

Neutral Citation Number: [2022] ECC Wor 7

IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER

CASE NUMBER [2021-063401]

RE: THE CHURCH OF ST MICHAEL, UPTON WARREN

IN THE MATTER OF A PETITION FOR THE REMOVAL OF THREE PEWS AND 20 CHAPEL

CHAIRS AND THEIR REPLACEMENT WITH NEW CHAIRS

JUDGMENT

Delivered on 22 SEPTEMBER 2022

INTRODUCTION

1. This decision determines a petition dated 17 February 2022 to remove three pews and replace them with up to 25 chairs at Upton Warren Church in the parish of Stoke Prior, Wychbold and Upton Warren. The petitioners are the vicar, the Rev'd Paula Honniball, the Churchwarden June Crofts and a volunteer Richard Edgington. Mr Edgington has been the lead petitioner.

DESCRIPTION OF CHURCH

2. The Church of St Michael, Upton Warren is a grade II* listed church dating originally from the 13th Century within the Upton Warren conservation area. The overall appearance of the church is more Georgian, having been extensively modified in 1724 and 1798. It comprises a nave and chancel only, with a relatively large vestry room to the south side of the nave. There are no aisles, side chapels, or other additional spaces. There is a balcony at the west end, under which toilet facilities have been installed more recently.
3. The most striking architectural feature of the church is its 1880 east window by W G Taylor. It depicts scenes from the Book of Revelation surrounded by textual excerpts in Greek. 'The design' according to the Guardian, 'is unique, having been framed by the donor from the frontispiece of his work The Revelation Expounded.' The donor in question was the Rev'd F J B Hooper, a former vicar of the parish. Pevsner considered the window 'uncommonly horrible', which I have to say in my view is rather harsh. I found it fascinating.
4. The rest of the windows are clear or pale coloured glass, the walls are painted white and there are few memorials, all of which are of simple design. This enables the church

to largely retain the Georgian ambience of the 18th Century reordering. The pulpit and lectern are wooden, and appear to be of relatively simple Victorian Gothic style.

5. The nave is panelled up to dado rail height, in a wood that has matured to a mid-brown colour. The balcony and wood panelling date from the 1798 reordering. There were previously pews on raised platforms on each side of the nave with a central aisle with terracotta tiled flooring. At some point, presumably in the 20th Century, these pews and pew platforms were removed, the floor levelled and moveable modern light wood pews introduced. Unfortunately, the removal of the earlier pews has left the wooden panels with damaged parts which are a different colour due to having not aged in the same way as the surrounding wood. Both the wooden part of the floor and the wooden pews are of different coloured woods, both different to each other and to the wooden panelling. The chancel and pulpit are carpeted in a mid-orange, similar to but not the same as the orange/brown of the terracotta tiles that remain in the centre of the nave floor.
6. Some of the pine pews are in poor condition, having been infested with woodworm. I am also told, somewhat concerningly, that despite treatment having been undertaken this has not been successful and the woodworm has spread to the Georgian panelling. This must be properly treated as soon as possible to avoid further damage to the historic fabric. Also present in the church are around 20 chapel chairs of various different designs. I am told these are the chairs primarily used by the congregation for worship and participants at other events held in the church, with the front pews set out around the outside walls of the front part of the nave and on occasion also around the chancel. The pews (and chairs) are placed in rows facing forwards when there are occasional larger services.
7. The overall impression of the church is of a clean, simple, light and airy space save for the lower level. The lower level of the church mars this impression by being somewhat busy with three different floor surfaces, several different types of seating and none of the woods of the panelling, floor or pews blending with each other. This busy impression is also added to by the use of various different loose cushions on the chapel chairs.

DETAILS OF PETITION

8. The petition seeks to remove three of the light wooden 20th Century moveable pews and the chapel chairs. It also seeks to introduce new chairs of a make and design known as Alpha LAMU. The petitioners obtained a sample chair which is present in the church for parishioners to try. This chair is made of pale 'blonde' wood with burgundy red upholstery on the seat and backrest. It has arms, and a book box on the rear. It is wider than most church chairs and rather heavy.
9. The purchase of (most of) the proposed new chairs will be funded via the Upton Warren Parish Council who will retain ownership of up to 18 of the chairs and lease them to the church at a nominal rent of £1 per chair per year. This is because a lot of

local community events and also meetings of the Parish Council itself take place in the church due to a lack of alternative meeting space locally.

10. The balance of the chairs is intended to be purchased from a legacy bequeathed solely for the purpose of obtaining comfortable chairs.

THE DIOCESAN ADVISORY COMMITTEE ADVICE

11. The DAC did not object to the proposals, on the basis that their advice to change from heavy to lightweight stacking chairs has been accepted by the petitioners.
12. They did not object to the proposed upholstery as the reasons given by the PCC for this were considered to be well intentioned.
13. They suggested offering the chapel chairs to other churches as many churches are looking to replace such chairs. However, I should note that any recipient churches (or other persons obtaining these chairs) will need to satisfy themselves that the chairs are free of woodworm, given its presence elsewhere in the fabric.
14. Following advice from the Registrar the DAC are satisfied there is nothing objectionable in principle about the leasing arrangement with the Parish Council.

RESPONSE FROM HISTORIC ENGLAND AND AMENITY SOCIETIES

15. Historic England was asked for Pre-Application advice on this petition. This was given in a letter from Steven McLeish dated 20 August 2021. This indicated Historic England would have no objection to the removal of 3 pine pews, but recommended that the remaining timberwork be treated for woodworm, subject to the detailed advice of the DAC. However, they cautioned against the use of upholstered replacement chairs due to their likely impact on the church's interior which is predominantly furnished in timber. Historic England encouraged the petitioners to consider the Church Building Council's guidance on seating, which provides some examples of new seating in historic churches.
16. Following formal consultation responses were received from the Victorian Society, the Georgian Society and Historic England.
17. The Victorian Society responded to the consultation by email dated 14th October 2021 from James Hughes echoing the views of Historic England, in that they had no objection in principle to the removal of the pews and timber chairs but expressed the view that the chairs proposed to replace them are 'inappropriate for a highly listed historic church interior and do not satisfy the C of E's statutory guidance on new seating. There may be a case for introducing new chairs here; but there is none for introducing chairs that are of a quality of material, craftsmanship and appearance that renders them unworthy of the building and harmful to its character and appearance. Any new seating should be entirely of timber and unupholstered.' I should add immediately that I have no cause for concern over the quality of craftsmanship of the

proposed replacement chairs, but do need to consider whether they would be suitable in the context for which they are being proposed.

18. The Georgian Society's response was by email dated 4th November 2021 and deferred to the Victorian Society in respect of the pews, and echoed the caution from Historic England against their replacement with upholstered chairs. They too took the view that high quality purely wooden chairs are both aesthetically more suitable in the context of a simple interior like that at Upton Warren and likely to be longer lasting than their upholstered counterparts.
19. Historic England also gave a formal response to the consultation repeating the views given in their earlier advice and again referring the petitioners to the CBC guidance.
20. None of the amenity societies nor Historic England wished to become parties opponent, but wished me to take their views into account when determining this petition.

CHURCH BUILDINGS COUNCIL STATUTORY GUIDANCE

21. The Church Buildings Council generally advocates the use of high-quality unupholstered wooden chairs and pews where seating is necessary. The Council's experience is that wooden chairs have the greatest sympathy with historic church environments, present the best value for money with long life-spans, and that a well-designed, ergonomic wooden chair can provide as much comfort as an upholstered design.
22. Upholstered seats are not considered to be appropriate for the following reasons;
 - They have a significant impact in terms of colour, texture and character which is not consonant with the quality of a highly listed church;
 - 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;
 - They are heavy and therefore more difficult to arrange and stack;
 - The addition of soft furnishings can alter existing acoustics;
 - 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.
23. They recommend that petitioners contact manufacturers to try a range of designs and try to envisage how they will appear multiplied throughout the church.
24. This advice has been repeated to the petitioners by the DAC and again by this court when first considering the petition in July 2022.

DIRECTIONS GIVEN

25. On 29th July 2022 I gave directions seeking further information from the petitioners as follows:
- a. Inviting further evidence on the issue of comfort and suggesting a trial of several different designs including unupholstered and seat-only upholstered from different companies.
 - b. Asking for further consideration of colour to blend with the existing panelling/other wood.
 - c. Asking for further information on the sustainability of the chairs and their estimated lifespans.

JUSTIFICATION FOR FACULTY SOUGHT

26. The original statement of need is undated, but was supplied with the petition. The reasons in support of the petition at that stage can be summarised as follows:

- There is community use of the Church and a desire from the minister and congregation to increase this;
- More flexible space is required to achieve this;
- Some of the pews are in poor condition and infested with woodworm despite treatment;
- The pews are heavy and difficult to move and require screwing to and unscrewing from the floor;
- There is significant public support for the removal of some pews and their replacement with more comfortable and flexible seating; and
- The current collection of seating does not enhance the interior décor of the building.

27. This statement of need included a different proposed chair to the original sample, still in light wood and with upholstered seat and back in a strong teal colour. This one is a “York” style chair manufactured by Winscombe Furniture of Mansfield. I understand this is lighter weight than the original Alpha LAMU. A photograph of similar chairs in Lickey Church was provided, the implication of which is that another argument is being made to the effect of:

- Upholstered chairs have been permitted in Churches elsewhere in the Diocese.

28. Additional information (also undated) was added to the original statement of need confirming that the York model is a substantial hardwood chair with morticed joints, the fabric can be scotch guarded (or similarly protected) and the chairs have a long life – similar chairs having lasted at least 20 years. However, it was confirmed that this model is not stackable. It was also confirmed that the preferred colour choice was a burgundy red ‘to complement the red tiled centre aisle’ with pale wood frame which was said to be ‘compatible with the remaining pine pews’. It was also suggested that ‘experience of this chair in another local Church suggests that it would be appropriate for its intended use.’ This is another reference to the use of similar chairs at Lickey.

29. A third undated, unattributed document was produced entitled 'Further explanation of need for upholstered chairs'. This put forward the following reasons for seeking upholstered chairs;

- The current chairs are firm wooden seated, in poor condition and uncomfortable.
- The congregations and community were canvassed on whether some pews and chairs should be replaced and whether the replacement chairs should be upholstered. The proposed changes were overwhelmingly supported. This comment is somewhat different to the original comment that flexible and comfortable chairs had wide support, rather than specifically upholstered ones.
- The proposed chairs (or very similar) are being successfully used at Lickey.
- The former church warden who left the legacy was strongly in favour of upholstered chairs, so not to buy such would 'deny the spirit of this legacy'.
- There is increasing community involvement with the church and improved facilities are needed.
- Stackable chairs are not necessary and there is nowhere to put them.

30. Finally, a fourth document, this one named as from Richard Edgington, but still undated, was provided to respond specifically to the directions I made in July (erroneously described in that document as 'advice'). This document made the following points:

- There are changes taking place in the pattern of use of the Church by the community that involve extended seating periods.
- The replacement of old and dangerous chairs with new upholstered chairs with new upholstered chairs of appropriate colour would not compromise the historical nature of the building.
- Chairs of a similar style and upholstered are used at other listed buildings including Grade I listed.
- The present seating is overwhelmingly seen as unsuitable.
- The community would welcome discussion on type and colour of wood and fabric but are reluctant to compromise on the desire for fully upholstered chairs.
- Historic England ought to support the petition because part of their role is to 'support change'.
- The early community consultation did not specifically focus on fully upholstered chairs but 'it became clear that the majority wanted wooden chairs with fabric upholstery.'
- A later consultation around the parish was organised with pictures of chairs and there was overwhelming support for fully upholstered.
- Visits were made to Lickey church (unlisted) and Malvern Abbey [sic] (Grade 1 listed) and St Just-in-Roseland all of which had upholstered chairs.

SITE VISIT

31. I undertook a site visit to Upton Warren Church on Thursday 15th September 2022 together with the secretary of the DAC. We were warmly welcomed by the three petitioners and the daughter of the deceased donor. Also present at church were around 6-8 other people preparing for a harvest supper that weekend, who were cleaning the church and creating floral displays. It was a privilege to witness a dedicated group of people who clearly love their church and enjoy serving the local community in that way.
32. This was a valuable trip to enable me to better understand the size, layout, décor and use of the church building and how any proposed replacement chairs would impact on it. It also helped me to better understand the expressed needs of the church which were:
 - a. Flexibility of use of the limited available space.
 - b. Ease of moving the seating to configure the space in various ways. This was important as for most of the time the volunteers moving the seating are older people who find moving the heavy pews difficult.
 - c. Comfort for the congregation, especially the more elderly members.

DETERMINATION

33. There is no doubt in my mind that the petitioners have made out their case in respect of the removal of three pews and the chapel chairs. The pews are in poor condition and the three worst ones will be removed. The chapel chairs are uncomfortable and look messy. They are of several different styles and most, but not all, had cushions of differing patterns on them. The chapel chairs particularly contributed the busy, cluttered feel of the space.
34. There is no opposition from Historic England or the Amenity Societies to this part of the petition and I have no hesitation in approving it subject to the conditions identified below.
35. Most of the arguments set out above in the bullet points, however, go primarily to the need to remove the pews and chapel chairs and replace them with uniform, comfortable chairs. They do not go to the specific need for upholstered chairs.
36. Historic England and the Amenity Societies all oppose the upholstered chairs and point to the Statutory Guidance issued by the Church Buildings Council under section 55(1)(d) of the Dioceses, Mission and Pastoral Measure 2007. The key parts of this have been reproduced above.
37. In determining the petition, a Chancellor must apply the law, which includes the statutory guidance. Such guidance must be considered with great care. It must generally be followed but, exceptionally and with good reason it is permissible to

deviate slightly from it. But any such departure must be justified by reasons that are spelled out clearly, logically and convincingly.

38. Despite having been referred repeatedly to this guidance that advises petitioners to investigate un-upholstered wooden chairs, the petitioners have declined to do so. There has been no attempt to find comfortable unupholstered or seat-only upholstered chairs that could meet the requirements of comfort and flexibility. This means that local community members may have been inadvertently misled into unrealistic expectations of what might be possible, and no consultation has been undertaken on more realistic alternatives.
39. Vitally, having not properly investigated the alternatives, the petitioners are not able to put forward a convincing case that only the type of chair that they prefer is capable of meeting their identified needs. The community views in respect of modern comfortable un-upholstered chairs, for example, is unknown as they have not been given the opportunity to try them.
40. The simple reference to other churches having similar such chairs is not in any way determinative of this petition. First, there is no doctrine of precedent within Ecclesiastical law that requires decisions of a Chancellor in one case to be followed in later cases. Only decisions of the Court of Arches or senior secular courts have that authority. Second, each case needs to be determined on its merits, considering the particular building and the particular needs of a particular community. For example, Holy Trinity church at Lickey is an unlisted building in the Diocese of Birmingham. Where a church building is unlisted the special architectural or historic interest of the building is less significant, and there is not the strong presumption against proposals adversely affecting that interest. The situation is different for listed buildings. Great Malvern Priory is Grade 1 listed and the petitioners must have been found to have had a very strong case for the upholstered chairs in that case. However, I note that it is also a very grand building on a scale utterly different to the simple intimacy of Upton Warren. Chairs that may be suitable in one location may not be suitable in another. I do note however, that the upholstery at Great Malvern Priory is in a neutral colour that does not distract from other, more ornate elements of that building. St Just-in-Roseland in the Diocese of Truro is not a church that is familiar to this Chancellor.
41. The intentions of the late churchwarden in making a gift to the church does not provide a reason to depart from the statutory guidance. The fact of the donation having been made subject to conditions does not bind the court to interpret the law as consistent with the conditions imposed by the donor. The decision must be made under the law, including the statutory guidance. If a faculty is granted subject to conditions, which is what has been determined in this case, the PCC will need to consider whether they wish to proceed subject to the conditions imposed. If so, they will also need to consider whether the terms of the bequest permit them to use that money to do so and if so, whether they wish to use it in that way.

42. I shall therefore consider what chairs can be justified on the evidence before me, in compliance with the statutory guidance, unless there are good reasons for departing from it.
43. The need for flexibility of use of the chairs is made out. There is already significant community use, including by a group of asylum seekers placed in a hostel nearby together with workers and volunteers supporting them. There are plans to increase the wider community use of the building alongside developing the worshipping community. This requires the chairs to be light enough to be easily moved. It also, in my judgment means it would be wise to have the option to stack them, if only 4-5 high, to maximise that flexibility. So stacked they may fit temporarily into the vestry or into a corner of the chancel. I agree there is no benefit in obtaining chairs that can be stacked very high and or that need special equipment to move the stacks. There is no space of sufficient size to store them, and the number of chairs proposed is modest in any event. It appears from comments made to the DAC that at one stage that option was agreeable to the petitioners, and the DAC's approval appears to be based on that requirement being fulfilled. A quick google search suggests that various church chair suppliers provide stackable wooden chairs, including upholstered ones and ones with an under-seat bookshelf. Therefore stack-ability should not impinge upon aesthetics, comfort or practicality.
44. The need for comfort, including for a congregation that is currently fairly elderly, is also made out. For that reason, having arms on some of the chairs is an appropriate addition. However, I am not convinced that only fully upholstered chairs will meet the requirements of comfort on the evidence supplied. Upholstery is considered further below.
45. In addition to the needs articulated by the petitioners, I observed a need to create greater unity and simplicity to the floor / seating level of the church. For that reason, I do not consider the 'blonde' wood of the frame on the sample chair appropriate, it does not match any of the other wood, including the pine pews. It would be better to choose a wood colour that blends with existing fabric that is likely to have a longer lifespan than the deteriorating pews, so it should match as near as possible the wood colour of the floor or the wall panels.
46. It is also important, particularly in such a (predominantly) simple, clean, light church not to have seating that detracts from the appropriate focal points such as the altar, the east window, the pulpit, the lectern and any people leading a service or other event. The fact that St Michael's Upton Warren is a relatively small church emphasises this point. This means that bright upholstery, whether burgundy, teal or any other strong colour is not appropriate as it will dominate the space and distract from the proper focal points.
47. However, a point that I noticed from visiting, but which was not specifically relied upon by the petitioners (nor evident from the photos supplied with the petition), is that cushions are routinely used to improve the comfort of the chapel chairs. These

were not particularly attractive, being quite worn and of differing designs. They added to the overall sense of busyness of the lower part of the church.

48. It appears to me that an older congregation wanting comfort will seek to continue to use cushions if wooden chairs are chosen which are not sufficiently comfortable. And no faculty is required for the introduction or removal of cushions, being covered by List A. It is therefore likely that if the congregation do not find the replacement chairs sufficiently comfortable, they will continue to use such cushions. In those circumstances, it is better for all the seats to be upholstered in matching neutral upholstery than for loose cushions of differing designs to be used. Therefore, if the petitioners cannot find sufficiently comfortable all wooden chairs, they may introduce chairs with upholstered seats only. This should enable sufficient comfort but leaves the backs of the chairs as plain wood which will keep the sight lines cleaner when observing the interior of the church and is therefore more in keeping with the simple, light feel of the building.
49. As identified above, coloured upholstery will be distracting and become much of a focal point for seating that is essentially functional. Therefore, if an upholstered seat is to be used it must be in a neutral colour that blends with the wooden frame. It does not need to be the same shade as the wooden frame. If this eliminates the use of the cushions, it will add positively to the simplicity and harmony of the furnishings, and keep attention properly elsewhere.
50. In the circumstances of this case the need for comfort for a congregation with a significantly elderly element, combined with the need to simplify the appearance of the lower part of the church by the removal of the need for loose cushions can together justify a slight departure from the statutory guidance, by permitting chairs with upholstered seats only.

ORDER

51. I therefore direct that a faculty be issued permitting the following works (subject to the conditions specified):
 - a. The removal of 3x pews. This is subject to the condition of the PCC considering obtaining commercial timber treatment for woodworm for the remaining affected wooden items in the church within the next 12 months, having taken advice on this from the DAC;
 - b. The removal of the chapel chairs subject to conditions that:
 - i. they are first offered to other local churches and if not wanted may be sold or otherwise disposed of; and
 - ii. in either case care must be taken not to spread woodworm infestation elsewhere.
 - c. The introduction of up to 25 chairs of a make and style to be agreed with the DAC subject to the following conditions:
 - i. They are light enough to enable ease of relocation within the church;
 - ii. They are stackable;

- iii. They are predominantly made of wood;
 - iv. They have a predicted lifespan of not less than 20 years;
 - v. All wooden parts are stained (or made of a suitable darker wood) to blend with the colour of the wood panelling and/or wooden floor;
 - vi. Most of the chairs must be without armrests, however up to 30% may have upholstered armrests added;
 - vii. They are upholstered or they have an upholstered seat only with no upholstery on the back rest or elsewhere;
 - viii. Any upholstery must be hard wearing and in a neutral beige, buff, or brown so as to blend in with existing wood in the church (it does not have to be the same shade as the wooden frame if some contrast is preferred);
 - ix. Any upholstery is commercially treated to minimise staining and water damage;
 - x. The chairs are to be identical save for those with armrests, which may differ only by reason of the armrests;
 - xi. The sample new chair made of pale wood with red upholstery is to be removed from the church;
 - xii. If any of the chapel chairs are unsafe, as was suggested during the site visit, they must be removed from use immediately.
 - xiii. The Memorandum of Agreement between the Parish Council and the PCC must be amended to take into account the provisions below, and the final form of the Memorandum is to be approved by the Registry before it is signed by the PCC.
- d. In the event of any dispute as to the interpretation of these conditions the matter is to be referred back to the court.

52. I direct that the petitioners shall be responsible for the court fees in this case in the usual way.

MEMORANDUM OF AGREEMENT

53. This agreement must not purport to limit or circumvent the powers and responsibilities of the Consistory Court. Therefore, the agreement needs to make clear that the Parish Council must not remove the chairs from the church without a faculty permitting them to do so (save where such removal is both temporary and with the full consent of the PCC having obtained any List A or List B permissions required). In the unlikely event of a peremptory order of this court requiring the removal of the chairs (for example on the grounds of public safety), the PCC must not be in breach of the agreement by reason of complying with such an order.

THE WORSHIPFUL JACQUELINE HUMPHREYS
CHANCELLOR OF THE DIOCESE OF WORCESTER
22nd SEPTEMBER 2022