canon Bob Lewis, and the churchwarden, Mrs Marion Cobner. The purpose of the visit was to inspect the pews for myself, and the church interior, and to discuss with the petitioners whether or not some accommodation could be made to meet the concerns raised by the Victorian Society.

2. Since that meeting, and because it was suggested that the statement of need was lacking in detail, Mrs Cobner has by email sent me further information which I have considered, and which I shall refer to below.

3. St Margaret's is an impressive and imposing church with a richly painted interior, designed by the Victorian church architect, GE Street, and financed by a famous and wealthy local family responsible for many churches, the Horsfalls, in an Anglo-Catholic tradition. It has marble columns supporting arches, and large sections of decorative tiled panelling and mosaic features to the walls, with an expansive tiled floor. The pews themselves occupy only the middle section of the nave between the central columns, although it is quite possible that at some stage in the past they extended across the full width of the church. They comprise simple movable

benches without any decorative or carved features, but with slightly unusual side panels, and giving a general appearance suggestive of belonging to the Victorian era, and not being later additions.

4. Although the view of Historic England is that the pews were probably not those originally commissioned or designed by Street, and thus not integral to the historic or architectural aspect of the building, the opinion expressed by Mr Hughes from the Victorian society differs, and he believes that the benches are typical of those introduced by Street into his churches, and instructive of the way the architect approached the design of congregational seating where there was a large and elaborate interior, and where the furniture and fittings were intended to be subservient to the rest of the interior, so as not to detract from its splendour. From my inspection, it is fair to say that they are not in a particularly good condition, certainly not ergonomically comfortable or efficient, but certainly simple in form.

5. The intention of the petitioners is that the pews should be replaced by approximately 120 chairs donated from the Anglican cathedral in Liverpool, and designed for use in worship. This would enable flexibility in the nave which cannot be achieved by the current benches; although they are movable, they are extremely heavy and time-consuming to shift, and would not allow chairs to be used alongside whenever there was an opportunity for a community or performance event which would have the potential to generate income for the church.

6. In terms of its recent history, until approximately six years ago, the church was in steady decline, and was in danger of becoming redundant with a modest congregation who had no use for such a large and expensive building. Although grant-aided funding has enabled some of the interior to be maintained and to ensure that the worst dilapidations were avoided, it is clear that there is much work still to be done, which in terms of such a splendid example of Victorian church architecture would certainly be justified, assuming that there was a continued and viable use. Happily, over the past few years a new and interested congregation has developed, with a vision for community outreach whilst providing a refuge for those who prefer a more Anglo-Catholic form of worship. There are a number of activities currently undertaken, including the hosting of food banks, messy church, arts projects, plays and concerts. Many more are planned, and it is hoped that the church could be used for events which would support the diverse ethnicity within the Toxteth community, hosting, perhaps, Afro-Caribbean weddings which

usually are very well attended. Thus a church in decline is now moving forward, and has the potential to develop its congregation, and to pursue its local mission.

7. The question to be determined on this petition is whether or not the removal of what may well be original pews, albeit those which are not fixed to the floor would affect the architectural or historic aspect of the building. It is a narrow question, and clearly depends on whether the pews are those originally commissioned and designed by Street, or whether they are subsequent additions.

8. This question is virtually impossible to resolve on the present evidence, with a divergence of opinion. Accordingly, I have decided to err on the cautious side, and to assume that they are original Street pews, intended, as Mr Hughes says, to provide a contrast to the rich and elaborate interior of the church, to ensure in their simplicity that they did not detract from the architecture and the liturgical focus which it provided.

9. This involves the so-called Duffield questions which were commended as an approach by the Court of Arches in **Re St Alkmund, Duffield [2013] Fam 158**, and represent an approach now followed almost invariably.

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] 7PD 21 26-8**, and the review of the case law by Chancellor Bursell QC in **In re St Mary’s White Waltham (no2) [2010] PTSR 1689** at para 11). Questions 3, 4 and 5 below do not then 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, 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.*

10. If these questions are addressed, there is a framework provided within which any harm caused by the building alterations may be assessed against the benefits which are achieved by those alterations. Essentially this involves a balancing exercise.

11. In answering the first question, I am inclined to the conclusion that the removal of the bench pews would not result in any particular harm to the significance of the building and its special architectural or historic interest. The pews were originally designed to be movable, and although they may well have provided a compliment to and a contrast from the elaboration of the interior, if they were never intended to be fixtures, there could not have been an anticipation of permanence. In any event, the fact that they contain no special elaborate or decorative features supports a conclusion that it was intended through evolution of the interior space that adaptations would be made as needs and requirements of the worshipping congregation changed with the passage of time. If there is a significance in the attribution of the pews to the original architect, it seems to me that the expressed intention of the petitioner to retain at least six of the pews of shorter length, and two to four of the pews of longer length would provide a sufficient acknowledgement of the original architectural feature for future generations. The sensible suggestion of using six pews in front of the altar in the lady chapel would clearly satisfy this intention, without intruding into the larger space in the nave, in which it is intended that the chairs should be placed.

12. Even if the first Duffield question was answered positively, this is a case where I have little doubt that the substantial benefit which would accrue to the church is having a versatility and flexibility in the worship area for other uses, thereby generating income to preserve this old historic church easily outweighs the very minor harm which would be caused by moving the pews from the nave, disposing of the majority of them, but retaining some in the lady chapel. The statement of need, and the additional evidence from Mrs Cobner suggests that without an opportunity to use the large space within the church for modern community purposes, including those not just associated with worship and the mission of the church, the prospects of reversing the decline of previous years would diminish, income would be lost, and a real risk would rise that St Margaret's could not be maintained and its magnificent interior improved.

13. A further feature is that because of the current layout of the church, the only catering and sanitary facilities are in the adjacent and attached vicarage, which is empty and has been for many years. It is the intention of the diocese, as I understand it, to arrange the sale for development of the vicarage, which would mean that the church must depend upon using its large public space to provide areas where refreshments could be served, and toilet provision made. This would be impossible if the benches were retained and required to be stored in areas where people would congregate after services or events.

14. Thus, on the assurance of the petitioners that some of these pews will be retained, whether or not they are original Street pews, I am satisfied that this is an appropriate case where a faculty should be granted. I propose the following conditions.

15. (a) First, that at least six of the pews of shorter length are retained for congregational use in the lady chapel or elsewhere (I note that there is another small chapel close to the vicarage, and beyond the vestry).

(b) Second, that four of the longer pews (I believe there are currently about six) are retained and used as benches along the north and south walls of the nave.

(c) Third, that such benches that are disposed of are either donated to church members, or sold through a reputable company specialising in the sensitive sale of church furnishings and fittings.

16. It is also a condition of the faculty that the work is carried out within six months from the date of grant.

His Honour Judge Graham Wood QC

Chancellor of the Diocese of Liverpool

7 July 2019