

**IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD**

**ST PETER: WALSALL**

**JUDGMENT**

- 1) The church of St Peter in Walsall has a Grade II listing. The building work began in 1839 and the church, which was designed by a local architect, Isaac Highway, was consecrated in 1841. The church was refurbished in 1868 and the current pews date from those works when they replaced the former box pews and the original three-decker pulpit. The pews extend across the width of the church and from immediately under the west gallery to the chancel save for spaces at the east end of the north and south aisles (the space at the end of the south aisle containing the font). The decorative pew ends were removed in the 1950's and it is apparent that some of the pews have been shortened in the past. The liturgical east end of the church was extended at the start of the Twentieth Century and the highly decorated chancel with an alabaster reredos, wooden rood screen and wooden choir stalls were installed in that period together with the current pulpit.
- 2) St Peter's was a flourishing church for much of the early part of the Twentieth Century but by 2012 the numbers attending had fallen and the vitality of the life of the church had declined. In 2012 the benefice was in suspension and the church was under threat of closure. In 2013 a church planting exercise led to the start of a revival. By 2018 the suspension had been lifted and the church was no longer being considered for closure.
- 3) The current life of the church involves a variety of styles of worship. The church planting exercise had been undertaken with a promise to retain services conducted in ways consistent with the church's Catholic tradition alongside rather more informal and less structured acts of worship. That promise has been honoured and the church sees both traditional services conducted in front of the Reserved Sacrament and a banner of the Blessed Virgin Mary and Fresh Expressions acts of worship with the style of worship now being predominantly evangelical and informal. On my site visit the east end of both the north and

south aisles and the west end of the south aisle appeared rather cluttered and it appeared to me that this was in part the consequence of attempts to fit the equipment used in a range of services into the only spaces not occupied by pews.

- 4) The church is set in an area of real need and of some marked poverty. The revival in the life of the church has included an active ministry to those in need locally. The church community is involved in a number of outreach ministries to the local community some which include activities taking place in the church building and others which the Vicar and the Parochial Church Council would wish to conduct in the church if that were practicable. There is a church hall across the churchyard from the church building. Subject to obtaining planning permission and funding the incumbent and the Parochial Church Council intend to rebuild this in conjunction with the YMCA to create living accommodation to be used by the YMCA and a hall for joint church, YMCA, and community use.
- 5) The Vicar, a churchwarden, and the church's design consultant petition with the support of the Parochial Church Council for a faculty for the removal and replacement of the existing heating system; for the removal of the pews and pew platforms; and for the replacement of the pews by upholstered metal-framed chairs.
- 6) It is of note that the proposals have been in preparation since 2015. In its response to the proposals Historic England characterised the Statement of Significance and the other supporting documents as "extremely thorough" and said that it was clear that the proposals had been the result of "a great deal of careful consideration". I agree with that assessment of the work and thought that has been put into this proposal. I also note that, as I will explain below, the Petitioners sought to address concerns raised about the proposals and modified their stance in an attempt to meet those concerns.

### **The Procedural History.**

- 7) There was no response to the public notice. The Diocesan Advisory Committee did not object to the proposed works but it was clear that the members of the Committee had considerable reservations about the proposed choice of chair.

Both Historic England and the Victorian Society expressed the concerns which I will summarise below but each chose not to become a party to the proceedings.

- 8) I concluded that the case was appropriate for determination on the basis of written representations accompanied by a site visit. The Petitioners did not seek to dissuade me from that course and submitted comments on the points made by Historic England and the Victorian Society.
- 9) My site visit took place on 19<sup>th</sup> July 2021.

### **The Applicable Test.**

- 10) The listing of St. Peter's is a recognition of its national significance. It follows that the approach laid down in *Duffield: St Alkmund* [2013] 2 WLR 854 as modified in *Re Penshurst: St John the Baptist* (2015) 17 Ecc L J 393 is to be applied and the following questions addressed:
  - 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?
- 11) 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. In addition when applying the *Duffield* guidelines the court has to consider whether the same or substantially the same benefit could be obtained by other works which would cause less harm to the character and special significance of a

church. If the degree of harm to the special significance which would flow from proposed works is not necessary to achieve the intended benefit because the desired benefit could be obtained from other less harmful works then that is highly relevant. In such circumstances it would be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, *ex hypothesi*, cause more harm than is necessary to achieve the desired benefit.

### **Replacement of the Heating System.**

- 12) The church building is currently heated by quartz heaters mounted high on the walls and three radiant heaters suspended from the roof joists. The existing heating system dates from 1989. The Petitioners propose replacing it with thirty wall-mounted radiators together with underfloor pipes all heated by a gas-fired boiler.
- 13) The Petitioners submit that the current heating system is ineffective with the result that for much of the year the building is cold and uninviting. The Petitioners' contention in this regard is not disputed and is readily understandable. The church is a large building and the heating system is now rather dated. My site visit took place on one of the hottest days of the summer but the inside of the church remained cool and it required no great imagination to accept that it would be distinctly cold for large parts of the year.
- 14) There is clearly a real need for any church to be adequately heated. If a church building is cold there can be a significant negative impact on the life and mission of the Church in that place. The Diocesan Advisory Committee were supportive of the proposed changes to the heating and neither Historic England nor the Victorian Society took issue with the proposed change of heating subject to their reservations about the removal of the pews and pew platforms (installation of the underfloor heating pipes would necessitate the removal of the pew platforms) which I will address below.
- 15) In those circumstances I am satisfied that the Petitioners have shown a real need to replace the heating and I am also satisfied that if the removal of the pews is otherwise justified then the installation of the new heating system will not harm

the special significance of the church. Indeed, the replacement of the hanging radiant heaters and of the unsightly quartz heaters by wall-mounted radiators at floor level is likely to enhance the appearance of interior of the church.

- 16) I did, however, have concern that the new system was to be based on a gas-fired boiler and that the papers before me did not address expressly either the February 2020 resolution of General Synod committing the Church of England to moving to net-zero carbon emissions by 2030 or the subsequent guidance issued by the Church Buildings Council on ways of moving from fossil-fuel based heating systems. In large part that omission was understandable given the length of time which this proposal has been in preparation. Thus I note that the specification for the proposed heating system was drawn up some months before the Church Buildings Council issued its guidance.
- 17) I did, however, on my site visit ask for clarification as to what, if any, consideration had been given to the use of a non-fossil-fuel based heating system. The Vicar and churchwarden present on that visit were able to give me a detailed albeit oral summary of the investigations which had been undertaken. In short the matter had been raised with the consultant advising the church on the proposals. His conclusions had been that the physical circumstances of the church and the surrounding churchyard meant that neither a ground-source nor an air pump heating system would be likely to be suitable in the current state of the technology. However, the heating system was such that it would be compatible with a non-fossil-fuel based heat source in the future.
- 18) In those circumstances I was satisfied that the issue had been addressed by the Petitioners and those advising them although not in the detail which would have been appropriate if the application had been prepared after the issue of the Church Buildings Council's guidance. I was also satisfied that it was not appropriate to require further consideration of different heating systems. That was because there appeared to be a real prospect that such consideration would simply lead to the conclusion that for the church to be adequately heated the proposed gas-fired system was the best option. Moreover, there would be a real risk that if such further consideration were to be required the resulting delay

would mean that another winter would pass before the church was adequately heated.

19) In the light of that conclusion it has not been necessary for me to analyse the difference of emphasis between the approach adopted by Petchey Ch in *St Mark, Mitcham* [2020] Ecc Swk 5 and *St Mary, Oxted* [2021] Ecc Swk 1 and that of Humphries Ch in *St Thomas & St Luke, Dudley* [2021] Ecc Wor 2. In short that is because I am satisfied both that the issue has been properly considered at the parish level and also that, albeit on limited material, there are proper grounds for concluding that the proposed system is the best option in the current state of the technology if the church is to be adequately heated.

20) I do, however, follow Humphries Ch to the extent of imposing conditions similar but not identical to those imposed by her in *St Thomas & St Luke, Dudley*. It will be a condition of the grant of the faculty in respect of the new heating system that the Petitioners use their best endeavours to ensure both (a) that so far as practicable gas supplied under a green tariff shall be used and (b) that so far as practicable carbon emissions caused by any non-renewable gas used are off-set. The purpose of those conditions is to seek to minimise the adverse effects of the use of a gas-fired boiler.

### **The Removal of the Pews and the Pew Platforms.**

21) The Petitioners contend that the fixed pews inhibit both worship and the use of the body of the church for other activities. I have already referred to the differing forms of worship which take place in the church and to the impression of a shortage of space which I noted on my site visit. The Petitioners say that removing the pews will enable the seating in the church to be configured differently for different forms of worship. They also argue that it will free up space by enabling the creation of open areas around the font at the east end of the south aisle and in front of the side chapel containing the Reserved Sacrament at the east end of the north aisle. The serving of meals and a ministry of hospitality more generally is an important part of the life and mission of St Paul's and the Petitioners submit that this is hindered by the presence of the fixed pews. They also argue that the fixed pews hinder the use of the church for community

activities and for other forms of outreach to the local community and in particular to those in need in that community.

- 22) The church does have a church hall. I have considered whether the space there could be used for the hospitality, community activities, and outreach which the Petitioners envisage taking place in the body of the church. The hall could address part of those needs. However, it was apparent that the church hall is now rather dated and provides rather less space for such activities than would be available if the body of the church were to be free of pews. Even if the proposed demolition and rebuilding of the hall are implemented the hall will still only address these needs in part. In that regard it is of note that the Petitioners see part of the purpose of using the church building for hospitality and community activities is to bring those outside the church into the church building itself. They see this as an aspect of the mission of the church by making the church familiar to those in the local community and thereby making it more likely that they will be willing to attend and participate in the worshipping life of the church (or at least as reducing a barrier to that caused by unfamiliarity with the building). That is a wholly appropriate objective.
- 23) The Diocesan Advisory Committee had reservations about the proposed choice of chair but did not resist the proposal for the removal of the pews.
- 24) Similarly although Historic England would wish to see at least some of the pews retained its main concern was also about the proposed replacement seating, an issue I will address below. Historic England was also concerned about the extent of the area of carpet proposed and pressed for a greater area of wooden flooring to be installed if the pews and pew platforms were to be removed.
- 25) The Victorian Society appreciated the church's need for greater flexibility in the ways in which the space in the body of the church could be used. However, it also pressed for the retention of a number of pews and said that it would be preferable if the pews at the east end of the nave and nearest to the chancel were retained where they would be seen in relation to the chancel and the other fittings which are being retained there. The Society also supported the use of a greater area of wooden flooring saying that this would complement the historic

woodwork in the church (in that regard I note that the wooden rood screen is to remain as are the wooden choir stalls in the chancel).

- 26) In the light of the stance of Historic England and the Victorian Society the Petitioners proposed a modification of the intended works. They proposed retaining four pews (albeit potentially with some shortening) which were to be repositioned alongside the north and south walls between the radiators. In addition they are willing to increase the area of wooden flooring and to reduce the carpeted area by providing for wooden flooring throughout the north and south aisles. However, the Petitioners contend that the acoustics of the church are such that an element of “dampening” through carpeting or other soft furnishing is needed if the sound is to be of the quality desired. They also argue that to retain *in situ* the pews at the east end of the nave and particularly those directly in front of the chancel as proposed by the Victorian Society would “fatally compromise the proposals” for flexible use of the church.
- 27) The Petitioners have argued that the pews are uncomfortable. I do not find this a persuasive part of their case. The impression I formed on my site visit is that the pews are very far from being the most uncomfortable of their kind. The contention as to comfort adds very little to the force of the case in the particular circumstances here.
- 28) I am, however, satisfied that the Petitioners have established a real need to be able to use the body of the nave more flexibly than is possible when that space is occupied by fixed pews. The ability to create space in the church and to configure the seating in different ways for different occasions will bring very real benefits in the life of this church both by way of its outreach to the local community and by reference to the different forms of worship which take place there.
- 29) I am also satisfied that it would not be appropriate to adopt the suggestion by the Victorian Society that some pews be retained at the east end of the nave. Such an arrangement would be in some ways the worst of both worlds. I accept the Petitioners’ argument that the retention of pews in that location would markedly reduce the scope for using the space in the church flexibly for different forms of worship. It would, indeed, enable the space to the west of the retained pews to be

used flexibly for community activities and for outreach but would preclude many of the configurations of seating for different types of worship which would be enabled if the pews were to be removed. In particular it would markedly inhibit the use of the area immediately to the west of the chancel for less formal acts of worship. Although the retention of those pews would impede the flexible use of the church it would not materially reduce the impact on the appearance of the church resulting from the removal of the bulk of the pews. So there would have been a change in the special character of the church without enabling the full benefit from that change to be enjoyed.

30) The removal of the pews will have an impact on the special character of this church. However, the benefits which will result are real and substantial. In that regard the progress which has been made in recent years and the revival in the life and work of this church are of considerable note. The Notification of Advice from the Diocesan Advisory Committee records that committee's acceptance of the assessment by the Archdeacon of Walsall that the church has been saved from closure by that revival. It could be said that this progress has been achieved notwithstanding the presence of the pews and that as a consequence the removal of the pews is not necessary. There is, however, very considerable force in the argument that the scope for flexibility in the ways in which the space in the church is used for worship and for community use is necessary if the progress made to date is to continue. It is of note that the Diocesan Advisory Committee, Historic England, and the Victorian Society all essentially accept that the case for removal of the pews has been made out. In the light of all those matters I am satisfied that the benefits to be achieved by the removal of the pews substantially outweighs the harm to the church's special character such as to make it appropriate to authorise the removal notwithstanding the listed status of the church.

31) The faculty will, therefore, authorise the removal of the pews and the pew platforms in the form of the revised proposals providing for the retention of four pews to be located on the north and south walls and for the increased area of wooden flooring to cover the extent of the north and south aisles.

### **The Replacement Seating.**

32) It follows that removal of the pews and the introduction of different seating is warranted by application of the *Duffield* approach. The decision as to which type of seating is to be permitted and in particular as to whether the Alpha SB2M chairs which the Petitioners wish to introduce are appropriate is a different one. It is in that context that the principle I have set out in the latter part of [11] above comes into play. I have to consider the effect on the character of the church of the proposed seating and have to be satisfied that the seating proposed does not affect the character to a greater extent than is necessary to achieve the benefits to which the proposed reordering aspires. If the same benefits could be achieved by other seating which would cause less harm to the church's character or be more in keeping with the setting in this church then the case for the proposed seating will not have been established.

33) In undertaking that analysis considerable weight needs to be given to the expertise of the Diocesan Advisory Committee and of Historic England and to the terms of the Church Buildings Council's guidance on seating. That guidance sets out the factors to be considered when decisions are made on replacing seating in churches. It is to the effect that upholstered seating is normally less suitable for use in churches than is unupholstered seating. The guidance is an indication of the considered view of the Council and at the very lowest it is of real relevance when decisions are to be made on the suitability of particular seating. The views of expert bodies such as Historic England and the Diocesan Advisory Committee are not conclusive and nor is the court bound by the guidance from the Church Buildings Council. However, where a faculty is sought for a proposal, in particular one affecting a listed church, which is contrary to that guidance and to the assessment of those expert bodies then the case for such a faculty must be properly established. Those seeking such a faculty must show that they have engaged properly with the guidance and with the expert views and must show why it is said that nonetheless a different course is appropriate in the particular case.

34) Here the Petitioners wish to replace the pews with the Alpha SB2M chair. This is a chair with a chrome frame and upholstered seat and back. The Petitioners

original proposal had been that the upholstery should be in a variety of shades of brown because the remaining woodwork (consisting of the flooring; the woodwork of the rood screen; and the choir stalls) is of differing shades. However, they are prepared to proceed on the basis of their second preference which is that all the upholstery be “Espresso”. This is a shade of brown which the Petitioners assess as being closest in colour to the shade of the current pews. The Petitioners make the proposal of a uniform use of “Espresso” upholstery because of the view expressed by the National Amenity Societies’ nominee on the Diocesan Advisory Committee that it would be preferable for the chairs to be uniform in colour.

35) The Petitioners have set out in some detail and by reference to the Church Building Council’s guidance on seating their reasons for seeking to introduce the Alpha SB2M and have explained why they wish to introduce that chair rather than various other potential options. In summary the Petitioners make the following points. They refer to other churches in which the Alpha SB2M has been installed saying that this demonstrates that its use is not inappropriate in a church and even in a highly-listed church. The Petitioners point to the comfort provided by the upholstery of the chair. However, it is apparent that it is the combination of three factors which is the main reason for the Petitioners’ preference for the Alpha SB2M. These are the lightness of the chair which means that it can be moved easily and quickly; the stacking capacity of the chair which can be stacked in piles of 25 meaning that storage of the chairs when not in use takes up less space than might be the case with other options; and the cost of the chairs with a cost of £14,320 for 180 armless chairs, 20 chairs with arms; and 8 dollies on which to stack the chairs. The Petitioners submit that wooden seats and benches suggested by Historic England would not meet the church’s needs because their weight would make moving them more difficult and their size would mean that more space would be needed to store them than would be needed for the Alpha SB2M. The Petitioners’ initial researches involved an assessment of four different types of chair including the Alpha SBW, a lightweight wooden seat which would be the preference of the Victorian Society. At the suggestion of the Diocesan Advisory Committee the Petitioners also considered use of the ICS Christ Church chair which is an oak chair with an upholstered seat and a solid wooden back. The Petitioners accepted that the ICS chair provided comfort and *gravitas* but

nonetheless still preferred the Alpha SB2M. There were two reasons for this. First, the weight and size of the ICS chair meant that the Petitioners believed that it would be more difficult to move and would take up more space to store than the Alpha SB2M. In that regard the Petitioners point out that while the Alpha SB2M can be stacked 25 high on dollies the ICS chair is stacked in trollies holding only 10 chairs each. Second, reference is made to the cost with the Petitioners estimating the cost of 200 ICS chairs including some with arms and trollies at £39,500. They point out that even if that estimate is overly-pessimistic the introduction of the ICS chairs would be likely to be at least twice the cost of installing the Alpha SB2M chairs.

36) It is apparent that the proposed choice of chair was the real issue of concern for the Diocesan Advisory Committee and it was that which caused the Committee to say that it did not object to the proposed works rather than recommending them. Indeed, the Notification of Advice records that two members of the Committee would not have recommended the works. As I have already noted the Committee had previously suggested that the Petitioners consider the ICS Christ Church chair and the view was also expressed that it would be preferable for the upholstery all to be “Espresso” rather than a variety of shades of brown.

37) In its representations Historic England said that wooden seats and benches would “respond far better [than the proposed chairs] to the colour, texture, and character of the existing church interior”. Historic England pointed out that the wooden seats which had been considered but which the Petitioners did not favour were also capable of being stacked and so would enable flexible use of the interior of the church building. By way of contrast Historic England felt that the proposed chairs would not “sit as well within the architectural composition of the existing interior” as either the current pews or as wooden seats would. Indeed, Historic England went so far as to say that the proposed chairs would be “a jarring and discordant addition” to the church.

38) The Victorian Society’s position was similar to that of Historic England. The Society accepted that there was a need for greater flexibility in the way in which the church was to be used and that the removal of some or all of the pews would necessitate the introduction of new seating. However, it did not accept that the

Alpha SB2M was a suitable choice. The Society favoured the use of Alpha SBW chairs or a similar chair with a wooden frame and back. It contended that the use of such a chair “would better reflect the character” of this listed church while still being capable of being moved and stacked and so enabling flexible use of the interior of the church.

39) I have found this the hardest aspect of the matter to resolve. It is clear that the Petitioners have given the question of the appropriate seats detailed and careful consideration and it also apparent that the option of installing wooden-framed chairs has not been dismissed without proper reflection. There is real force in the point which the Petitioners make as to the disparity between the cost of such chairs and that of the Alpha SB2M. There is also force in the argument that although technically stackable the wooden chairs because heavier cannot be stacked as quickly and easily as the Alpha SB2M and that when stacked the wooden chairs would take up more space. Against those points the arguments of Historic England and the Victorian Society are measured and considered. Those bodies have not adopted an unthinking opposition to the proposed works but have taken a proper account of the need for the interior of the church to be used flexibly. I accept the contention that wooden-framed chairs would have a lesser impact on the character of this church and be more concordant with the retained rood screen and chancel furnishings than the Alpha SB2M would be. Although not expressed precisely in these terms the argument from Historic England and the Victorian Society against the Alpha SB2M is that it is not necessary to introduce chairs having such an impact on the church’s character and appearance in order to achieve the benefit of being able to use the church building flexibly.

40) With a degree of reservation I am persuaded that the suggested wooden chairs although fitting more appropriately with the appearance of the interior of the church would not be as suitable for flexible use as the Alpha SB2M. There is a difference between a chair which is capable of being moved and stacked and one which can be moved and stacked quickly and readily. I accept that wooden chairs will not be as easy to move as the Alpha SB2M and that they would, when stacked, take up more space. I find that ease of flexible use is important in the

context of the different styles of worship in this church. I have already noted the contrasting styles of worship. There are regular services in which there is a formal or traditional style of worship but I accept the Petitioner's description of the predominant style of worship as being "evangelical/charismatic in style, which includes freedom of movement and expression". I am satisfied that this is not a case where it is being contended that flexibility is desirable but where for the majority of the time the chairs will remain in the same places and same configuration (and potentially in the same configuration as the removed pews). I accept that if chairs are introduced then the configuration of the seating in this church will be changed frequently. I also accept that the ease of altering the configuration of the seating is an important part of the benefit to be obtained from the proposed works. In that regard it is also relevant that I am satisfied that the argument that more flexibility in seating arrangements will facilitate increased community use of the church and the outreach work of the church are not mere aspirations. Rather I am satisfied that the seating will be reconfigured on a regular basis to facilitate such activities which, I accept, are an important part of the church's ministry to the local community in this area where that community has real need and faces considerable difficulties. Such reconfiguration would be possible if wooden chairs were introduced but it would not be as easy to achieve. I conclude that there is a real risk that the benefits flowing from the introduction of chairs would be reduced to a significant degree if the court were to insist upon wooden chairs. It follows that the benefit for which the Petitioners strive could not be achieved in a different way (or at the lowest the court cannot be satisfied that it could be) involving less impact on the special character of this church. Accordingly, I am satisfied that the case for the introduction of the Alpha SB2M chairs has been made out and that the faculty should extend to authorising that introduction.

### **Conclusion.**

41) It follows that a faculty will issue for the works as proposed by the Petitioners subject to the conditions set out at [20] above and to the modifications which the Petitioners have proposed of the retention of four pews and their repositioning against the north and south walls; the increase in the area of wooden flooring to

cover the current extent of the north and south aisles; and the provision that all the chairs are to be covered in “Espresso” upholstery.

*STEPHEN EYRE*

HIS HONOUR JUDGE EYRE QC

CHANCELLOR

9<sup>th</sup> August 2021