Neutral Citation Number: [2019] ECC Lic 7

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

WELLINGTON: ALL SAINTS

JUDGMENT

1) The church of All Saints in Wellington has a grade II* listing. It was built in 1790 and underwent major reorderings in 1898 and 1990 with significant changes also taking place in 1930 and 1955. Much of the original interior furnishing has been changed or removed. The current pews were installed in 1898. The 1990 reordering included the carpeting of the church and the pews were then lifted from their pew platforms. Most of the pews are static resting on the floor but a number of rows of pews have had castors placed on them. To that extent they are mobile although their weight and size means that moving them is not an easy matter. The church already contains a number of chairs of different types. The 1990 faculty had authorised the removal of most of the pews and the introduction of 100 chairs. However, as implemented the 1990 works retained most of the pews and introduced a total of just over 40 chairs. The chairs in the chancel for the clergy are wooden and unupholstered with high backs. There are about 20 chairs with wooden frames and upholstered seat pads (but unupholstered backs) and a number of wholly unupholstered chairs. The chairs are in various parts of the church: at the front of the south aisle; at the rear of the church; and in side rooms. Despite the presence of those chairs the church remains predominantly pewed with pews in the nave, both aisles, and in the galleries.

2) All Saints is a lively church with large attendances and ministering to a variety of ages and needs. It is in the centre of Wellington and seeks to operate as a civic and community church serving the growing population of that town.

3) The vicar and churchwardens petition with the support of the Parochial Church Council for a faculty authorising the removal of the first four rows of pews on either side of the nave and their replacement by chairs. The chairs for which permission is sought are to be bespoke versions of Winscombe chairs – they are to have wooden frames with upholstered seat pads and backs in dark red fabric.

4) The Diocesan Advisory Committee did not recommend approval of the petition and both Historic England and the Georgian Group have expressed objections in the terms I will consider below.

The Procedural History.

5) There was no response to the public notice and neither Historic England nor the Georgian Group chose to become a party opponent. I concluded that it was expedient to determine this matter on the basis of written representations and a site visit and the Petitioners consented to that course.

The Petitioners' Case.

6) The Petitioners seek to remove the first four rows of pews on either side of the nave but to leave in place the six rows behind those and the pews in the north and south aisles. The principal reason for seeking this permission is with a view to enabling flexibility in the use of the church and to facilitate involvement of children in the life of the church. The Petitioners explain that the church has "a thriving children's ministry and when children are welcomed into the nave during worship services they are encouraged to move, dance and physically join in with the worship. The presence of the pews significantly limit the space available for this and, when a service of Holy Communion is being celebrated, the children must be moved out of the area in order to allow communicants to enter it. This causes confusion and distracts from the worship."

7) In addition as part of its ministry and mission to the local community the church seeks to host festivals, exhibitions, concerts, and similar events. The availability of an open space at the front of the nave would provide a setting for such events. Space can be created at the front of the church by the movement of those pews which are on castors. However, notwithstanding the presence of the castors those pews are heavy and cumbersome. It follows that their movement is by no means an easy exercise. Moreover, unless they are moved out of the church to the parish rooms some little way away (a substantial undertaking) they are moved to fill up the space between the south aisle and the nave and thereby substantially minimise the use which can be made of the south aisle seating. The difficulty in moving the pews and the space which they take up when moved means in the submission of the Petitioners that they are moved less often than would be desirable and so the

activities which would take place in an open space at the front of the nave do not take place or take place less often than they otherwise would or in a more constrained way.

8) The Petitioners also point out that wheelchair users are not able to use the pews. A number of wheelchair users attend the church and currently they station themselves at the front of the south aisle and those accompanying them sit on chairs which are also positioned in front of the pews in that aisle. The Petitioners describe this as being undesirable because it confines wheelchair users and those with them to a particular part of the church which is to some extent out of the body of the congregation.

9) The Petitioners make some reference to the fact that the pews are not comfortable for sitting on for long periods. However, it is clear that this is not the major motivation for the petition. It is not a prominent feature of the Petitioners' submissions and it is to be noted that even after the introduction of the proposed chairs the majority of the seating in the church will be by way of pews. The Petitioners deliberately have not sought to replace all the pews with chairs. That is because to do so would lead to a reduction in the seating capacity of the church and All Saints is in the fortunate position of being full on a regular basis and so needing the greater capacity that is provided by pews as opposed to seats.

The Objections.

10) The Diocesan Advisory Committee did not recommend approval. The Committee explained that it did not believe that the health and safety element of the Petitioners' contentions had been made out. The more significant feature in the Committee's reasoning was that it felt that the design of the proposed chairs was not appropriate for this listed church and would be harmful to its character. In that regard the Committee noted that the Petitioners had not followed the best practice for seating in churches as set out in the Church Buildings Council's guidance note on such seating.

11) The Committee's notification of advice had been followed by a site visit in November 2018 with a view to finding alternative ways of meeting the parish's needs. After that visit the Committee had recommended that consideration be

given either to further modifying the pews to make them more comfortable and more readily mobile (perhaps by an upgrading of the castors) or to a scheme based on using unupholstered chairs either akin to the clergy seating in the chancel or to the other unupholstered chairs already in the church.

12) The representative of Historic England participated in the Diocesan Advisory Committee's consideration of this matter and in the site visit. Following that visit Historic England indicated that it supported and agreed with the views of the Committee. Historic England described the proposed upholstered seating as "somewhat undistinguished" and domestic in appearance and concluded that it would not fit readily in the church where despite the various changes which have occurred much of the historic fabric and, perhaps more important, an "overall sense of carefully considered quality" remains. Historic England echoed the views of the Diocesan Advisory Committee in urging consideration of the Church Buildings Council advice and recommending the Petitioners bring forward proposals based on unupholstered seating.

13) The Georgian Group takes the view that "very little of the original decorative scheme now survives within the principal worship space." For that reason it does not object to the removal of some of the 1898 pews and is content to defer to the Diocesan Advisory Committee in respect of the details of any proposed replacement. However, the Group did express the view that "it is important that any new furnishings introduced to the church are of a coherent high-quality design …".

The Petitioners' Response.

14) The Petitioners have provided a response to the comments of the Diocesan Advisory Committee and the other bodies. This is clearly the product of a deal of hard work and addresses in some detail the impracticability of making any significant improvement to the mobility of the existing pews. However, sadly its treatment of the question of the choice of replacement chairs is rather less detailed. It explains that there has been investigation of the possibility of having chairs replicating the clergy seating in the chancel but that these would be expensive and difficult to move. It is said that having unupholstered chairs would "be a retrograde step". This is said to be because the members of the congregation "are already accustomed to the comfort of the pew cushions on the existing pews." In that regard

I noted on my site visit that the pews have cushions on the seats but the backs are unpadded. The Petitioners proceed to say that "a padded deep back [is] desirable for those with back problems" but no detail of the reasons for this conclusion are given.

15) It is of note that the Petitioners give no indication that they have considered or engaged with the guidance of the Church Buildings Council in respect of seating notwithstanding the repeated references which the Diocesan Advisory Committee and Historic England have made to this. Similarly the Petitioners give no detail about what other types of chairs have been considered nor of the alternative costs involved or the reasons for preferring the chairs which are proposed.

The Applicable Principles.

16) I have already said that All Saints is a listed church and that the proposed works will lead to an alteration in its appearance. Therefore, I am to have regard to the guidance laid down in *Duffield: St Alkmund* [2013] 2 WLR 854. That requires the following questions to be addressed in respect of alterations to listed churches.

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

b) If not have the Petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted?

c) If there would be harm to the significance of the church as a building of special architectural or historic interest how serious would that harm be?

d) How clear and convincing is the justification for carrying out the proposals?

e) In the light of the strong presumption against proposals which will adversely affect the special character of a listed building will the benefit outweigh the harm?

17) In considering the last question I have to bear in mind that the more serious the harm the greater the level of benefit needed before proposals can be permitted. I

also have to bear in mind that serious harm to a church listed as Grade I or Grade II* should only be permitted in exceptional cases.

18) Where it is established that works of a particular kind are needed and that the benefit to be achieved justifies harm to the church's special significance the rationale of the *Duffield* approach still requires that the works permitted must only those which cause the minimum harm to that special significance which is consistent with producing the benefit in question. In determining a faculty application the consistory court must address the petition before it and consider whether the proposals it contains are permissible. It is not normally relevant that an alternative proposal might be preferable. The general rule does not, however, mean that when considering the balance between the harm caused to the special significance of a listed church by particular proposals and the benefit to achieved the court is to ignore the question of whether the same benefit could be achieved in a less harmful way. Indeed, in many cases it will be necessary to consider that question in some detail. That is because if a desired benefit can practicably be achieved in a way which causes less harm to the special significance of a church than the works proposed by a petitioner it will follow that the petitioner in question will not have shown that it is necessary to undertake those works (or to undertake them in the proposed way) to achieve the benefit. In such cases and saving exceptional circumstances the proposed benefit cannot be said to outweigh the harm to the church's special significance which would be caused by the proposed works and such works could not be authorised.

Discussion.

19) I am satisfied that a case of appropriate strength has been made out for the proposed removal of four rows of pews. I accept the mobility of those pews which are on castors is notional rather than real in that they are not readily movable and even when moved they take up considerable space in the church. I also accept that the facility to create an open space at the front of the nave will be a real benefit in the life of this church. That facility can be provided by the installation of chairs in the place of the existing pews. Chairs will be more readily movable and when not in use can be stacked so taking up markedly less space than the pews. In those circumstances I accept that to the extent that the removal of four rows of pews will

cause harm to the special character of the church the benefit to be achieved very substantially outweighs that harm. In that regard it is of note that the pews were not part of the original furnishings of the church but were added in 1898. Moreover, even after the proposed removal the majority of the pews will remain.

20) The question of whether the use of the proposed chairs can be permitted is a much more difficult one.

21) In *Holy Trinity, Long Itchington* [2016] Ecc Cov 7 I referred to the Church Buildings Council's guidance note on seating in churches. The guidance note explained why it will normally be preferable to use unupholstered rather than upholstered seating in a church (the current guidance note is in similar terms to that which I considered there). In that case I concluded that the preferences of the petitioners and the Parochial Church Council could not prevail over the concerns of expert opinion in a case where the objectives of the proposed reordering could be achieved without the use of upholstered chairs.

22) The questions of the nature of the Church Buildings Council's guidance and of the weight to be attached to it were considered in detail by Bullimore Ch in his judgments in *All Saints, West Burnley* [2017] Ecc Bla 6; *St Stephen, Burnley* [2017] 7; and *All Saints, Higher Walton* [2017] Ecc Bla 9. Bullimore Ch concluded that the guidance could not automatically "trump" the wishes of a petitioner and that proposals apparently contradictory to that guidance would still have to be considered on their merits.

23) Bullimore Ch is clearly right to say that the guidance cannot be automatically conclusive and that care has to be taken in assessing its relevance in a particular case. However, in my judgement it remains a very material consideration. In this regard it is to be remembered that the guidance is considered guidance provided by a body constituted under Measure in circumstances where its membership is required to include persons with relevant expertise and where it is charged, inter alia, with the obligation "to promote… by means of guidance or otherwise, standards of good practice in relation to the use, care, conservation, repair, planning, design and development of churches" (see Dioceses, Pastoral and Mission Measure 2007section 55 (1)(d)). The guidance provided by the Council is

likely to be of particular significance in the case of a listed church as part of the assessment of whether the proposed works cause more harm than needs to be caused to the special significance of a church in order to achieve the benefit being sought. As explained at [18] above this will often be an essential part of the analysis of a proposal affecting a listed church. The guidance of the Council that well-designed unupholstered chairs can be as comfortable and enduring as upholstered ones (and sometimes more so) while having less impact on the character of a church can be of particular relevance in that regard.

24) In light of that it will normally be necessary for a petitioner seeking permission for a chair of a kind not advocated by the Church Buildings Council to explain why it is said that a chair of a kind which is advocated by that Council is not suitable and why it would not be practicable to achieve the desired objective of the proposed reordering by using such a chair. In some cases a petitioner will be able to provide such an explanation and it will then be appropriate for permission to be given but in others a petitioner will not succeed in doing so. Thus by way of example in *St Anne, Aigburgh* [2019] Ecc Liv 1 and *Holy Trinity, Sittingbourne* [2018] Ecc Can 1 Wood Ch and Gasztowicz Dep Ch respectively refused faculties for upholstered seating an adequate case not having been made out. Conversely in *St Mary Magdalene, Ashton upon Mersey* [2016] Ecc Chr 1 and *St John the Evangelist, Killingworth* [2017] Ecc New 2 Turner Ch and Duff Ch respectively granted faculties for such seating. I reverted to the question of the seating in Holy Trinity in *Holy Trinity, Long Itchington* [2018] Ecc Cov 3 where I amended the earlier faculty to permit seats with an element of upholstery after there had been further investigation involving a detailed consideration of different kinds of chairs and costings and a revision of the proposed type of chair to propose a chair with a markedly greater element of timber framing than had been originally put forward.

25) In the current case the Petitioners do not appear to have engaged with the Church Buildings Council guidance despite having been referred to it. They also do not appear to have really engaged with the concerns expressed by the Diocesan Advisory Committee and Historic England about the chairs proposed but instead they have sought to demonstrate the flaws in the alternative courses which those bodies suggested.

26) Even without reference being made to the Church Buildings Council guidance I would have to attach considerable weight to the views of the Diocesan Advisory Committee and Historic England on matters of aesthetics. That weight is increased when those views coincide with guidance from the Council. In passing I note that the good sense of some aspects of that guidance became apparent on my site visit. As I have already explained some chairs with upholstered seat pads were introduced in 1990 or shortly thereafter. The chairs proposed by the Petitioners are to be of the same colour as those already in the church but the latter (or at least some of them) have faded so that the chairs will appear different in colour.

27) I remember the caution which chancellors must exercise in taking account of their own non-expert assessment of matters of aesthetics. Nonetheless the impression I formed on the site visit accorded with the views of the Diocesan Advisory Committee and Historic England. It did indeed appear that the proposed chairs with upholstered backs and seat pads would strike a discordant note. The bulk of the pews will remain and the proposed chairs would be in front of those pews in the nave and alongside those in the aisles. The pews have unupholstered backs and I can readily accept that in those circumstances a block of seats with red upholstered backs immediately in front of and alongside those pews would create an unsightly impression.

28) I have concluded that the proposed chairs would have an adverse impact on the appearance and special character of this church by reason of the upholstery on them and in particular the presence of upholstered back pads. The following factors mean that this adverse impact cannot be said to be justified by the benefits sought to be achieved:

a) The assessment by Diocesan Advisory Committee and Historic England that those same benefits being capable of achievement by different seating which would not have the same adverse impact.

b) The support which that assessment can derive from the considered guidance of the Church Buildings Council.

c) The marked failure of the Petitioners to engage with the Church Buildings Council guidance or to explain in any detail the case for saying that the

proposed chairs are the only or even the best practicable means of achieving the desired benefit.

Conclusion.

29) In those circumstances the faculty in the form currently proposed must be refused. As explained above I accept the removal of four rows of pews is appropriate. I give permission to the Petitioners to apply to amend the faculty to propose a different kind of chair. In the event of such an amendment the matter is to be referred again to the Diocesan Advisory Committee with a view to considering whether it is prepared to recommend approval with a subsequent reference back to me but there need be no further public notice or other consultation. I hesitate to prejudge any assessment by the Committee of any such revised proposals and I am certainly not giving a direction either to the Petitioners or the Committee but it might assist if I indicate the impression formed on my site visit. This was that chairs with upholstered seat pads but unupholstered backs might have a materially less significant visual impact than the proposed chairs with upholstered backs. In that regard I note that the chairs would be replacing pews which currently have unupholstered backs but which do cushions of various patterns on them. However, I emphasise that I express that view as a matter of no more than impression and the Petitioners may well wish to consider other forms of unupholstered seating.

STEPHEN EYRE

HIS HONOUR JUDGE EYRE QC

CHANCELLOR

22nd September 2019