

Neutral Citation Number: [2020] ECC Liv 1

**IN THE CONSISTORY COURT**  
**of the DIOCESE OF LIVERPOOL**

**Re St Thomas' Church, Ashton-in-Makerfield**

**JUDGMENT**

**Introduction**

1. This court is concerned with a faculty petition for major internal reordering at St Thomas Church in Ashton -in-Makerfield. Although it has the unequivocal support of the Diocesan Advisory Committee, the proposals, which involve, inter-alia, the removal and alteration of historic furniture and fittings, have nevertheless raised a number of objections from local parishioners, and some members of the congregation. None of the objectors wished to become parties opponent at my invitation, and accordingly I propose to deal with this petition on the basis of the written representations that have been made.

2. I had the opportunity to visit the church shortly before Christmas, and to inspect the internal layout for myself, which has enabled a greater understanding of the potential impact of the proposed reordering, which is summarised below.

3. Since my visit, and at my request, Mr Schafer, the architect and professional consultant advising the petitioners, has provided a schedule of approximate costs on the basis that the works might proceed in two phases. I shall refer to the relevance of this schedule later in my judgment.

## **The church**

4. A substantial and impressive 47 page document has been provided in support of this petition, which is described as “heritage statement” and was prepared by Schafer associates. It incorporates both the statement of need and the statement of significance, as well as identifying all the relevant references to the church, including the listing statement, Pevsner, and Pevsner and Pollard.

5. From this material it can be seen that St Thomas Church is a grade II listed building which was constructed at the very end of the 19<sup>th</sup> century principally from sandstone utilised from the building which had previously been on the site since mediaeval times, with the substantial former church constructed in about 1710 demolished to make way for the “new” building. It was designed by well-known church architects, FH Oldham of Manchester, and is described as a “good building” (Pevsner) and “a pretty good church” (Pevsner and Pollard). The west tower is low in comparison with the rest of the building which occupies a prominent position close to the centre of Ashton-in-Makerfield in a conservation area. The tower originally had a Saddleback roof, which was removed in the early 1960s but a notable feature is the projection of the transept on the north side which has a rose window with a free tracery.

6. On first impression (even attending on a dull and wet day as I did) this is a handsome and striking building of Victorian heritage dominating the village/town landscape, but without doubt the most redeeming aspect of the church is the expansive interior with the spatial appearance of the nave enhanced by the wide aisles on the very broad arches which are described as “a dying” into the piers. Because several of the rear pews have already been removed, the spatial quality is further improved, and the focus in the nave is the pews which remain in the centre aisles, and the North and South aisles. The pews are of stained pitch pine, and date from the beginning of the last century although they are of rather less significance than the newer fittings, removal of which is the subject of greater controversy, namely the oak choir stalls which were fitted in 1947. On both north and south side these have attractive carved frontages, with the northside pews positioned in front of the organ. The pulpit is also oak, again with intricate carvings, and dates from 1908. It is octagonal, and positioned to the left of the chancel facing

from the west tower. On the north side there is a small chapel, with a separate timber communion rail relatively recently constructed and an adjustable communion table.

7. The internal space heating is presently provided by an old gas-fired boiler with pipework and cast-iron radiators which currently are positioned in and around the internal fittings and fixtures.

8. The chancel is accessed by three steps with the sanctuary and high altar/communion table at the east end a further step up. There is presently no disabled access to the chancel or the sanctuary.

### **The proposed re-ordering works and why it is said that they are required**

9. As indicated, the works are extensive. The following is proposed:

1. replacement of the suspended timber floor in the nave with a block and beam floor;
2. removal of the nave pews, and replacement with chairs, yet to be identified but similar to those already used within the nave;
3. removal of the side (a lady) chapel platform and communion rail;
4. construction of a projecting chancel in the form of the dais or platform with a removable communion rail;
5. provision of a ramped access to the chancel and the vestry;
6. removal of the pulpit and the choir stalls;
7. the provision of a replacement heating scheme with a new boiler plant and underfloor heating;
8. replacement of the audio-visual installation.

10. Over several years the pattern of worship and congregation involvement has evolved, particularly in the later service (as is typical in many Anglican communities) with less focus on liturgical ceremony and a more informal style to enable participation by families and children in the worship. Frequently the communion table is utilised in a forward position to bring it towards

the congregation. There is no longer a choir, and the traditional pulpit has not been used for a number of years. Because there are steps up to the chancel from the nave, access is restricted for wheelchair users, particularly one of the clergy herself, who is disabled, and it is generally considered that the vestry and the chancel provide limited accessibility. The heating system is somewhat antiquated and expensive to run, and in a re-ordering which involves the removal of floor surfaces there is an opportunity to install modern underfloor heating which is efficient and less costly.

11. In terms of the wider use of the church, there are a number of community organisations who would not only wish to use the facilities of a more flexible space, but who would be willing to pay so to do. This would raise much-needed income to pay for the fabric of the building. Some of these organisations use the church hall, which is believed to be less suited, and some distance away from the church.

12. The side chapel is currently used for smaller gatherings, including contemplative services and communion, whilst providing for a more accessible chancel beyond the platform would allow an alternative meeting space for worship in an intimate environment.

13. The proposal, which is now confirmed in a separate email through Mr Schafer, the architect, is that the work should be divided into two phases, with the substantial cost comprised in the first phase, when the pews will be removed, the chancel dais constructed, and the underfloor heating installed. Clearly this will be the most disruptive of the phases, and its cost is set to exceed £178,000. The second phase, which nonetheless remains controversial is far less costly, at just over £10,000.

### **The nature of the objections**

14. Although a significant re-ordering project had been under discussion for a number of years, the specifics did not materialise until approximately two years ago when professionals were instructed, and Mr Schafer provided his heritage statement and proposals for internal re-

ordering. There was a gradual introduction of these proposals to the congregation with requests in the early part of 2019 for open meetings. I have not been made privy to the entire history relating to the emergence of the objections, and it is not clear how many open meetings did actually take place but it would appear that from about this time objections began to become more crystallised, with the organisation of a cohort of opponents, some of whom were parishioners, and some of whom were not, and following the issue of the petition and public notices Mr Paul Tushingam organised a petition to register “strong objections” against the internal works. The petition was directed to the registrar on 3<sup>rd</sup> April 2019. It contained 74 names. Some of these will have been regular worshippers, perhaps at the more formal earlier Sunday service, although no indication is provided as to their association.

15. In addition to the petition, supported by the comprehensive letter from Mr Tushingam, a number of individual letters were received by the registry. The letters were from Mr T Hughes, Mrs Jean Johnson, Mrs M. Twist, Mrs Kathleen Millett, Mrs M. Cook, Mr W. Hunter and Mrs M. Hardman.<sup>1</sup>

16. The themes running through these letters were largely the same, with the most significant objection being to the removal of the choir stalls and the pulpit, although it was acknowledged that neither were used at the present time. One or two opposed the removal of pews, although this was for the most part not controversial. The basis of the objection was not simply an aesthetic one or a desire to retain older and more historic fittings, but a feeling that a sense of worship and sanctity would be lost by the removal of these traditional and beautiful items. It was considered that an open worship area which would have a multiplicity of uses, would be like creating a “barn.”

17. As I have indicated, Mr Tushingam provided the most detailed and articulated objection. He identified his opposition to the construction of the chancel dais, as well as the removal of the chancel furniture, and the fittings from the Lady Chapel area. He acknowledged

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<sup>1</sup> It is also to be noted that one of the signatories to the petition subsequently withdrew her objection, and provided a letter in support, expressing “sorrow” at the removal of the pulpit and choir stalls. There were a handful of supportive letters directed to the registrar, including one from the wardens.

the potential of removal of the pews, which would create a large open area, but could see no purpose in interfering with the chancel which provided a focal point for the East window and the main altar and would affect the visual amenity. He believed that the proposal to remove the chancel furniture was an afterthought, without any real consultation and he decried the absence of an open meeting for discussion. Mr Tushingham had previously been on the PCC, and is clearly an individual with great knowledge of the church and its layout. He regarded the proposals as having created a significant degree of upset within the church, driving a number of congregation members away. He described the proposals as comprising a “vanity project” and drew attention to the fact that the choir stalls had been a gift from his maternal family and although unused, there was a special case for their preservation. The oak communion rails in the Lady Chapel were also a gift of a previous congregation member.

18. In relation to the consultation of the amenity societies, essentially the Victorian Society, as well as Historic England, the DAC made provision for this in its advice, and I considered in the early direction stage of this petition that it was unnecessary for any formal statutory consultation direction insofar as there had been correspondence. Historic England expressed no view, and the Victorian Society did not respond within the 28 day period provided in the notice. This is somewhat unfortunate, especially because there was a request for an extension of time, after Mr Hughes informed the petitioners that a response had been overlooked. However, because the delay which he was seeking was for several months this was declined. I had reflected on whether or not it would be appropriate nevertheless to afford the Victorian Society a further opportunity to provide some input, but on balance, bearing in mind the strength of the voiced objections by some parishioners and congregation members which are likely to have coincided with the views of Mr Hughes expressed in similar cases which I have dealt with, I considered it disproportionate and not expedient to delay this matter further. It is in the interests of all those involved in the re-ordering, whether supporting or opposing, to have this matter resolved. It is highly likely that the Victorian Society would not have formally opposed the petition, but would have expressed regret at the removal of historic and aesthetically pleasing furniture and fittings which have enhanced this church building for many generations. I take this on board in arriving at my conclusions.

## Considerations and the legal approach

19. If changes to a listed Church building are to be authorised by the grant of faculty, a series of questions should be addressed. These were commended as an approach by the Court of Arches in **Re St Alkmund, Duffield [2013] Fam 158**, and it is an approach now followed almost invariably.

- (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] 7PD 21 26-8**, and the review of the case law by Chancellor Bussell QC in **In re St Mary’s White Waltham (no2) [2010] PTSR 1689** at para 11). Questions 3, 4 and 5 below do not then 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, 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.*

20. If these questions are addressed, there is a framework provided within which any harm caused by the building alterations may be assessed against the benefits which are achieved by those alterations. Essentially this involves a balancing exercise.

21. In assessing that degree of harm, the court will take into account any qualified or expert evidence, usually provided by amenity societies or specialist bodies (although absent in this case), the strength of the objections, including the evidence provided by those who have been associated with the church over many generations, and can speak to its history, as well as other professional assessments (here provided by an architect with vast experience of reordering

church buildings). The court can also rely upon its own experience, assisted by an on-site inspection of the proposed works, and the *corpus* of reported cases decided by Chancellors in other dioceses dealing with substantially similar work. Whilst acknowledging that no two church buildings are identical and each case must be decided on its own merits, objective assessment is aided by understanding the evolution of heritage, and the degree to which adaptations to living buildings can be made whilst preserving the historic and aesthetic aspect insofar as is possible. If harm is established, the secondary question for the court is a broader and more subjective one based upon the evidence adduced by the petitioners as to the need for the changes.

22. In this context I have had little difficulty in coming to the conclusion that the removal of furniture and fittings within the chancel area which have been *in situ* for many decades, even if not original to the church construction in Victorian times will have a significant impact on the historic character of the church. The heritage is defined by the continued use of the church as a holy place and if some fittings can be identified with periods in history their importance should not be likely disregarded as a focus for and a reflection of worship over the generations. The aesthetic aspect of individual items depends upon the quality of the material and whether it is simply or intricately constructed. In this respect the relevant fittings are the choir stalls and the pulpit, both of which have elaborate carvings and are on any interpretation not only pleasing to the eye, but entirely in keeping with the traditional chancel enhancing the special place that is the sanctuary, with the eyes drawn to the east window and the altar/Lord's table, and at the same time elevating the priest or minister to an authoritative position as he preaches the word of God. In considering whether any harm is created by the removal of these items, it is less relevant that they may have been gifted by now deceased members of the congregation. Many such fittings as well as individual items of furniture, windows and artefacts are provided as gifts and it would be unduly restrictive to the development by later generations to conclude that such gifts justify a special form of preservation. Churches need to move on to meet the needs of particular subsequent generations and to progress.

23. Accordingly, I conclude that the removal of the pulpit and the elaborately carved choir stalls would constitute significant (but not serious) harm to the architectural and historic character of this church.

24. The furniture in the Lady Chapel is of far more recent origin, and it is not suggested that this be removed but repositioned for further use. Whilst the alteration of the Lady Chapel will represent some harm, I regarded it as minor for the purposes of the Duffield questions.

25. In relation to the raised dais to form a projection to the chancel, I acknowledge that this is a controversial feature but in my judgment the harm in this respect is again minor and not significant. This is because the general shape and configuration of the chancel is retained, and whilst there will be an encroachment into some of the nave, the space internally is so substantial that it will have minimal impact. I will deal with the question of accessibility separately when carrying out the balancing exercise below, but it follows that if the pulpit is removed an elevated position is nevertheless required for the ministers when leading services and preaching and this should be considered as a consequential alteration necessary on its removal.

26. In some respects, pew removal, even if largely supported by the congregation, can have a very significant impact on the historic character of the church. This is especially so where the internal space is more confined, (typically in a rural church) and the pews are original to the church construction, or later additions at particularly important times in its development, as well as being intricate, or reflective of a particular design which requires preservation. Here the pews are merely provided as seating, they are not particularly special being pitch pine, nor are they original to the church. Further, a number have already been removed and replaced with individual seats. I regard this aspect as one which gives rise to only very minimal harm to the character of the church of historic and architectural terms.

27. None of the other proposed work of reordering in my judgment represent any harm, and should be considered to be necessary, or consequential on the major items.

28. I now turn to carry out the balancing exercise when considering the justification for the works. As indicated above the more serious the level of harm, the greater must be the identified need for undertaking the works of re-ordering. In this case I do not regard any of the individual items as giving rise to serious harm which would require a very high level of justification, but nevertheless consider the pulpit removal and the choir stall removal as significant in which

respect it is necessary for the petitioners to convince me that notwithstanding the creation of a large, flexible and usable public space within the nave these items cannot still be preserved as an acknowledgement of the heritage associated with this beautiful church.

29. Bearing in mind the minimal impact of pew removal set against the very substantial benefit to be derived from creating a church which can have a multiplicity of uses, both for the community and the congregation, and which is adapted to modern worship styles I have little doubt that the test is easily satisfied, and that the justified need outweighs that minimal harm. It is important to recognise that an historic old building requires to be maintained, and with dwindling congregations and stretched resources all forms of income should be considered. Therefore, whilst traditionalists may regret the passing of time when churches were easily identified by their rows of pews with a line of vision facing eastwards towards a high altar position, the reality is that space must now be flexible, and that mission depends upon making the internal space welcoming and inviting for a variety of uses.

30. There is a higher threshold of justification required for the removal of the pulpit and the choir stalls. I can understand the concerns of those objecting that this would potentially amount to unwarranted destruction of the church's heritage, although neither have been used for some time. The argument that their preservation would not interfere with the creation of the flexible space, and yet would retain some aesthetically pleasing link with the past is not without some merit. However, after careful consideration I have come to the conclusion that there is a compelling feature which provides a justification for the proposed works, and which should be considered holistically with the alteration to the Lady Chapel and the creation of a raised platform. These proposals are driven by a need not just to create a modern worship space, but also one which is inclusive and accessible. It is clear to me that currently the sanctuary, and thus what is intended to be a quiet and contemplative new worship area when the nave is opened out, and the lady Chapel communion rail removed, is largely inaccessible to wheelchair users. When consideration is given to the fact that accessibility is prevented by the positioning of the pulpit and the choir stalls, neither of which have been used for some time, although these items provide an attractive heritage reminder, the balance is significantly tipped in favour of their removal to justify the need to provide an accessible chancel. Further, there is, and would be a certain incongruity created by the retention of the traditional chancel with the pulpit and choir stalls seemingly integrated, and yet an open and flexible nave which could be put to a variety of

uses, including dramatic performances, presentations, degree ceremonies, community classes and the like. This in itself justifies a more modern platform style dais which would not be possible with the retention of the pulpit and the choir stalls.

31. I confess that I retained some misgivings about the scale of removal of the fittings to achieve what would be a fairly dramatic alteration in the appearance of the chancel area, but I have been persuaded by the petitioners, and my concern is assuaged, by the proposals that the aesthetically attractive carvings to the front of the pulpit and the choir stalls on both north and south sides could be reused as frontages or panelling within the new chancel area. It is less clear how the pulpit, once dismantled, could be reallocated, although this is still under consideration, but there is a clear idea to utilise the choir stall panels within the chancel in two respects. The first would be on the north side providing a degree of screening for the organist which would be less restrictive and enclosed than that which presently exists, and the second would be on the south side to configure the path of access to the sanctuary for wheelchair users when the ramp is created. Thus, the appearance would not be so significantly different, but the chancel would be represented by a slightly wider area beyond the newly positioned Lord's table but with the frontages which exist presently set back by several feet. This in my judgment is a very sensible compromise.

32. Overall, the petitioners have provided compelling evidence of need to justify the major reordering in all respects. This is a dynamic forward-looking church, seeking to accommodate the interests of those who prefer a more traditional style of worship and liturgy, but at the same time allowing more modern forms which would be appealing to a younger generation. The latter can only be achieved by adapting the church to allow for a more welcoming and intimate worship style created by the projecting dais. Further, like many churches in similar demographic areas, St Thomas, which requires a substantial degree of upkeep to maintain its heritage, can only survive if it becomes multipurpose which is achieved by the flexible use of space, and is made available as a community asset in the town which has little enclosed public spaces for performances, meetings, gatherings etc. Such flexibility will provide considerable income for future generations.

33. Thus, in the context of any significant impact on the historic or architectural character, in my judgment this is outweighed by the very substantial benefits which would be achieved by the proposed reordering. I have taken into account the objections of those who have written to the Registry or signed the petition. Their concerns, as I have indicated, are valid and understood, but they are not sufficiently compelling that I should deny this petition.

### **Conclusion**

34. In the circumstances, I am prepared to grant the faculty that is sought, subject to conditions. The first of these is in relation to funding. Two phases have been identified. Before commencing either phase (the first being by far the greatest in terms of cost) the petitioners should provide evidence to the Registrar that funds are in place to cover the cost. The second is that the carved frontages from the choir stalls should be incorporated into the design of the chancel as a reminder of the heritage and history of its former use to form screening for the organist and the disabled ramp access / route respectively to either side of the chancel. The third is that the petitioners should use their best endeavours to incorporate the carved panels from the dismantled pulpit within the new chancel/nave area as a similar reminder. In this respect I do not intend to be any more specific and trust this to the good sense and imagination of the architect and the petitioners whom I accept have the need for heritage acknowledgment at the forefront of their planning. These works should be completed within 12 months of the issue of faculty.

His Honour Judge Graham Wood QC

Chancellor of the Diocese of Liverpool

7.2.2020