

Neutral Citation Number: [2019] ECC Der 1

In the Consistory Court of the Diocese of Derby

In the Matter of Barrow on Trent: St Wilfrid, and

In the Matter of a Petition dated 5th October 2018, presented by Rev Tony Luke, Rector, Anne Heathcote, churchwarden, and Sue Merryfield, PCC secretary

Judgment

- 1) **Brief history of the application, the building and the present ministry set-up:** This is a petition for permission to carry out re-ordering work to the interior and some lesser work to the paths and drainage to the exterior, of a Grade I medieval church. The parish lies to the south of the City of Derby. The church is within the Barrow on Trent Conservation Area. Mrs Heathcote is handling the petition. She has the distinction of following her father, grandfather and great-grandfather as churchwarden of this church, for a combined period of over 100 years. The village of Barrow (up)on Trent lies between the River Trent to the south, and the Trent and Mersey Canal to the north. The village is mentioned in the Domesday Book. It has a population of 558 as recorded in the 2011 Census.
- 2) The church building is of squared sandstone with sandstone dressings, and lead and plain tile roofs with coped gables, and a tower at the west end. It has, according to recent research, Anglo-Saxon roots, and also historic connections with the Knights Hospitaller from around 1165 until 1540, when the English branch of the Order was first disbanded, before a brief restoration under Mary, until finally disbanded under Elizabeth I. The present building largely dates from the C13th, with further stages of construction in the C14th and C15th. Further changes were made in the C19th. Overall the church consists of a nave with north and south aisles, a porch on the south side, and chancel, and, as noted, a tower. It has three bay arcades, that to the north being mid C13th, and the south one dating from the following century.
- 3) In 1876 open-backed pews on platforms were introduced into the nave and aisles in place of the previous box pews. The platforms may have been pre-existing. In any event plans from relevant faculties indicate the areas for seating seem to have remained similar in size and location within the building (see para 2.2.4 of Latham's report, described below).
- 4) The church of St Wilfrid is one of 7 parish churches forming the Trent and Derwent Group which serves the communities of Aston on Trent, Elvaston, Weston on Trent, Shardlow, Swarkestone, Barrow on Trent and Twyford. The Rector is Rev'd Tony Luke MA. According to the current website, he is assisted by a curate, a number of retired clergy and three Readers.
- 5) **The full list of proposals** were formally approved by **the PCC** on 16th October 2018, by 7 out of the 10 members, two others indicating their support, and one being absent.

6) They are set out very fully (and helpfully) in the petition itself, but run to one-and-a-half closely typed pages. It will not be helpful to set these out in such detail, and it will be sufficient to summarise the major items and overall effect of what is proposed:

- a) to level the existing floor to the nave, porch, tower and north and south aisles, by installing a new timber floor to the main circulation areas, after necessary repairs to the brick floor, and inserting appropriate viewing windows so the floor and memorial stones set therein can still be seen.
- b) to install insulation and under-floor heating beneath the new timber floor.
- c) to turn over the worn threshold stone at the south door, clean it, and adjust the door height appropriately, and slope the floor in the porch to aid access
- d) to repair the stone floor in the chancel
- e) to replace the existing composting toilet within the tower, with a larger accessible one, and create storage space for chairs (see below) and possibly other items
- f) to create a ringing floor/vestry above, with access steps
- g) to insert a glass screen at ringing floor/ vestry level into the archway below (largely to reduce draughts)
- h) to relocate the font from the base of the tower to the eastern end of the north aisle
- i) to remove and dispose of the pews, save for a representative example
- j) to introduce lightweight metal-framed chairs with wooden seats and backs, of the Abbey type
- k) to introduce a small kitchenette at the west end of the north aisle, with storage, and matching storage at the west end of the south aisle
- l) to introduce an audio-visual system
- m) to conserve and protect an alabaster effigy in the south aisle
- n) to remove and cap off the existing gas supply, and remove large diameter cast-iron heating pipes and radiators
- o) to introduce a modern lighting system
- p) to introduce a small number of minimal lighting bollards in the churchyard
- q) to introduce new drains following the line of the existing path
- r) to provide level access at the north-west access to the church, including disabled access
- s) to replace ironmongery to the door and re-decorate
- t) to create a 'French' drain around the church perimeter in place of the concrete apron
- u) to replace plastic and asbestos rain-water goods with cast-iron

all in accordance with a large number of detailed plans and documents specified in the Schedule of Works or Proposals.

7) If implemented, the scheme will provide an open and flexible multi-use space in what is at the moment an area suitable only for worship, with

modern heating and other services, and reduce dampness in the walls and elsewhere.

- 8) **The proposed scheme and its history:** The proposed scheme began life many years ago. It is supported by a Design, Access and Heritage Statement dated June 2018 prepared by the Derby architects' firm of Lathams, and a large number of plans and drawings, and a specification, and some helpful photographs, provided to me, together with relevant quotations for various aspects. These obviously provide much more detail than I have given above, which I do not need to repeat *in extenso*. Despite some relatively minor areas of contention during the consultation process, concerning chiefly the work in the tower, I believe the scheme as now presented is acceptable to all the amenity interests.
- 9) **The DAC** visited the church on 13th May 2014, and again on 13th March 2017, the second chiefly in connection with the full (second) HLF grant application. I have the site visit reports. I have also read the considerable amount of correspondence that has passed with various DAC advisers, eg on electrical supply matters and heating, and the details of the lighting. The DAC **Recommended** the works at its meeting on 10th September 2018, subject to conditions about archaeology, a conservation report on the effigy, and details of the AV system.

Amenity bodies

- 10) **Historic England** wrote in 2014, and in January and again in July 2018. They have always been amenable to removal of the pew benches, but latterly expressed disappointment at not knowing what chairs were to be introduced, and were clear they should be un-upholstered. After quite considerable correspondence with James Boon, the architect at Lathams, in connection with the work in the tower arch, and noting '*it would cause some level of harm to the significance of the church as a heritage asset*', HE expressed themselves as ready to defer to the DAC's views, on the basis their anticipated recommendation in favour would be based on '*sufficient justification*' being shown for the changes. I take this to be a reference to Question 5 of the Duffield questions, which I deal with below.
- 11) **The Victorian Society** offered comments on 31st October 2018 and, were critical of the Statements of Significance and Needs indicating the proposals would not have an effect on the walls and roof, and contended that they did not deal with the rest of the building. They noted the listing description described the church as '*much restored*', in the C19th. They liked the Victorian pews and suggested they could be made moveable. They did not know what replacement chairs would be brought in, and certainly regretted the introduction of the screening in the tower. Nonetheless by 5th November they indicated they did not wish to make a formal objection about the clearance of pews. They liked, or at least did not object to, the Abbey chairs, which could be suitably stained, and indicated they would defer to the DAC about the tower.
- 12) The church in fact responded fully to their comments on 8th November 2018. They contend there was no wide-ranging renovation in the 1870's, and the most striking Victorian feature is indeed the bench seating. Although in theory '*moveable*', because of their size and design, the pews

do not lend themselves to regular displacement, and they show signs of wear and tear. The pew platforms are placed directly onto the earth. They favour the building up of the floor levels, as a *'light touch'* way of levelling the floor overall. The glazed screen will prevent the draught of cold air presently experienced, from entering the church. The re-arrangement of things possible as a result of the work in the tower will in fact, they contend, improve the look of the west window. I found their comments realistic and persuasive.

- 13) The **Local Authority** (South Derbyshire) commented on 6th July 2018 in an email from their Conservation Officer, Liz Knight. Removal of the pews was *'justified'* in the aim of providing long-term flexible use, and subject to appropriate detailing, the other proposed changes were acceptable.
- 14) The **Church Buildings Council** has been actively concerned in the development of the scheme, but a senior officer, David Knights, stated on 7th September: *'Given....the way the scheme is progressing I am content that this is left with the DAC unless it has specific concerns to raise'*.
- 15) **SPAB** offered initial comments as long ago as July 2014 and recognised the *'considerable potential of the building to be used by a range of people for various activities'*. They offered various positive comments, and asked to be able to consider the scheme when drawings and details had been prepared. This has not happened, despite efforts to get further input from them. A comment in an email of 7th September 2018 from the DAC Secretary, Nigel Sherratt, to an architect member of the DAC, Liz Walker, (who had asked to see SPAB's response to consultation, before herself commenting), indicated, though not in these exact terms, that he found them slow in responding, and they were now *'way past the 28 days timescale they have'*. I have heard nothing more, and I do not think it necessary to press SPAB further. There is ample evidence available on the amenity/heritage aspects, to show that the matter has been fully and carefully considered by the statutory consultees.
- 16) **No objections** have been raised following exhibition of the **Public Notices** between 6th October and 5th November 2018 and notification of the proposals on the Diocesan website.
- 17) **Discussion:** The main ideas and aims of these proposals have been gestating for a good number of years, and the DAC and HE (by whatever name) have offered advice and comment from at least 2014. I am satisfied that where comments have been offered, the petitioners have listened carefully, and responded positively and creatively. They have obviously been much aided by their professional advisers, and the DAC. There seems to have been a great desire to interfere as little as possible with the present structure, while seeking to achieve their overall aims.
- 18) The overall planning, and presentation of the petition and its accompanying documents, has required a great deal of work (and the answering of many questions) by Mrs Heathcote, and the petitioners' advisers, and input from many others, including the DAC members and their consultants, and extensive consultation with amenity societies and others, and has resulted finally, in a clear and careful set of proposals. The estimated cost is upwards of £850,000, and that is largely dependent on a second-stage grant from HLF being forthcoming, the proposals being

clearly beyond the resources of this church and its small community on their own. A number of other charitable bodies have also promised grants.

- 19) At an early stage, a *Historic Building Assessment* report was obtained from Peter Ryder BA, M.Phil, FSA in Spring 2013. He was, I believe, the first to detect the few remaining indications this was an Anglo-Saxon foundation, something not noted in the Derbyshire volume of the current edition of *The Buildings of England* (2016), by Hartwell, Pevsner and Williamson. He offers a tentative chronology running to some eight stages. He notes the shortening of the chancel, and possible loss of a vestry, among '*various post-medieval vicissitudes*'.
- 20) **Discussion of changes:** I have sought to *summarise* what is proposed and what its overall effect will be. How big a change will it make? The church structure has undergone few alterations since medieval times, according to Dr Ryder, who also states in his concluding paragraph: '*The church seems to have escaped any heavy programme of C19th restoration*'. (There were later works in 1908 when columns of the north arcade were rebuilt or repaired, and work to the porch were undertaken.) The present proposals will make no changes of note to the walls or roof or to the present floor surfaces, in that most of the latter is to be preserved beneath a new wooden floor. The main exterior work is intended to improve the drainage (and so also reduce damp within the walls and some monuments in the building). The latter is more in the nature of improvement, and will have no effect on the significance of this listed building.
- 21) The most visible interior feature at present is the Victorian seating. Removing that and introducing chairs will be a highly visible change. All the pews will go, save for a sample pew, and chairs will be introduced – the well-known Abbey chair from the firm of Trinity Church Furniture. It has a tubular chrome frame and wood-ply seating and back. According to illustrative drawings provided, approximately 150 such chairs are to be introduced. This choice is in line with the current **Church Buildings Council** statutory guidance indicating un-upholstered seating should be used in historic buildings, and it has commended itself to the PCC – not an invariable outcome.
- 22) The kitchenette and new toilet arrangements are requirements for a multi-purpose building, as is the AV system.
- 23) The heating and lighting and electrical services are now clearly out-dated and require replacement. This is dealt with in the correspondence and seems to have given rise to no fundamental issue, save for some suggestion that retaining a gas-fired heating system might have some advantages. That is now resolved in favour of an electric under-floor heating system.
- 24) Levelling the flooring is also going to be a visible change, but putting in a separate wooden floor over the present levels, is a neat and non-intrusive solution to the perceived problems with the floor, which I suspect will also be cheaper than removing the pew platforms. As the new flooring would otherwise hide the brick, and various memorials into the floor, and

so obscure their historic and architectural interest, viewing panels will be incorporated where appropriate.

- 25) The stone parts of the floor in the chancel will be levelled and restored where necessary.
- 26) A proposal in the petition, which I have not mentioned above, to demolish a disused Victorian brick chimney-stack previously used in connection with the boiler house, is not being pursued, following critical comments sent to the planning authority by **Historic England**, when permission to demolish was sought.
- 27) The work in the tower has also been somewhat contentious, but in the end has, I believe, been accepted by the consultees. Setting out their comments and criticisms will not assist at this stage. Useful comments and suggestions were also received in a report of July 2018, from the **Diocesan Bells Adviser**, Mr Mike Banks, which will materially assist if and when a bell needs to be removed for repair or re-tuning. The proposed screen is largely for draught- control.
- 28) A strange issue emerged at a late stage when the DAC Secretary suggested that there was some proposal, or at least notion, in the air, that the parish wished to increase the number of bells from the present three. Mrs Heathcote firmly rejected the idea, uncompromisingly asserting no such idea had ever been raised by her, or the preceding churchwarden members of her family. However on p.2 of the DAC initial site visit report of 13th May 2014, at which visit Mrs Heathcote was present, there is a mention, after reference to the ringing floor, to: *'one suggestion.....possibly adding bells, to attract bell ringers'*. It is not clear who said this and I accept what Mrs Heathcote says about her rejection of the idea. In any event no one is proposing adding more bells at this time.
- 29) The church contains an **alabaster effigy** of a priest in robes, set within a recess in the south wall of the south aisle, though that is not the original setting. I have a four page report dated 22 October 2016 by Miss Sally Badham OBE, FSA, a well known and nationally recognised expert on church monuments. She suggests it may be one of the earliest such monuments in the country dating from before 1370, possibly from the 1320's or 1330's. It may be a representation of one of Barrow's vicars in the first part of the C14th. Her report confirms that this area of the country is particularly noted for the quarrying and use of alabaster. The effigy is *'extremely important'* and *'would benefit handsomely from conservation and relocation so that it can be more easily seen'*. Her report does not include specifics as to what such conservation would entail, and although I am in favour of that in the light of Miss Badham's report, I could only give permission if those details were forthcoming and also approved by the Church Buildings Council. This is too important a piece of sculpture to go ahead simply on the basis conservation is a 'good idea' without knowing exactly what that means! I believe there may be such a report in existence from Messrs Skillingtons, but I have not seen it.
- 30) **Font:** this is to be moved from the back of the church at the base of the tower to a more prominent and accessible position at the eastern end of the north aisle. This will of course move it from the canonical position close to the main entrance, where it signifies entry into the Christian life.

It is a change made by many churches in recent years, and enables the congregation to have an easier view of the rite of baptism being performed. It will also improve circulation space at the back of the church.

- 31) **Justification:** It is obviously for the petitioners to explain and justify their proposals. It is not enough to rely on the DAC Recommendation, or present lack of objection from the parish or consultees.
- 32) So why do the petitioners want to carry out this extensive and expensive work? Apart from the obvious need to improve the building by having proper and effective heating and lighting, and the obvious benefits in also reducing damp in the walls and other parts of the structure, and keeping it weather-proof, they strongly believe the present floor layout with its various dangers and hazards to those using the building, and inflexible seating at present renders the building only suitable for the purposes of public worship. If it is to survive and thrive, it must be capable of taking on other roles.
- 33) The church is used for regular weekly worship, led by the clergy, twice a month, and by Readers on other Sundays. The local primary school uses it for its own end-of term and Festivals' worship, and, to a degree, by young people in the weekly youth group. There are also occasional concerts and exhibitions. Most worshippers are in the older age range, but younger adults and children attend the monthly Family Service. The building is not left open, as the church has experienced a number of thefts in the past, so is unlikely to attract visitors who are simply passing by. Although it has received a number of legacies for upkeep and restoration, the church's regular income is insufficient to cover its running expenses and meet its obligations to the diocese ('Common Fund).
- 34) Against this background, the petitioners contend the parish needs a place for meeting and communal events. The Village Hall and Brookfield Club in the village provide some such facilities, but neither is big enough, nor suitable, for large gatherings or concerts or similar events. The congregation is slowly shrinking as older members of the congregation die, or cease to be fit enough to attend. If the facilities available can be improved and their use increased, hopefully more people will be drawn to St Wilfrid's and the income will increase, thus enabling the building to be looked after and preserved for future generations. This is not all about finance however. The petitioners rightly wish to provide a benefit to their community and facilities for purposes other than simply for Sunday or other worship. In order to do this they believe that steps must be taken to provide the improvements and changes they seek.
- 35) **Assessment of proposals:** This is of course an extremely important building, historically and architecturally, as its Grade I status confirms, (as well as being important as a local centre of worship and mission). Its Grade places it in only the top 2.5% of all listed buildings, and the rare and unusual links with the Knights Hospitaller are of considerable interest to historians and others. Changes to such buildings need to be looked at most carefully by all those concerned with the decision-making process.
- 36) The test within which the Court is **required** to come to decisions about proposed alterations to listed buildings is set out in paragraph 87 of the

decision of the Court of Arches (the ecclesiastical court of appeal) in the case of *Duffield, St Alkmund* 2013 Fam 158 (as further refined in later cases), in a series of questions:

- 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 assumption 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, 26-8, and the review of the case-law by Chancellor Bursell QC in **In re St Mary's, White Waltham (No 2)** [2010] PTSR 1689 at 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 **St Luke, Maidstone** at p.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 1 or 2, where serious harm should only be exceptionally be allowed.*

This provides a structured and logical method of coming to a conclusion.

- 37) It is therefore important to analyse the effect on the significance of the parts of the building that will be affected by the proposed changes, the degree of 'harm' that will be caused by them, and consider the benefits that will accrue, and the overall justification relied on.
- 38) I have set out the '*Duffield Questions*' at this stage, so the petitioners can understand the framework within which I **must** proceed when making a decision. '*Significance*' is not an entirely easy concept to grasp, and '*harm*' is equally somewhat strange. After all, the petitioners will contend what they propose will improve the building. However, the changes overall will affect the historic appearance of the whole interior *to a degree*. How much, has to be determined. Latham's report together with Peter Ryder's report of 2013 on the architectural history and its significance, must inform the decision I have to make. I recognise there will be some degree of '*harm*' to the significance of the listed building if these proposals are implemented. However I am satisfied that that '*harm*' will lie on the **lower side of moderate**. Every step to safeguard the present fabric, consistent with the overall aim, has been taken.

- 39) But these need to be seen against the day-to-day reality of insufficient income and gradually dwindling congregations, and the very limited opportunity to diversify the uses to which the building can presently be put. The petitioners want to make the church a more useful community asset, to increase its use, and help to preserve and enhance its future. These are certainly not unworthy aims, but they must depend on a good deal of hope, rather than certainties. We must ask: *'If they build it, will they come'*? There can be no clear or obvious answer to that. Only time will tell. Is there enough clarity about the future to *'justify'* permission for the overall scheme to be granted?
- 40) On the other hand, if things continue as they are – and the changes are not permitted – what will the outcome be? The petitioners are very clear that they will simply be unable to pay the necessary running costs, including the Common Fund payment to the diocese and in a couple of years, they will be forced to close (although that is never as easy or quick, as those involved in the sad process expect).
- 41) I have not been provided with any figures from the parish, e.g., their annual accounts, or any 'business plan' for the future, and I have struggled somewhat in being asked to proceed without some greater detail and evidence as to the realities of their present finances, or hopes and expectations for the future. I have considered whether I should seek these, even at this late stage.
- 42) In the end, I have decided that that course is not the right one. No one else has raised this issue, or questioned Mrs Heathcote's assertions as to the future of this church in the next few years if these changes are not permitted. Mrs Heathcote has already answered a multitude of questions with remarkable patience and good sense, and her comments, arising in various emails about the future for St Wilfrid's, many appearing 'by the way', are the more powerful for not being aimed at providing specific answers to direct questions. I therefore have no doubt that the last three or five years' annual accounts would show a general picture of decline in income and/or reserves. Equally, asking for future projections is in reality almost impossible. Many of those groups or bodies whom it is hoped to attract, may hopefully increase and improve the financial position, but it is uncertain – and must be so – how soon they will begin to do so, or to what extent. To press for this before coming to a decision on the faculty application, is unrealistic, and will be demoralising to the petitioners and to the enthusiastic Friends Group in the village. I note also that for their second stage grant to be made by HLF, a Business Plan has to be provided. The petitioners are at the moment, I apprehend, wanting a decision about the acceptability of the proposed changes on the building as an historic asset, before embarking on the financial projections.
- 43) **Conclusion:** I have concluded that the picture of general decline, ending in closure of St Wilfrid's as a place of regular worship, as it has been for many centuries, has been made out by the petitioners, who have been planning to avert that outcome since at least 2013. Whether the outcome they fear would arrive in two or five or ten years, is not the point. I am satisfied they have shown that that outcome is inevitable unless radical

steps can be taken to make the building more usable, and indeed much better used.

- 44) Nonetheless, I have to consider the cautionary final paragraph in the *Duffield Questions*, which is of particular concern in this case because St Wilfrid's falls within Grade I. I have come to the clear conclusion that looking beyond the '*lower side of moderate*' harm these proposals will cause, and considering the '*benefits*' that will hopefully be secured, not only for the congregation, but the wider community, that the only likely way to afford St Wilfrid's any hope of a long-term future, is to implement the proposals.
- 45) The PCC and petitioners are faced with problems understood and experienced by many churches, especially in rural areas, that are set within small communities, with dwindling congregations and income, who are desperate to preserve their ancient building into the future, both for worship and wider service to the community. The petitioners and PCC have faced the challenge imaginatively, over a long period of time, and presented an imaginative and creative solution. They will have to continue to pursue their goals with determination and energy, if the proposals are to be carried to a successful conclusion in the long term. However I am satisfied that I ought to grant a faculty in accordance with the outline below.
- 46) **Costs:** It is plain this has been a complex matter, and involved the Registry in a good deal of work over and above the normal, both for the Registrar and her staff. I am therefore prepared to authorise an additional '*correspondence fee*' to cover this. The Registrar has indicated to me the Registry clerk spent more than one hour extra on this petition, that is, over and above what would be 'normal' for an average faculty to this point in the process, and she herself spent an extra 4 hours and 20 minutes. Doing the arithmetic against their normal charging rates, that comes to £950.00 plus VAT, and I will allow £750.00 plus VAT. That sum is to be paid by the petitioners as a condition of and prior to the issue of the formal faculty.

John W. Bullimore
Chancellor
13th February 2019
Outline of Order

The petition is approved, subject to the following:

- 1) No permission is given for demolition of the chimney-stack (the petitioners not having pursued their request)
- 2) No permission is given at this time for renovation of the effigy, unless and until I have seen a detailed report on the work proposed, and that report is approved by the CBC and DAC
- 3) The conditions in the DAC Notification are to be followed, insofar as not yet complied with
- 4) Costs to be paid by the petitioners as above
- 5) Time for completion: by end of August 2022
- 6) Permission to apply for Further Directions by email or letter to the Registry.