

Neutral Citation Number: [2017] ECC Wor 1

In the Consistory Court of the Diocese of Worcester

Archdeaconry of Worcester: Parish of Suckley: Church of St John the Baptist

Faculty petition 14-63 relating to reordering of church building

Judgment

Introduction

1. The parish in 2014 sought a faculty for what I described at the time as being “a remarkably ambitious programme of works that would, if implemented in its entirety, radically transform the building into a multi-purpose space capable of use for much more than merely Sunday worship”. There were twelve principal elements of the programme, together estimated to cost more than £300,000.

2. On 8 April 2015, I granted a faculty to authorise in principle:
 - (i) the introduction of new heating under the floor (items N3, N4, SA1 BR1 to BR4 on drawing 3062.3 P1 revision F), followed by either
 - the installation of a new timber floor (items N2, SA1) or
 - the relaying of the tiles along all or part of the existing aisle and the laying of a new timber floor elsewhere;
 - (ii) the carrying out of adjustments to the pews in the nave, to make them moveable, and the purchase of suitable trolleys;
 - (iii) the introduction of toilet and catering facilities along the north and south walls of the tower, at ground floor level, broadly as shown on the plans accompanying the petition (as items BoT1 to BoT15), along with associated arrangements for water supply and drainage (items W1, W2, W3, and drawing 3062.3 P2 revision B) and moving of memorial (item SC1);
 - (iv) the introduction of storage cupboards along the west wall of the side chapel (item SC2);

- (v) the erection of a new enclosure for the gas meters at the base of the north wall of the tower (items G1 to G3); and
- (vi) the improvement of the access between the school and the church, and the reinstatement of the path to the vestry door (items OS3 to OS6).

3. That faculty was subject to the following conditions:

- (1) that no works shall be carried out on each of the above items (i) and (ii) until a fully costed specification for the works in that phase has been approved in writing by the court, following consultation with the Victorian Society, Historic England and the DAC and full publicity;
- (2) that no works shall be carried out on the above item (iii) until a fully costed specification for the works in that phase has been approved in writing by the court, following consultation with the DAC;
- (3) that no works shall be carried out on each of the above items (iv), (v) and (vi) until a fully costed specification for the works in that phase has been approved in writing by the DAC or, in default of such approval by the court;
- (4) that each item of work (i) to (vi) shall be carried out in accordance with the details approved under conditions (1) to (3);
- (5) that no works shall be carried out on each of the above items until an amount equal to at least 90% of the estimated full cost of the works in that item, including any professional and other fees and taxes, has been raised or promised to the satisfaction of the registry; and
- (6) that the DAC Archaeological Advisor, or another archaeologist approved in writing by the Court following consultation with the DAC, shall be given an opportunity to inspect and record the building before, during and after the works.

4. I noted then that the other items that formed part of the overall package of works would have to be the subject of a further petition or petitions. Those other items were as follows:

- (a) the removal of the pews in the nave, and their replacement with “more versatile seating, such as a mixture of stackable more comfortable pews and chairs to facilitate flexible worship and all other anticipated uses of the space” – save insofar as authorised under item (ii) above;
- (b) the provision of a nave altar;
- (c) the provision of a room in the area currently used only as a vestry, to the south of the chancel, that can also be used for children’s groups, meetings, and as a quiet space; the separation of this from the main church by glazed screens; and the moving of the organ to a new location;

- (d) the provision of storage, both for church equipment (such as the benches and chairs) and for school equipment when not in use – save insofar as authorised by item (iv) above;
- (e) the provision of Improved IT facilities and, in due course, modern audio-visual (AV) facilities for worship (although the latter is to be the subject of a subsequent faculty petition);
- (f) the grading of the floor of the porch, to provide step-free access; and
- (g) the provision of a new storage area for the ride-on lawnmower, currently stored in the base of the tower.

The 2016 faculty petitions

5. Since the issue of that faculty, a new incumbent has been appointed. Two new faculties were submitted in 2016, for:
 - the installation of a new floor, to follow the installation of a heating system (16-43); and
 - the alteration of some pews, and the disposal of others (16-44).
6. In relation to the first of these, objections were received from two local residents, one of whom pointed out that the conditions attached to the previous faculty had not been complied with. The Victorian Society objected to the loss of the tiles, Historic England made no representations, and the local planning authority had not been consulted.
7. In relation to the second, objections were received from six local residents; much (but not all) of their concern related to the manner in which the petitioners had chosen to present their proposals, rather than as to the substance of what was proposed.
8. In a letter date 10 May 2016, I noted that there were two possible ways forward. Firstly, the Parish could rely on the faculties already granted, and seek approval for the details of the flooring and the adjustments to the pews. I observed that there was no possibility of anyone formally “objecting” to the details submitted. However, I would not be prepared to consider the details until I was certain that they had been considered by the Victorian Society, Historic England, the planning authority and the DAC. Further, I

would take into account the points that had been raised in objections to the new petitions.

9. Secondly, the parish could continue to rely on the new petitions, but they would need to be considered in the light of the objections that had been submitted, possibly following an oral hearing. I also observed that I was not willing to approve the new floor until I had available full details of the new heating.
10. The two petitions were subsequently withdrawn.

The present application

11. A new architect has now taken over responsibility, and the reordering scheme has been reconsidered, and considerably amended.
12. As a result, the Parish now seeks detailed approval of four specific elements of the reordering scheme:
 - (A) the screening-in and use of the vestry;
 - (B) the introduction of new under-floor heating and timber flooring;
 - (C) the introduction of a kitchenette, WC and upper room in the north transept;
and
 - (D) the removal of some of the pews.

I consider each in turn.

13. Before doing so, however, I note that the Parish appears to have been given indications that some or all of the approvals now being sought could be dealt with by way of amendments to the existing faculty. It will become apparent that I do not agree with that approach, at least in relation to some of the items. It may be helpful, therefore, if I set out the basis on which I have considered this in principle.

Amendment to previously approved proposals

14. It sometimes occurs that a parish wishes to amend a faculty. This may relate to something trivial, such as altering the detailed specification of some element of works that have been authorised, or extending the time within which works are to be carried out. But it may be something more major, and potentially controversial, such as removing twelve pews instead of six. A variation of this would be where a faculty authorises works, but requires the details of the works to be approved before they are implemented; the details are then submitted, but not in accordance with the original approval. The present case is an example of the latter.

15. The Rules provide that a chancellor may amend any faculty (Faculty Procedure Rules 2015, r 20.3). And there is nothing to stop anyone – in particular a parish – inviting the chancellor to make such an amendment. The Rules do not specify what kind of amendment may be made, nor what procedure is to be followed. However, the chancellor is only permitted to take such action if it seems “just and expedient” to do so. That means that a faculty should not be amended if it would be unjust to any of those who were involved – that is, those who made representations in relation to the original petition, or who might now wish to make representations. But the very existence of the power means that it cannot be right for a chancellor to insist that any change to works that have been authorised must be the subject of a new petition; were it otherwise, there would be no need for the reference to expediency.

16. It seems to me that it will normally be appropriate to amend a faculty without further ado where the change is very minor, and in particular where it amounts to doing something that has been permitted, but in a different way. However, more caution should be exercised where a proposed change relates to the substance of the works. So, for example, if a parish is granted a faculty to introduced blue chairs, but now wishes to choose a slightly different shade of blue from the one approved, that can probably be authorised with no further consultation. But if it wishes to save money by using a quite

different quality of chair, or to choose a bright red one, that may need to be the subject of further consultation.

17. And if the change is to do something significantly different, that will obviously need to be the subject of an entirely new petition. That does not mean that the new petition will necessarily be refused; but it would not be just to prevent those who might wish to make representations from doing so.

18. Deciding whether a particular proposed change can be authorised by amending a faculty is bound to be a matter of fact and degree. But one test is likely to be a consideration of the probability of the change raising objections distinct from those that might have arisen in relation to the original proposal. And that in turn may require consideration of whether (and why) the original proposals were controversial. So, for example, if a parish is permitted to replace a pipe organ with a digital organ, and subsequently wishes to amend the detailed specification of the stops, those who supported or objected to the petition on principle are not going to be troubled by the revised specification. But if at least some of the objections were on the basis of the cost of the new organ, and the revised specification is likely to increase the cost yet further, there might be more cause for concern, perhaps leading to a request for a revised justification.

(A) Screening-in and use of the vestry

19. This seems to be a more detailed scheme in relation to unapproved item (c) (see paragraph 4 above). I note that Historic England is not objecting to this; and that the DAC appears to be in favour (although its letter of 6 July 2017 does not state that explicitly). And it is good to see details of this element of the overall scheme, as it gives confidence that the Parish is thinking of the church as a whole.

20. However, this element of the works was explicitly not authorised by the 2014 faculty, as noted in paragraph 27 of the 2015 judgment. It will therefore need to be the subject of a new petition, which will need to be notified to the local planning authority, Historic

England and the Victorian Society, since the works in question would undoubtedly affect the character of the church as a building of special architectural or historic interest. I therefore make no further comment at this stage, so as not to prejudice my eventual consideration of this proposal.

(B) New under-floor heating and timber flooring

21. The 2015 faculty authorised (as item (i)) the introduction of new heating under the floor followed by either:

- the installation of a new timber floor, or
- the relaying of the tiles along all or part of the existing aisle and the laying of a new timber floor elsewhere.

22. As noted above, that authorisation was subject to conditions – in particular as follows:

- (1) that no works shall be carried out on [item (i)] until a fully costed specification for the works in that phase has been approved in writing by the court, following consultation with the Victorian Society, Historic England and the DAC and full publicity;
- (3) that no works shall be carried out on [that item] until a fully costed specification for the works in that phase has been approved in writing by the DAC or, in default of such approval by the court; and
- (4) that [those works] shall be carried out in accordance with the details approved under conditions (1) [and] (3).

23. In accordance with condition (1), the Parish has now produced a detailed scheme for the under-floor heating and a new timber floor.

24. The heating has been the subject of detailed discussion with the DAC heating advisor, and it appears that all minor details have now been sorted out. And Historic England has apparently raised no objection. The Victorian Society appears not to have expressed a view as to the heating; but it has been consulted. There is no explicit statement as to there having been any public consultation on the heating; however, there has been full

public discussion of the new floor, as described in the Statement of Need, and this would have almost inevitably involved mention of the heating.

25. Historic England has raised no objection to the proposed floor, and the Victorian Society has only objected to the principle of losing the tiles from the main aisle – but not as to the details. There has been general, although not unanimous, public support for the all-timber option; although, as I noted above, some objections to the loss of tiles were received in relation to petition 16-43 (since withdrawn).
26. The principle of an all-timber floor, as one of two possible options, was explicitly authorised by the 2015 faculty. I am satisfied that the requirements as to consultation have been satisfied, and that the more detailed scheme now proposed is satisfactory. I am therefore content to approve the heating and the floor, to be carried out in accordance with the details that have been submitted.
27. I would, however, draw to the attention of the Parish the remaining conditions attached to the faculty, which still require to be complied with:
 - (5) that no works shall be carried out on [item (i)] until an amount equal to at least 90% of the estimated full cost of the works in that item, including any professional and other fees and taxes, has been raised or promised to the satisfaction of the registry; and
 - (6) that the DAC Archaeological Advisor, or another archaeologist approved in writing by the Court following consultation with the DAC, shall be given an opportunity to inspect and record the building before, during and after the works.

(C) Introduction of kitchenette, WC and upper room in the north transept

28. The original proposal was that kitchen and WC facilities would be introduced in the base of the tower and along the south wall of the nave. I authorised the former but not the latter; and required that the details of the new facilities be approved by the court (and not just by the DAC).

29. The proposal now is to introduce such facilities into the north transept, and also to insert a new mezzanine floor. As with the proposal for the new vestry, I observe that the DAC is supportive, and that Historic England defers to the DAC. And here too it is good to see details of this element of the overall scheme, to see how it fits in with the overall programme.
30. I note that the DAC is said to be of the view that this can be dealt with as an amendment to the previous faculty rather than as the subject of a new petition. However, in the light of the principles I have outlined earlier in this judgment, I consider that what is now proposed is a sufficiently major departure from the previously approved works that it will need to be the subject of a new faculty petition – particularly in view of the contentious history of this matter. This petition too will need to be notified as per paragraph 20 above – and the two elements could indeed be handled together.
31. Again, therefore, I make no further comment at this stage.

The pews

32. The 2015 faculty authorised (as item (ii)) the carrying out of “adjustments to the pews in the nave, to make them moveable, and the purchase of suitable trolleys”. That clearly envisaged the retention of all of them, albeit in a modified form. That authorisation was subject to conditions that were, in effect, identical to those applying to item (i), noted at paragraph 22 above.
33. What is now proposed is the removal of a significant number – about 24 out of 36 – of the existing pews, and the retention of ten, adapted so as to be movable, with two fixed in place around the font. Those proposed to be disposed of (or at least the majority of them) are said to be affected by woodworm. And the Parish considers that there is only space for ten pews (all shortened) to be retained against the wall or the south arcade when the nave is in use for activities requiring a cleared central area. This is in effect what was proposed in faculty petition 16-44 (since withdrawn).

34. It is not clear whether Historic England accepts the existence of the woodworm, but not that it constitutes a justification for the removal of the pews, or whether it rejects the technical evidence as to the worm. Either way, it is objecting to the proposal.
35. However, whether or not anyone is objecting to this element of the presently proposed package, there is simply no faculty in place to authorise it. I cannot approve the details of item (ii) under the relevant conditions, because what is now proposed is not what was envisaged by item (ii), nor is it a minor variation of what was envisaged. If the proposal were to be the removal of one or two pews, with the rest made moveable, I might have been willing to authorise it as an amendment. But that is not the case; it is now proposed to remove around two thirds of all the pews.
36. I note the comments in the Statement of Need as to the public consultation exercise that has been carried out. However, I am well aware that proposals to remove pews can be contentious; and I note too that this particular reordering has not been wholly devoid of controversy. And petition 16-44 (which related just to the loss of the pews) was the subject of some objection. So I am not willing to short-cut the procedural requirements, which are designed to ensure that proposals are properly considered, and in particular that the recognised amenity bodies and the local planning authority are given a chance to comment fully.
37. It follows that the proposal to remove all but twelve of the pews must be the subject of a further petition, which will have to be notified to Historic England, the Victorian Society, and the planning authority. Again, I would not wish to prejudge my eventual decision on that, save to say that I would wish to see evidence as to the condition of the pews, and whether any woodworm or other problem can be remedied. Clearly it would be much more helpful if that could be agreed between all the parties.

The way forward

38. It follows from my conclusions above that the new heating and the new floor can now be introduced, subject to compliance with conditions (5) and (6) (see paragraph 27 above). But the other works – the creation of the new vestry, the conversion of the north transept, and the removal of most of the new pews – will have to be the subject of one or more further petitions. And I cannot at this stage prejudge what my eventual decision will be on those. I regret that this will cause further delay, but I have no option.

39. Unfortunately, there is one further complication. As things stand at present, once the new floor has been introduced, the pews will all have to be made moveable, and reintroduced. To do so would clearly be a waste of resources if many of them were then to be disposed of. That might suggest that it would be helpful to resolve the question of the pews before the works to the floor are actually implemented.

40. On the other hand, in order to introduce the new floor, it will be necessary to remove all of the pews, at least temporarily. That will provide a good opportunity to see what the church would look like with some or all of the pews removed, and to experiment with different layouts – no doubt in consultation with the DAC. If that approach is pursued, consideration will have to be given as to how the pews can be made moveable on a temporary basis, and where they can be stored until their final location has been determined.

41. The parties should therefore give urgent attention as to how they wish to resolve this matter, so as to minimise any further delay.

42. I also recognise that it may now seem unfortunate that petition 16-44, seeking the removal of some of the pews, was withdrawn, and that I am now requiring a new petition to be submitted. However, now that the overall plans of the Parish seem to be more fully thought-out, the overall position as to the future of the church can be more thoroughly assessed, and the funding considered in more detail. That in turn will enable

a more informed view to be taken as to the future of the pews. Further, as I have noted, it may be possible for experiments to take place to inform the assessment by all concerned as to the various possible options.

43. Finally, it will be noted that the original faculty, dated 27 April 2015, required that the approved works be completed within 36 months of that date – that is, by 27 April 2018. In all the circumstances, I order that the faculty be amended by the extension of the time for completion of the works by a further 36 months.

CHARLES MYNORS

Chancellor

18 November 2017