

25 AUG 2009

Diocese of Exeter

Chancellor

Date: 6th August 2009

Petitions: Re-ordering of Newton Tracey Church

JUDGMENT

Background

1. By a petition lodged on 18 May 2009 a faculty is sought to authorise a scheme of reordering the interior of the church of St Thomas à Becket in Newton Tracey. The schedule of proposed works is as follows:
 - (a) remove and dispose of all pews (including those currently removed under an APTR) retaining pew and frontal behind the font and two freestanding pews on North Wall as examples;
 - (b) replace pews with 40 upholstered chairs;
 - (c) adapt prayer desk on North side of chancel to retain only the seat;
 - (d) provide vestry at East end of North aisle with brocade curtains as separation from chancel and North aisle;
 - (e) install five electrical convection heaters;
 - (f) provide small kitchen facility on south wall of belfry; screen with brocade curtain;
 - (g) carpet nave and base of Tower;
 - (h) renew wiring and install new lighting;

as in Jonathan Rhind architects' drawings numbers 493/01, 493/02, 493/03 and 493/04A; documents A, B and C and various fabric samples.

2. St Thomas à Becket is a 12th century, grade II* listed building. The Statement of Significance describes St Thomas à Becket as a small parish church set on the outskirts of a small village. Whilst the church includes parts which date back to the 12th and 13th centuries, a substantial restoration took place in the mid 19th century.
3. Permission was given by the Archdeacon of Barnstaple by licence granted on 1st March 2008 for the temporary removal of pews from the North aisle to allow for the timber flooring be repaired and to enable the church to try out more adaptable seating arrangements. The petitioners contend that there is no longer a need for the extensive provision of fixed pew seating in this small church. The church is part of the Two Rivers Team Ministry. The average weekly church attendance is eight, but numbers rise considerably on special occasions. The Statement of Need states:

‘The proposed work to reorder Newton Tracey Church, taking out pews, putting in chairs and carpeting, as well as adding a kitchen and extra heating, is seen as a way forward to provide a more useful worship space that can be used throughout the week for a variety of church and group meetings.’

The petitioners also report that the experiment with movable chairs has been successful in providing greater flexibility for seating in services and at meetings held in the church. In addition the removal of the pews is said to have made the church appear lighter and more inviting.

4. The petitioners say that there is a need to improve the heating in the church, which is said to feel cold, and the need to provide kitchen facilities for use after services, concerts and group meetings.
5. On 27th April 2009 the DAC issued a certificate recommending the proposed schedule of works, subject to a proviso that a revised drawing is submitted to and approved by the DAC prior to the commencement of works showing the extent of carpeting now proposed. Subsequently details of the carpeting have been supplied to the DAC which has given its approval. In addition the DAC certificate imposed a proviso that the electrical work is carried out in accordance with the relevant BS standard by a registered contractor. The DAC recommended that the applicants should consult the following bodies:
 - (a) English Heritage
 - (b) the Victorian Society
 - (c) the Church Buildings Council.
6. By a letter dated 7 April 2009 the Church Buildings Council expresses general support for the scheme as one which will provide 'a useful multi-use space'. The CBC makes a number of suggestions to improve the scheme, such as the provision of an external WC and the removal of the font base. The CBC also advises that carpeting the entire nave would harm the character of the church and provide a maintenance problem. The CBC recommends, as an alternative, a uniform hard floor surface.
7. The Victorian Society, in a letter dated 17 March 2009, describes "this diminutive building" as being "a charming example of a mediaeval church that was refurbished during the Victorian era. The fittings of 1867-8 are all very attractively detailed and would have formed a

delightful, unified interior before the temporary reordering. The photographs of the recent changes are not convincing that further pew removal would be any sort of enhancement for the interior of this church. The random assortment of chairs on the new floor looks untidy and at odds with the historic character of the church. We would therefore prefer that further significant erosion of the pews is not carried out."

8. The Victorian Society propose that the remaining five rows of pews should be maintained, particularly as only five chairs are intended to occupy this space. It is submitted that if the rest of the nave, North aisle, West end and vestry are altered as proposed then the necessary flexibility will be achieved, whilst maintaining the historical presence of these pews. In common with the CBC, the Victorian Society do not favour carpeting the nave, but suggest tiling should be used following the existing pattern.
9. By a letter dated 19 March 2009, English Heritage expressed general support for the proposed reordering. However English Heritage are concerned by the proposed clearance of the remaining pews and would recommend a more modest solution, such as adapting them for the North aisle, possibly as unfixed benches. They request that the pews and the "distinctive prayer desk" should not be sold off, but adapted for use elsewhere in the church. Again, English Heritage is firmly against the use of carpet stating that "carpeting is always a problem in churches".
10. At its meeting on 15 May 2009 the PCC, having noted the advice received from the Heritage bodies, nevertheless resolved to continue with the present application, as modified in accordance with the DAC provisos.

11. On 19 May 2009, the PCC treasurer wrote in support of the application and to advise this court that he had "very serious doubts as to how we could continue to operate without the planned reordering and the opportunity to extend usage of the church and generate more income. The removal of all pews, improved heating and lighting, the provision of a kitchen are all paramount to the survival of this church". His letter is supported by relevant financial documents.
12. On the 17th June the conservation officer for North Devon Council wrote indicating acceptance that it was difficult to make a case for the complete retention of the pews, but nevertheless expressing a personal view that their 'simplicity fits well with the character of the church' and stating that the complete removal of the pews would be a loss. A compromise solution is supported whereby some of the pews and one prayer desk are retained.
13. A public notice was displayed in May 2009 as a result of which a nine letters of objection have been received in relation to these proposals. Each of the objectors has received a letter from the Diocesan Registry explaining the relevant procedure and offering them the choice of either allowing their letter of objection to be taken into account, without becoming a party to the proceedings, or completing Form No 4 and becoming a full party. Each objector has, either expressly or by implication, opted for the former option. In determining this Petition I have read each of the letters of objection and have taken their contents into account when formulating my assessment of the merits of the application.
14. In summary, the main objections raised make the following key points:

- (a) removing the pews will take away the character of the church and part of its historic heritage;
- (b) the removal of the pews and their replacement with flexible seating is not at all in keeping with this lovely old church;
- (c) removing the pews will limit the number of people who can be seated at a big service, such as a wedding or funeral;
- (d) removing the pews significantly detracts from the character of the building and may well deter families from choosing to hold a wedding or christening there;
- (e) the proposed changes would make the church feel like a village hall. If a village hall is needed, then there is one only a mile or so away;
- (f) the carpeting will ruin the acoustics (this from an organist who plays there) and may become damp and hard to clean;

15. In addition to the above summary it is right to give individual attention to the letter from Mr and Mrs W J Smith, both of whom have been lifelong members of the PCC and Mr Smith recently retired as churchwarden after 38 years of service. Their letter essentially makes two points. Firstly that they are against the removal of the pews. Secondly, and separately, they complain that their voice has not been heard and properly recorded during the local consultations and PCC meetings. Mr and Mrs Smith do not feel that an adequate reason has been given for the removal of the pews. They wish the pews to remain in the church "in order to keep the spiritual feeling that at the moment is absent and bring back our beautiful little church."
16. When reading these various letters of objection, the court has been struck by the individual nature of each contribution which seems to set

out the writer's particular thoughts rather than simply "signing up for" a party line.

17. By letter dated 8 July 2009, the petitioners have provided a detailed response to the various points raised by the objectors. They point out that four of the nine letters come from one family (that of Mr and Mrs Smith) with close connections to the church going back over generations. The petitioners perceive that the family's desire to keep the church unchanged is, in part, in memory of their ancestors and that this has hindered making any progress in the building for many years. It has been agreed to keep one pew in place where this family always sit. Contrary to the complaint made by Mr and Mrs Smith, the Petitioners explain that they have expressly taken steps to keep this valued couple informed of the plans, and the reasons behind them, as the project has developed.
18. Dealing with the substantive points that have been made by the objectors, the petitioners make a strong case in claiming that the number of people who can be seated under the new arrangement is the same, if not more than, was the case when all the pews were in place. This has always been a small church and some local families have always chosen to use adjacent churches for larger weddings. The point is also made that many of the pews are damaged beyond repair by extensive beetle infestation and wet rot.
19. The petitioners note that only one objector has referred to the carpeting. They argue that, whilst the new wooden floor is level, the mediaeval tiles and Victorian tiled aisles are uneven, a problem that will be alleviated by the provision of underlay and carpet.

20. Whilst the petitioners also make the point that many people are delighted with the prospect of a reorder church, the fundamental argument that they raise is the one set out in the Treasurer's earlier letter. This is a church facing very high repair and maintenance bills. On its present financial base, it cannot see itself continuing to fund annual expenditure from its expected income without increasing the use of the building and thereby increasing income from hiring fees. In the petitioners' view, doing nothing, or reverting to the full pew layout as it was before the temporary reordering is simply not an option as it is not financially viable.

Discussion

21. The proposals with respect to the creation of a vestry and kitchen, together with the plans for heating, electricity and lighting seem to be uncontroversial as between those who have made comment on this scheme. Those proposals will therefore be approved in due course.
22. Opposition has been raised with respect to the following:
- (a) Removal of the pews;
 - (b) Removal of or adaptation of the prayer desk; and
 - (c) Carpeting.
23. Taking the issue of the pews first, the DAC and the CBC either recommend or do not object to these proposals. The Victorian Society would prefer that further erosion of the pew stock does not take place. English Heritage suggest a more modest solution whereby the pews, possibly adapted as benches, are placed elsewhere. North Devon Council's officer expresses a personal view that the complete removal of the pews would be a loss and supports a compromise solution (presumably along the lines of that put forward by EH). The objectors

see the removal of the pews as being the focus of their opposition and argue that the proposal adversely affects the character of the church, removes a significant part of its historical heritage and detracts from the atmosphere of this spiritual building.

24. The plans, which are illustrated with photographs and prepared by the architects in support of the application, provide a good picture of the current layout of the church and the proposed alterations. It is clear from that material that this is indeed a small church. The current partial reordering, which has a modern open plan seating arrangement alongside the remaining five pews in the South aisle, seems incongruous. The space within the church would appear to be too small to accommodate two such differing styles of seating. A clear choice must, in my view, be made between reverting to all pew seating or all flexible seating arrangements.
25. Despite not having seen photographs of the church as it was prior to the partial reordering, it is easy to imagine the peaceful and orderly vista created by the rows of pews on either side of the central aisle. This is a small, simple building, and these pews would seem to fit very happily within it from a visual perspective. Whilst the pews have only been in the church for some 140 years (which, in the life of a building as old as this, is not long) they must represent a real link for those whose family and connections with Newton Tracey go back through the generations. These are not, to my mind, insignificant factors when considering change to such a building in a small rural community.
26. From the point of view of conventional worship, I also accept the point that is made that the layout of chairs, certainly as shown in the

photographs of the partial reordering, seems untidy and insubstantial when compared to the fixed pew seating on the other side of the aisle.

27. If the use of the church were to remain as it was and has been for many years, namely almost entirely that of providing the space for formal Christian worship, then I would not favour a change to chaired seating and would require all of the previously removed pews to be re-instated. But the heart of the Petitioners' case is that there needs to be a break with the past in terms of the use to which this building is now put. A change is necessary to widen the types of occasion for which the building can cater to include less formal worship, meetings, concerts and other gatherings. If the Petitioners are justified in this view, then the change of use and the consequent re-ordering is likely also to be justified.
28. The legal context within which this issue falls to be decided is, as with any application for a faculty to make changes within a listed building, that the burden of proof lies on the petitioners who seek to secure a change from the status quo. In particular the court must address the following three questions:
 - (a) have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of the parish or for some other compelling reason?
 - (b) Will some or all of the works and adversely affect the character of the church as a building of special architectural and historical interest?
 - (c) If the answer to (ii) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's

discretion a faculty should be granted some or all of the works?

29. The word "necessity" in (i) above is to be given a broad interpretation so that it includes works which are necessary for pastoral well-being over some other compelling reason.
30. Where the body of parishioners are unanimous, that fact is likely to be of substantial importance. Where, as here, there is division within the parish, the force of any perceived majority view will be diminished. In any event in each case the court must form its own of the merits and exercise the discretion as it is, by law, obliged to do.
31. I have already summarised the case for change, which is put in plain and forceful terms by the Treasurer and, subsequently, by the Petitioners in their July response. The message is that if the church is to remain open at all, then it must pay for itself to a much greater extent through non-liturgical usage. For this church, the changes proposed do not arise because of a strong desire to develop a more modern style of worship, or as a result of a whim or preference amongst the current PCC, they are said to arise out of financial necessity. This key driver behind the Petitioner's case, is simply not addressed by any of the objectors (be they lay members or heritage bodies).
32. Having seen the recent church accounts that have been produced, I have no difficulty in taking the Treasurer and the Petitioners at their word when they put their case in terms of financial necessity and paramount imperative with regard to the survival of this small church.

33. Looking at this application in the context that I have now described, it seems to me that a clear choice exists between insisting upon the reinstatement of all or most of the pews, or permitting their almost total removal. A degree of compromise, in the sense of keeping three pews as an example of the current set, is already contained within the scheme. Given the size of the building, I do not consider that any greater compromise can be made without ending up with some sort of 'half-way house' which, like the current partial arrangement shown in the photographs, is incongruous and lacking in unity.
34. The pews themselves are in no means part of the ancient fabric of the church. They were introduced in the 1860's as part of the Victorian refurbishment. As such they have an historic (and, for those who know them, an important sentimental) value which I do not under-estimate, but also do not over-estimate. They are not said to be prime examples of this style or age of pew and they are not in good repair.
35. The court has been struck by the force of the feelings voiced by the objectors and the detailed arguments that they raise. It will be apparent from my earlier observations that I share at least some of their opinions about the aesthetic value of the pews over and above that of modern seating. In addition the court very much respects the fact that some of the objectors know this church extremely well and have served it over many years; it must be an intimate and much treasured part of the landscape of their lifetime.
36. At the same time, others, who must also have the past and future welfare of this church high in their priorities, have come to an opposing conclusion as to the need for change and the consequences thereof.

37. A judgment on the point is required and the court must provide it. For the reasons that I have given, I am satisfied that the 'need for change' case that is put forward by the Petitioners is made out. This building must adapt and take on a wider role within this community in order that it may remain open at all in order to continue to deliver on its essential function, namely providing a place and focus for Christian worship. As well as extending the possible use of the building, a more flexible seating arrangement will permit different configurations for use at different types of service. Just as the Victorians set up the church furnishing to meet the needs of their church and worshipping community in their day, I am satisfied that the current PCC and incumbent, who have clearly given long, anxious and caring consideration to these radical proposals, have developed a scheme which meets the modern needs of the Newton Tracey community both now and in the foreseeable future.
38. For similar reasons, I consider that the adverse effect on the historical interest in these pews within the building, is rendered necessary in a manner that justifies the judicial discretion being exercised in favour of the proposals.
39. I will therefore in due course approve the removal of the pews, subject to the planned retention of three, as described in the Petition.
40. Turning to the prayer desk, in my view it falls to be determined in line with the principal decision described above in relation to the pews and I therefore approve its re-location and adaptation as proposed.

41. In relation to the proposal to carpet the nave and tower, it is of note that each of the heritage bodies is opposed to this proposal as being generally harmful to the character of this building.
42. The financial argument that led the court to grant the key proposal with respect to the pews, is seemingly irrelevant to the question of whether the floor is carpeted. Despite the detailed and unanimous advice from the VS, EH and CBC on the question of carpeting, the PCC minute in response simply 'agreed to take note of the comments' but nevertheless 'resolved to continue with the present application'. In their letter of the 8th July, the Petitioners point to the unevenness of the tiles as justifying the use of underlay and carpet. The court notes and gives weight to the fact that the DAC recommends the scheme, and has expressly approved the detailed plans for carpeting.
43. At present a case based on the unevenness of the tiles is not prominent in the paperwork and the court is not satisfied that other alternatives to the use of carpet have been fully investigated. There is a need to prove the degree of unevenness relied upon and a need to demonstrate consideration of the use of alternative flooring solutions other than carpet.
44. As a point of principle, this court accepts the general approach of the heritage bodies that introducing carpeting to this church will significantly, and adversely, affect its character. English Heritage advises against finishing the church in the manner of a domestic living room. Mrs Biggs fears carpet will affect the acoustics. In addition, I would observe that, whilst making other fundamental changes which will facilitate use for meetings and other gatherings, there is a need to maintain in sight the fact that this is a church and not a village hall; the

provision of carpeting, unless it is necessary for other reasons, would seem to me to be on the 'village hall' side of the line and not therefore acceptable.

45. As a result, the Faculty that flows from this judgment will exclude giving approval for the introduction of carpeting as proposed. I do not dismiss the application for carpeting, but in effect adjourn it so that the Petitioners may reconsider what the heritage bodies, Mrs Biggs and this court have said about the matter. If the Petitioners decide to renew the application for carpeting then they need to 'make out their case' by establishing that carpeting is necessary and that other alternative options will not adequately address the needs of the building. If the carpeting issue is to be raised again, I direct that the Petitioners' revised case on this point must be re-submitted to the heritage bodies for their further observations before it is returned to me for further consideration.
46. In any event, the question of flooring, which is now left at large by this ruling, will need to be resolved and approved in due course once a revised plan has been determined.

Decision

47. In the circumstances, and for the reasons that I have given, I therefore direct that a Faculty be issued in the terms of the Petition, save that approval is not given for item (g) [carpets] and the issue of flooring is adjourned for further consideration. I direct that the proviso in the DAC certificate relating to electrical contractors is a condition of this Faculty.

A handwritten signature in dark ink, appearing to read 'A. McFarlane', with a horizontal line drawn underneath it.

Sir Andrew McFarlane

Chancellor of the Diocese of Exeter