

IN THE DERBY CONSISTORY COURT

Re All Saints', Mickleover

J U D G M E N T

1. A faculty is sought to re-order the interior of All Saints' Church, Mickleover in the Diocese of Derby. All Saints is an ancient village church, with parts of the building dating back to the 14th century. It has a Grade II* listing. It is stone built and set in a large churchyard. Internally it consists of a nave and two side aisles, a chancel at the east end and a tower at the west. It was extensively restored in 1857-8, when many of the current internal furnishings, including the red pine pews, with straight backs and short seats, and pulpit, were installed. The altar and reredos were added later in 1931. There have been further works adding space for an organ and a vestry in 1902, and, later, in 1967, a choir vestry.
2. The proposed works, as set out in the Public Notice, are to re-order the nave and aisles, to introduce new seating and floor coverings, a coffee bar and a disabled access toilet and baby-changing area. It is proposed to sell the pews. In the petition, the cost of the works is estimated at £125,000 of which £60,000 is available, leaving £65,000 to be raised. In more detail, the proposal is for the removal of the 19th century pine pews from the nave and north and south aisles; levelling the pew platforms and installing a suspended timber floor; replacement of existing carpet tiles and carpeting of tiled floors at the west end; installing a toilet/baby-changing facility/chair store in the choir vestry with ramped access; and installing a servery at the west end of the north aisle. It is proposed that Alpha A1B chairs will be purchased for seating in the nave, while Howe 40/4 chairs would be purchased for use in the aisles.
3. The Statement of Need gives three reasons why the proposed works are required. Firstly, to provide comfortable seating for worshippers on Sundays and on other days during the

week. It is said that the current pews are uncomfortable and this is given as a reason why older members of the congregation won't attend even if they bring a cushion. It is said that the inflexibility of fixed pews can cause issues for the emergency services if they are called to attend someone who has suffered a sudden collapse. Secondly, in order to grow the ministry of the church, a flexible space is needed for activities such as mums and toddler groups, family worship, café church; a space for community events, such as concerts, talks and exhibitions. Thirdly, although there is a church centre next door, which has kitchen facilities and toilets, it is often let to external organisations to generate income. The addition of a servery and disabled access toilet would enable the church building to be used independently of the church centre.

4. The proposals were considered by Historic England who provided pre-application advice to the DAC by letter dated 23rd April 2018. It was said that “The pews form part of the Victorian remodelling scheme and their arrangement performs an important architectural role in structuring the volume of the church interior and emphasising the focus towards the chancel and altar. The pews therefore make a strong positive contribution to both the aesthetic character of the interior and the overall significance of the church. The proposed almost total pew removal from the nave and aisles would therefore be regrettable and harmful to the significance of this church, resulting in the loss of historic fabric and character. In our view, justification for the level of pew removal proposed needs to be robust; in this case we are not convinced that there is robust justification at this stage. Whilst we understand the need for more flexible space within the church, we do not believe all the options have been fully explored. We would therefore urge the parish to consider a more phased approach of pew removal in the first instance. For example – removing only the aisle pews or removing pews from either the front or back of the church would provide more flexible space which may meet the parish's needs whilst retaining the structure and character within the church.” Concerns were also expressed over the choice of chairs and the extent of the carpeting proposed.
5. The petition was considered by the DAC at a meeting on 23rd July 2018. The committee recommended the proposals subject to four provisos. Firstly, the choice of chair for the

nave should be agreed by the DAC, secondly the carpet choice should be agreed by the DAC, third the cabling and pipework routes should be agreed with the church architect and finally below-ground work should be subject to archaeological monitoring.

6. The Public Notice was displayed from 26th July 2018 to 25th August 2018. One objection was received from Mr B Daykin by letter dated 24th August 2018. Mr Daykin is a former churchwarden and PCC member. He objects to the provision of a “tea-bar” on the basis that similar facilities exist in the church centre; he does not believe sufficient thought has been given as to how the “tea-bar” will be used on Sundays, given the timings of the services; the congregation is unaware of the type of chairs being proposed; and that there are other more urgent works, disabled access and windows in particular, which are more urgent. He writes that others agree with him, but consider it pointless to object. As a result of his objection, Mr Daykin was served with a Form 5A to which he responded that he did not wish to become a party opponent, but wished the Chancellor to take his letter into account when reaching a decision.
7. The faculty came to me on 12th March 2019 and, having reviewed the petition, I considered that, in view of the fact that the choice of type of chairs was controversial, it would be inappropriate for me to delegate this question to the DAC. I was also concerned that the parish was not currently able to fund the proposed works. I gave directions that three questions should be put to the petitioners and the objector and that the DAC furnishings advisor should be invited to comment on the responses. I asked (i) why the parish wanted upholstered chairs, rather than wooden chairs, given the Church Buildings Council (“CBC”) guidance; (ii) why it was thought desirable to have two different types of chairs; and (iii) why I should not follow the CBC guidance, that is, not to allow upholstered chairs.
8. The CBC Guidance on seating is issued under section 55(1)(d) of the Dioceses, Mission and Pastoral Measure 2007. In summary it recommends that when considering replacement seating, parishes should choose high quality wooden chairs or benches **without** upholstery. The guidance states “Our experience is that well-designed wooden

chairs have the greatest sympathy with historic churches and offer the best value for money given their long lifespans.”

9. The response from the petitioners gave answers to all three questions. In relation to upholstered chairs, they repeated their assertion that older members of the congregation cannot attend unless they have upholstered chairs. They added that people’s expectations of comfort have changed, and few people would choose an un-upholstered seat. They say that pew cushions would not be a solution. They then say that the upholstered chairs proposed would be more stable and assist older members of the congregation when standing or sitting. They say they have considered the test results which show upholstered chairs to be hard wearing with a 25-year life span. Finally, they have been advised that upholstered chairs would not affect the acoustics of the building.
10. In relation to the proposal that there should be two different types of chair, they say that it is envisaged that the chairs in the nave would be moved infrequently, however the chairs in the side aisles would be stacked and stored so as to create space. This is the reason for the two types of chair.
11. Their justification for not following the CBC Guidelines is that they consider that it is aimed at preventing damage to the visual appearance of church interiors. They believe that their proposals mitigate this by retaining pew backs; having upholstered chairs with wooden top rails and wooden backs; having the same shade of wood on both types of chair; and, the use of light coloured and stain resistant fabrics.
12. Mr Daykin also responded to my questions. He expressed concern that upholstered chairs would get stained, citing the stains on the existing carpet in support. He did not know why two different types of chair are proposed and he could see no reason for not following CBC guidance. Mr Daykin was also concerned about the cost of the proposals.
13. Dr Janet Spencer is the DAC Fabric Advisor. She had previously expressed concerns at the proposal for upholstered chairs and indicated a preference for un-upholstered Howe

chairs. I believe this was the reason for the proviso in the Notification of Advice from the DAC. Her comments by e-mail dated 22nd April 2019 on the statements in response to my questions were as follows:

“1. Why upholstered chairs, instead of wooden ones?”

At my first advisory meeting with them I explained that fully upholstered chairs - of the kind used in dentist’s waiting rooms - were not appropriate for church interiors. Even with an upholstered seat and wooden back they are heavy to move, stack only to 5 high, the upholstery wears out and they do not allow the flexibility required when pews are removed. They repeat here the notion that only upholstered seating can provide comfort. I had advised them of the CBC’s competition for manufacturers to design good, comfortable wooden chairs as replacements for pews, in order to stop the proliferation of fully upholstered chairs, and they should consider the Chorus chair, a winner in that competition. I suggested that they look at the Chorus chair in use at Willington church. I advised them also to look at the Alpha Howe 40/4 chairs in use in St Peter’s, Derby where the vicar organised a trial of a dozen different chairs, which resulted, much to the surprise of those prejudiced against all wood chairs, in the top choice for comfort being the Alpha stacking chair as against the upholstered chairs. They argue that parishioners can no longer sit on the pews, “with or without cushions”, but in churches where pews remain, foam-padded squab seats are used successfully, including at Melbourne and in Derby cathedral. Very few events in any venue, last for more than two hours at a time without a break.

At the first advisory meeting not only did we talk about the comfort of upholstered or all wood chairs, but of the effect on the historic stone interior of removing natural materials such as oak or pine and replacing them with unsustainable inferior materials that will cost more in the long run through the need for regular replacement .

Well-designed chairs are intended to be secure and allow for elderly people to lean on them. The Chorus and the Alpha stacking chairs also come with arms, with spaces for books and can link to make rigid rows if needed.

I am not convinced by the upholstery manufacturer’s claims about upholstery lasting for 25 years. It is not logical to suggest that upholstered seating will last as long or as well as all wood chairs. Oak and pine pews and chairs have lasted for a hundred or more years in churches. I attach a photograph of an upholstered chair of under ten years’ wear from a church which makes the point clearly. The DAC secretary has a file with examples of worn out, sagging and stained upholstered chairs.

I am not an expert on acoustics, but I am sure there are many different opinions on the effect of carpeting and seating, as well as a church full of people, on the acoustics of any interior.

2) Why it is thought desirable to have two different types of chairs.

With the proposed removal of the pews, the seating capacity goes down from 150 to 120. I am not sure of the rationale for removing the pews in the nave. Usually the argument is to allow for greater flexibility in the use of the space within the church, but here the parish states that only the side aisles are needed for flexible use. This has been done successfully in many churches where the nave pews are retained and the side aisles used for meetings, lunch clubs and so on. The Alpha Howe 40/4 is ideal for this purpose. The upholstered bench type of seating, the Alpha A1B, in the nave it seems, is to act in imitation of pews. However, if approval is given for complete pew removal, then my advice remains that it would be far preferable to have the Alpha Howe 40/4 chair throughout the church. These chairs can have arms, a linking system, spaces for books and stack to 30 high when that is necessary to allow maximum flexibility. The stacking chair and upholstered chair are completely different and regardless of the colour of the wood or upholstery, the effect will be unfortunate. A far greater harmony and spaciousness would be given to the interior with the effect of the same wood chairs throughout.

I remain unconvinced by their argument for two types of chair.

3) Provide reasons why CBC guidance on seating should not be followed with regard to upholstered chairs and the proposed servery.

The retention of the back pew and the choir stalls is to be applauded for the sake of the visual impact, but the arguments against upholstered chairs in churches with serveries is irrefutable. Drinks will be spilled and upholstered seating ruined. In a discussion of colours for carpeting and upholstery my advice was to try to keep close in tone to the stone of the interior - browns, greys, and neutrals. 'Light' coloured fabrics are not practicable and strong reds and blues have to be used very carefully and in the appropriate setting. The CBC's guidance is entirely sensible and if followed would save parishes money on cleaning and replacement of seating.

It is helpful that the immediate servery area will remain tiled.

I find their arguments for upholstered seating where food and drinks are served to be unconvincing.

Overall, my best advice would be to leave the pews in the nave and use squab cushions with removable and washable covers, remove the pews from the side aisles and use the stacking Alpha Howe 40/4. If complete pew removal is agreed, then my recommendation is that the Chorus chair or Alpha/Howe 40/4 all wood stacking chairs are used throughout the church.

However, if pews are to be removed and approval given for the use of the Alpha A1B chair with wooden back and upholstered seat, then to mitigate the bad effect a neutral colour such as grey/brown - or textured fabric with those colours- should be used for the seats.

Letter from Mr B G Daykin, dated 5th April, 2019

Mr Daykin raises all the issues addressed in my response above.

He raises the problem of wear and tear on upholstered seating as opposed to wooden seating.

He points out that the carpet in the church is already stained by spillages of drinks and upholstered seats would suffer in the same way.

He cannot understand the point of having two types of chairs in use in the church.

He cannot see why the CBC guidance should not be followed.

He makes the point that with pew removal and replacement with chairs, the chairs are very difficult to keep in straight lines, though this concern would be addressed by the fact that the Alpha stacking chairs have the capacity to link and have room for bibles.

He makes the valid point that the PCC have not given, as far as he knows, any financial forecast as to how they intend to implement the development of the project.

Whilst it is beyond my remit as furnishings advisor to comment on finance, I can say in support of Mr Daykin's concern, that the parish should have funds to replace removed pews with good quality seating before approval for such removal is granted. Overall, I have sympathy with the points raised by Mr Daykin in his letter."

14. On 3rd May 2019, I visited All Saints, Mickleover. I was accompanied by the Registrar, Mrs Nadine Waldron.
15. In the light of my visit, the responses to my questions and comments and the fact that the petition is clear that the parish does not currently have the funds to carry out all of the proposed works, I asked whether it was possible to break the proposals down into "phases". I was told that this would be difficult, but that the Church architect was working on it.
16. While waiting for this, I received very late representations from the Victorian Society. I declined to accept these, but indicated that I would consider a formal application to put them in out of time. No such application was made.

17. On 19th June 2019 I received, via the Registrar, a letter containing the following revised proposals for the works to All Saints:

“It is not possible to divide the project up in the way that the Deputy Chancellor has asked for as it wouldn’t work. So we have looked at our plans again with Mr Mark Parsons and decided at this stage to go for a staged approach, which means that we would like to get an early decision on the installation of the toilet and drinks servery, the removal of pews in the North Aisle to allow for the children’s table to be accommodated, plus the removal of the two back pews in the Nave to give the circulation space that we will need. The attached plans show the extent of this reduced work.

Although for Phase 1, we might have decided not to go ahead with the carpet replacement until all the pews were removed at some point in the future, at the request of the Church Architect we will also be looking to replace the carpet in the Nave/North and South Aisles and probably the Chancel at this stage as per earlier drawings (because the existing rubber backed carpet tiles are sealing in moisture underneath)

In terms of the replacement of pews by chairs in the North Aisle, we are looking at purchasing up to 24 Howe 40/4 chairs without fabric seating (w/out arms), plus a further 6 with arms.

The overall cost of the project will be approximately £82k including contingencies (see attached estimate). For this, we have a grant of £25k from Raymond Ross Fund, which the PCC can match from its own resources. The rest of the funds will be raised we hope over the next 12 months through donations and fund raising by the congregation. As discussed with Mrs Waldron, we may seek an extension of 2 years over the usual 2-year faculty allowance in order to achieve this phase.

In coming to this decision, the PCC would still like a decision on suitability of the fabric chairs for the Nave (as per the full faculty application) from the Deputy Chancellor as we would hope to move on to completing the full project in the medium term.”

18. I will treat this letter as a request to amend the petition. I will allow this and, since it is a simply a division of the proposed works into stages, I will not require a new petition or a new Public Notice.

19. I propose to determine the amended petition, that is the first phase of the works including the disabled access toilet, the servery and the removal of the pews in the North Aisle.

Given that I am asked to allow up to four years for these works, I will not make a decision on any other aspect of the original petition, including the suitability of upholstered chairs in the Nave. The worshipping community's experience of the works undertaken in the North Aisle may lead to alternative proposals for the Church as a whole and, in my judgment, an "in principle" decision on one aspect of future plans, at this stage, would be inappropriate.

20. In considering whether to permit these works, given that All Saints' is a Grade II* listed building, I am guided by the framework set out in *Re St Alkmund, Duffield* [2013] Fam 158. The questions, set out in paragraph 87 of the judgment, to be addressed are:

- (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
- (2) If the answer to question (1) is "no", the ordinary presumption in faculty proceedings "in favour of things as they stand" is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals: see *Peek v Trower* (1881) 7 PD 21, 26-28, and the review of the case law by Bursell QC, Ch in *In re St Mary's Churchyard, White Waltham (No 2)* [2010] Fam 146, para 11. Questions 3, 4 and 5 do not arise.
- (3) If the answer to question (1) is "yes", how serious would the harm be?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *In re St Luke the Evangelist, Maidstone* [1995] Fam 1, 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed.

21. In my judgment it would be right, in this case, to consider separately the different components of the proposed works for which permission is now sought by the amended

petition. There are, I believe, four. Firstly, the disabled access toilet; secondly, the servery; third, the removal of the pews in the north aisle and the back two pews in the nave; and, fourth, re-carpeting.

22. In my judgment, neither the installation of the disabled access toilet nor the servery will result in harm to the significance of the church as a building of special architectural or historic interest. In particular, the disabled access toilet is being installed within the 1967 choir vestry extension. Both the toilet and the servery will be of real benefit to congregation members who will not need to move to the church centre. It will be for the PCC to address the concerns which Mr Daykin raises in relation to overlapping between services and I am sure that this will be done. It does not, however, appear to me to be a good ground for refusing permission for these works. Likewise, the re-carpeting which will be an improvement on the current carpet. The fact that there will be a tiled area around the servery should minimise the risk of spills on the carpet, so far as is possible. I am satisfied that I do not need therefore, in relation to these works, to go beyond the first two questions in the *Duffield* Guidelines. I am satisfied that these works should be permitted. The carpet is to be Una Grano Ecotrust (colour 0825730) by ege.

23. The removal of the pews in the north aisle and the rear pews in the nave, by contrast, will, in my judgment, result in harm to the significance of the church as a building of special architectural or historic interest. They form part of the overall uniform appearance of the interior. I agree with the initial assessment of Historic England. I would assess the removal of this limited number of pews as moderate. I therefore have to consider how clear and convincing is the justification for these works.

24. In essence, the area which will become available through the removal of pews is intended to provide a space which can be used for a wide variety of purposes. It will be used for children's work, for fellowship, for meetings and for exhibitions. Stacking Howe 40/4 chairs, which can be removed and stored elsewhere, will facilitate these uses, while still permitting the area to be used to seat worshippers when needed. Together with the toilet and servery, it will enable the church to be used independently of the church centre. In

my judgment, there is a strong argument for enabling a part of this church to be used more flexibly and the undoubted public benefit will outweigh the moderate harm which will be caused. I am therefore satisfied that these works should also be permitted. The chairs are to be the Howe 40/4 type, un-upholstered, up to 24 without arms and up to 6 with arms. The shade/veneer is to be approved by the DAC.

25. I need to consider, as a result, what should happen to the pews which are removed. I am asked to authorise their sale. I am satisfied that the pews which are removed from the north aisle may be disposed of as the parish sees fit. In relation to the rear pews from the nave, however, the question is not so easy to answer. The original proposal included their retention. It may be, therefore, that they will be required at some point in the future. I will therefore direct that they must be retained and stored in a safe and dry place.
26. As an aside, removal of the rear nave pews will necessitate the relocation of the radiators which are currently located behind them. The current radiators are, in my judgment, singularly unattractive and I direct that once re-located, the radiators should be painted so as to be less obtrusive. I will also direct that the choice of colour should be approved by the DAC.
27. The Notification of Advice included recommendations for conditions. Those which have not already been addressed by me, I will include. The cabling and pipework routes should be agreed with the church architect and any below-ground work should be subject to archaeological monitoring.
28. In conclusion, a faculty will issue for the works identified on the plan drawn up by Anthony Short & Partners LLP and numbered R2-23B, namely:
 - a. the installation of a disabled access toilet in the choir vestry including ramped access from the nave;
 - b. the installation of a servery in the north-west corner of the church;
 - c. the removal of the pews in the north aisle and their disposal; the removal of the back two pews in the nave and their secure storage; the introduction of up to 24

Howe 40/4 chairs without arms and up to 6 with arms in the north aisle; the re-location and painting of the radiators currently attached to the back pews in the nave. The shade/veneer of the chairs is to be approved by the DAC and the choice of colour for the radiators is to be approved by the DAC.

- d. Together with the re-carpeting of the nave, north and south aisles and chancel. The carpet used is to be Una Grano Ecotrust (colour 0825730) by ege.
 - e. Provided that (i) the cabling and pipework routes shall be agreed with the church architect and (ii) any below-ground work shall be subject to archaeological monitoring.
29. I am asked to allow up to four years for these works to be carried out. Given that the parish currently has a little less than two-thirds of the funds required for these works, but indicates that it expects to be able to raise the balance within twelve months, I propose to allow three years for the works at this point. If sufficient funds cannot be raised to complete these works within that period, then, in my judgment, the project should be re-assessed. Works may not commence until the parish has raised the funds required to pay for them.
30. If, during that time, the parish wishes to pursue the other elements of the original petition, namely the reordering of the nave and south aisle, and has the money to do so, then an application may be made, without the need for a fresh petition, for further directions via the Registry by e-mail or letter.
31. I am also asked to direct that, due to the above average amount of time spent by the Registry on this petition, extra correspondence fees should be paid by the parish in the sum of £350.00 plus VAT to reflect 2½ hours' additional work. I will so direct, with such fees to be paid before the issue of the faculty.

2nd October 2019

Timothy Clarke,
Deputy Chancellor.