

In the Consistory Court of the Diocese of Salisbury

In the Matter of Weymouth, St John the Evangelist

Judgment

1. The Vicar and Churchwarden of this parish have petitioned for a faculty permitting the replacement of their existing upholstered timber framed chairs with new upholstered metal framed SB2M chairs. The church building was consecrated in 1854, is Grade II* listed and is in the Weymouth Town Centre Conservation Area.
2. There have been no objections received at the Registry in response to the Public Notices displayed at the church, but the Diocesan Advisory Committee has not recommended the proposals for approval. The Church Buildings Council, Historic England and the Victorian Society have all raised objections to the proposals. All four bodies accept that the replacement of the church's existing chairs is appropriate. The concerns relate only to the choice of replacement chair proposed by the Petitioners. None of the consultee bodies has elected to take party status in these proceedings but instead asks that I take their representations into account in determining the petition.
3. On 6 May 2022 I visited the church in order properly to understand the impact that these proposals would have on this listed building. I am grateful to those in the parish who ensured that the building was open for me to inspect and for their welcome and discretion in leaving me undisturbed during my visit.
4. Having reviewed the material before me, I formed the preliminary view that this matter could appropriately be determined on consideration of written representations under Part 14 of the Faculty Jurisdiction Rules 2015. In accordance with r14.1(2) I invited the views of the Petitioners about whether they were content for the matter to be disposed of in this way. After a period of consideration they indicated that they were so content and accordingly I directed that the petition should be determined on consideration of written representations.

Background

5. The church of St John the Evangelist stands prominently on a busy traffic island at the north end of Weymouth seafront. It's lofty tower and spire are a significant landmark in the town and are said to be reminiscent of the

work of Benjamin Ferrey, Diocesan architect at the time of its construction, although the church was built to the design of nationally significant architect, Thomas Talbot Bury¹. It was built in the early 1850s as a chapel of ease to the church of St Mary and subsequently acquired parish status. From its first use, its ‘churchmanship’ has always been evangelical in style.

6. Originally listed in 1953, the listing entry is a detailed one, and has clearly been amended since the 1980s. The striking ‘Decorated Gothic’ exterior of the building appears to have been changed relatively little since its construction 170 years ago. The interior has been subject to more significant change, particularly in 1985 when all pews were removed and replaced with the current upholstered chairs, a large raised dais was introduced at the liturgical East end of the church, the nave and dais were carpeted and two rooms were created by partitioning of the transepts. Despite these significant changes, the original Victorian interior is still clearly readable in many ways, especially in the deep, ornate chancel which is rich in detail and decoration.
7. I pause here to note that the papers submitted in support of this petition repeatedly refer to the building as being Grade II listed. It is not. It is listed Grade II*. The difference between Grade II and Grade II* buildings is a significant one, as reflected in the differing consultation requirements for works to Grade II listed buildings and Grade I and II* buildings in the Faculty Jurisdiction Rules 2015². The overwhelming majority of all listed buildings (91.7%) are Grade II listed, whereas a mere 5.8% of them are Grade II* listed. Grade II* listed buildings are defined as “particularly important buildings of more than special interest” by Historic England. I keep very much in mind that the church of St John is in this category.
8. In 2019 the parish produced a document outlining its ‘Renewal Project’. That project involved various proposed changes to the building, including improved access, improved heating, lighting and toilet facilities, the installation of kitchen facilities and the introduction of “new lightweight and comfortable chairs which allow for comfort and greater flexibility”. With this petition I am concerned only with the latter proposal.
9. The current timber-framed upholstered chairs, which were introduced with faculty permission in 1985, are now showing their 37 years of age and are looking shabby. They are bulky in style, heavy to move and can only be stacked in piles of two (with one chair placed upside down on top of another). None dispute that they should be replaced.
10. The Petitioners originally sought permission for the introduction of the metal-framed SB2M, upholstered in beige fabric, as their replacement chair. The DAC and the statutory consultees all advised that un-upholstered chairs should be used and the CBC and HE also advised that chairs with a

¹ Talbot Bury was also responsible for the Guildhall in Weymouth.

² See r.4.5.

flat top to the back (rather than the curved top of the SB2M) would be more appropriate and less intrusive in the historic interior of this church. The Petitioners then proposed an alternative chair, which was timber framed, fully upholstered but much lighter and more stackable than the existing chairs. That alternative was also not recommended by the DAC and the Petitioners have consequently returned to their original proposal of the SB2M, but with a cleanable suede-like 'Nappa' fabric to address the concerns which had been raised around the hygiene of upholstered chairs. As the petition now stands, I must determine the proposal to replace the existing chairs with the SB2M upholstered in a beige 'Nappa' fabric.

The law

11. In determining this petition, I must apply the guidelines set down by the Court of Arches in *Re St Alkmund, Duffield*³. Those guidelines take the form of a list of questions:

1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
2. If the answer to question (1) is "no", the ordinary 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, 26-8, and the review of the case-law by Chancellor Bursell QC in *In re St Mary's, White Waltham (No 2)* [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.
3. If the answer to question (1) is "yes", how serious would the harm be?
4. How clear and convincing is the justification for carrying out the proposals?
5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *St Luke, Maidstone* at p.8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2*, where serious harm should only exceptionally be allowed.

The questions have been refined further by the Court of Arches in *Re St John the Baptist, Penshurst* (9 March 2015) which requires a careful assessment of the special significance of the building before answering the *Duffield* questions.

12. I have described something of the history and significance of the church earlier in this judgment. The *Pevsner* entry for the church is rather brief referencing the building's early 14th century style and then going on to say simply "With a NW steeple, the spire well provide with lucarnes. Nave and

³ See *Re St Alkmund, Duffield* [2013] Fam 158 at para 87.

aisles; octagonal piers.” As mentioned above, the Listing Entry is rather more fulsome, giving a generous level of detail, especially about the exterior of the building.

Harm to the special significance of the building

13. And so I ask myself, would the proposals result in harm to the significance of this listed church? This apparently straightforward question has a significant degree of nuance in this case. Firstly, what are the proposals? It is intended that the existing chairs should be replaced with the SB2M chairs. All involved in this case agree that the existing chairs are of no significance, are shabby and awkward to move and stack. Their removal would cause no harm to the significance of the building, and arguably would enhance that significance; but would their replacement with the SB2M chairs harm that significance? Of the advisory and consultative bodies involved in this case, only the Victorian Society appears to come close to suggesting that the introduction of the SB2M chairs would cause harm to the significance of the building. The other objections raised are focused almost entirely upon the failure of the proposed chairs to conform to the CBC Guidance on seating (of which more below).

14. I have come to the conclusion that the replacement of the existing chairs with SB2M chairs would not harm the special significance of this building. The building itself will not, of course, be affected in any way. I find that the replacement of shabby, upholstered timber-framed chairs with metal-framed upholstered chairs in a similar tone cannot be said to cause harm. This is much less likely to be the case where longstanding (or even original) pews are being replaced with chairs, but that is not the case here. In concluding that harm will not be caused, I have had regard to the fact that the common concern in relation to upholstered chairs of creating an overly ‘domestic’ feel to the building is significantly mitigated in this case where the whole of the nave and large dais are already entirely carpeted such that it cannot be said that the replacement of upholstered chairs with more upholstered chairs will have any impact on the risk of an overly ‘domestic’ feel to the building.

The presumption against change

15. Although I have concluded that no harm would be caused to the significance of the building by these proposals, the matter does not end there. The burden remains on the Petitioners to satisfy me that the proposals are justified such that the ordinary presumption against change has been rebutted.

The objections

16. In determining whether that burden has been discharged I do, of course, take account of the fact that this is a Grade II* listed building. The advice and consultation responses received clearly have that status very much in

mind. I have taken account of all of the objections and concerns raised, including a consideration of the minutes of the relevant DAC meetings at which this proposal has been considered. Although not comprehensive in detail, the principle concerns are:

- a. That the CBC guidance does not recommend the use of upholstered chairs in churches;
- b. That the Petitioners' justification of their choice because it is lightweight does not bear scrutiny when more suitable un-upholstered lightweight chairs are available;
- c. Concerns about hygiene arising from the inability to wipe upholstered chairs effectively; and
- d. The more orderly aesthetic impact of a flat top to the back of the chair than a curved top.

17. As mentioned above, there is, of course, statutory guidance provided by the CBC in the 'Guidance Note: Seating'. Much of the objection expressed by the consultative and advisory bodies is centred on the concern that these proposals do not conform to this guidance, in particular it's observation that "the Church Buildings Council generally advocates the use of high quality wooden chairs (i.e. un-upholstered) and pews where seating is necessary". I must (and do) have careful regard to this guidance in determining this Petition, but it is important to remember that guidance is guidance, and by definition, not determinative. It can certainly not be said that there is any blanket 'rule' against upholstered seating in listed churches. I must carefully consider the guidance in the context and circumstances of this particular church.

18. A proportion of the Guidance Note is of no particular application in this case in that it addresses the need to assess the significance of the existing seating and the impact on the building itself (e.g. changes to flooring or heating systems). Here it is accepted that the existing seating is of no significance and there will be no impact on the physical building by the proposed changes. Nevertheless, when addressing the choice of replacement seating, the Guidance Note supports the use of wooden seating and states that upholstered chairs are not considered appropriate for the following reasons:

- a. They have a significant impact in terms of colour, texture and character which is not consonant with the quality of a highly listed church;
- b. Experience demonstrates that upholstered seating needs more regular refurbishment (wear and tear, staining) than seating without upholstery. This is especially true of multi-use churches where it will be normal to eat and drink regularly on the chairs;
- c. They are heavy and therefore more difficult to arrange and stack;
- d. The addition of soft furnishings can alter existing acoustics;

- e. Wood tones and textures fit well within church buildings and have been used for centuries in this context, whilst some colours have associations with other types of buildings such as offices.

Response to the objections

19. The Petitioners have filed lengthy representations in response to the objections raised. Much of the Petitioners' representations are focused on the inadequacy of the existing chairs and the risks involved in their retention. I have not been assisted by those submissions because it has been clear throughout these proceedings that all bodies engaged in the consultation and advisory process accept that the current chairs can and should be replaced. The principal issue is whether the proposed replacement chairs are appropriate. The Petitioners have provided a list of over 200 churches where permission has been granted for the use of the upholstered SB2M including, in a significant number of cases, as the principal form of seating. The Petitioners have also provided me a significant number of decisions of Consistory Courts in which permission has been granted for the introduction of upholstered chairs into listed churches. They rely particularly heavily upon the decision in Re All Saints, West Burnley [2017] ECC Bla 6 as an example of the introduction of fully upholstered chairs, to replace wooden pews, and repeatedly refer to this as a Grade II* Church. That is inaccurate. West Burnley church is, unlike the church of St John in Weymouth, Grade II listed. I have already set out the significance in the difference in those two grades of listing above.

20. I have considered the numerous Consistory Court decisions brought to my attention by the Petitioners. The overwhelming majority relate to Grade II listed churches⁴ although equivalent permission in a Grade II* listed building is not without precedent⁵. Although useful as giving a broad indication of how other Chancellors have dealt with similar issues in the past, it is absolutely clear that each of these decisions was made (and my decision must be made) on consideration of the particular circumstances and facts of the church building with which they were concerned.

21. As well as citing the authorities mentioned above, the Petitioners also argue that it would be wrong and, indeed, "unlawful" to refuse upholstered seating in this case on the basis that that would be to reverse the decision made in 1985 to grant a faculty for such chairs. They set out the strong (even "militant") views of the congregation that lightweight upholstered chairs are necessary as both more comfortable and better able to serve needs of the congregation in the wide range of worship and outreach activities set out in detail in the materials before me. I make clear that it can in no way be unlawful to reach a conclusion in this petition which results in a different conclusion to the one reached by the Chancellor in

⁴ Only Re St Chad, Pattingham [2020] ECC Lic 4 relates to a Grade II* listed building but limits the permitted upholstery to the seat of the chairs.

⁵ See Re All Saints, Worcester [2019] ECC Wor 1.

1985. Many things have changed since that decision was made (the rules, the guidance and, not least, the circumstances of the church) and I must make the decision based on current circumstances.

Determination

22. I have considered the reasons given for the general inappropriateness of upholstered chairs in the CBC Guidance Note as well as the more specific (though overlapping) reasons given for their inappropriateness in this particular church as set out at paragraph 16 above. I have balanced them against the arguments raised in favour of these chairs by the Petitioners.
23. I do not find the arguments about the hygiene risk from upholstery to be convincing. There is no evidence before me which supports a finding that upholstery presents a risk to health and it is not so obvious a proposition that I find that I can take judicial notice of it.
24. The concerns raised in the CBC Guidance Note about weight and acoustics are also not of concern in this case. It is clear to me (and undisputed by others) that the Petitioners have justified lightweight chairs. The fact that this church nave is already both filled with upholstered chairs and fully carpeted means that any acoustic impact will be negligible.
25. Nevertheless, the increased risk of staining and wear and tear with upholstered seating is supported by the experience of the CBC as set out in its Guidance Note. That issue, together with the impact of the proposed chairs upon the colour, texture and character of the building, are the principle issues which I must weigh in the balance in determining whether the Petitioners have discharged their burden of proof.
26. It will be apparent from the length of this judgment that I have not found this an easy decision to make. The Petitioners have set out clear arguments for the use of upholstered chairs in their church building. This is a church congregation which has continuously (and with permission) used upholstered chairs for a period of 37 years. The use of chairs which are perceived as comfortable and welcoming are, it is said, crucial to its churchmanship, style of worship and outreach activities. I agree with the observations of Bullimore Ch in the West Burnley case that "individuals' views may differ considerably on what is comfortable... Comfort is a very personal and individual matter." The views of those who will use these chairs on a daily and weekly basis must be given appropriate weight when determining whether they will meet their needs.
27. It is said that these upholstered chairs will look tired and shabby sooner than wooden chairs would; that they would accordingly likely require replacing sooner than wooden chairs. The Petitioners are clearly aware of the likely lifespan of upholstered chairs, having used them for 37 years. They are of the view that the benefits of upholstered chairs in terms of their comfort and welcome outweigh the disadvantages of having to

replace them perhaps sooner than un-upholstered chairs. I note that the 'Nappa' fabric proposed has a 100 000 rub value and is classified for commercial use. If the Petitioners understand and accept the balance between the perceived advantages of upholstery to the worship and mission of this church and the potentially shorter lifespan of these chairs then I do not consider it appropriate for me to refuse to accept that judgment if the chairs are otherwise appropriate.

28. I have considered carefully whether the impact of the chrome-framed and upholstered SB2M chairs upon the colour, texture and character of this building means that their introduction is not justified. A neutral colour is proposed, much like with the existing upholstered chairs, and I do not find that the impact of the colour of the chairs will be very significant. However, having visited the building and considered its existing context, I have formed the view that the curved top and chrome frame of these chairs would form a rather strident contrast to the wood and stone of this highly listed interior. That strident contrast would have some negative impact on the texture and character of the building in a way that wooden chairs with a flatter top would not. To use the wording of the CBC Guidance Note: wood tones and textures fit well within church buildings. In particular, the church of St John has a significant amount of wood in evidence - wooden panelling to the walls and sanctuary, wooden ceilings, wooden railings.

29. In considering all of the above, and having particular regard to the fact that this is a highly listed building, I have come to the conclusion that, although the Petitioners' arguments about the benefits for this parish of upholstered chairs are justified, the wooden framed upholstered chairs which the Petitioners had briefly offered as a compromise choice would be more in keeping with the historic interior of this church. Its flatter top would also be less jarring than the proposed SB2M. Such a chair would clearly meet the Petitioner's needs and as such, although I must refuse the petition in its current form, I can indicate that an amended petition received at the Registry seeking permission for the introduction of the Lightweight Wooden High Stacking Chair previously proposed would be likely to be granted. I would not require the 'Nappa' fabric to be used, but the fabric chosen should be hardwearing and in the neutral colour proposed.

An addendum

30. It is evident to me that tensions have arisen in the context of this petition and its consultation. I understand that opinions may, and clearly do, differ about the appropriateness of different proposals for a building. For some reason, the choice of seating often seems to evoke particularly strong feelings. Nevertheless, differences of opinion may be held and explained with a courtesy and respect which has been at times lacking in this case.

31. The tone of the Petitioners' representations has been inappropriately defensive and at times bordering on threatening. I have not found the unnecessarily hostile tenor of those submissions helpful. I take this

opportunity to remind the Petitioners that the Diocesan Advisory Committee and the statutory consultees are a source of significant expertise freely available to them in the discharge of the heavy burden of using and maintaining a highly listed building such as this one. Certainly as far as the DAC is concerned, that expert advice is provided largely by volunteers.

32. The faculty system does not exist as an obstacle to frustrate parishes, but rather as a means to ensure that careful and appropriate care is taken in the use and maintenance of the substantial part of the nation's built heritage which has, by history, been entrusted to the Church of England. If the faculty system does not operate in a robust and effective way then there is the risk that the Ecclesiastical Exemption will be removed and all changes to listed churches would require the permission of secular planning bodies in the form of Listed Buildings Consent. Such bodies would not provide the expert assistance available to churches without charge; neither would they be required to take account of the role of a church as a local centre of worship and mission, as the DAC must under section 35 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018. It must be better for the parish of St John, Weymouth and parishes throughout the Church of England that such considerations are at the heart of decisions made about changes to our churches.

33. I trust that upon reaching a conclusion of this rather troubled matter the parties involved will be able to leave behind the bad feeling which has clearly developed. I have no doubt that all concerned in this matter have been concerned to further God's kingdom in this place.



The Worshipful Canon Ruth Arlow
Diocesan Chancellor

2 July 2022